

Putting the Law in its Place

Analyses of recent developments in law
relating to same-sex desire in India and Uganda

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SEXUALITY
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Cover painting by Baaraan Ijlal

Baaraan Ijlal owes her narrative style to many influences: from the tradition of dastans and epics to music and contemporary literature. Time is not a barrier on her canvas. Dialogue is encouraged. And cultural and social taboos are challenged constantly. With no formal training she continues to learn systematically from them.

Baaraan Ijlal is a visual artist. She lives and works in New Delhi, India. To enjoy and read more about her visual art work, visit: <http://baaraanijlal.com/>

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Putting the Law in its place - analyses of recent developments in law relating to same-sex desire in India and Uganda

Editorial note

Since December 2013, there have been dramatic shifts in local and global discourses that connect sexuality, politics and law. In India the campaign against the anti-sodomy provision, Section 377 of the Indian Penal Code has, in some sense, come to the end of the judicial route even as the explicit and formal politicisation of sexuality opens up new spaces and challenges. In Uganda, the long standing Anti-Homosexuality Bill has become an Act, close on the heels of another legislation – the ‘Anti-pornography Act’, which rearticulates a moral (read religious) notion of the nation. In Nigeria we have a similar law, which, although pegged on the criminalisation of same-sex marriage, has far reaching effects of criminalising public discourse around homosexuality. In each of these contexts we see the intersection of sexuality with politics, law, religion, and discourses of morality. At the level of ‘international’ discourse, however, rather shallow analyses lend themselves to the reinforcement of a barely-post colonial geopolitics, where the complex interactions of these factors in the politics of sexuality are elided.

This collection of essays has been jointly produced by Sexuality Policy Watch and the IDS Sexuality and Development Programme.

The collection of analyses presented here juxtaposes the Indian and the Ugandan contexts with the intention of opening up new questions for struggles in both these places, but also with the objective of generating a deeper conversation amongst activists and academics about the peculiarities of Law and Politics as distinct (if connected) realms of action. One feature of these various essays is to bring about the circulation of more nuanced analyses of the particular political-economic and cultural conditions for these dramatic developments in law , which take place at the intricate intersections between global economics, national politics and the so called ‘return of the religious’ (Derrida, 1998) in dogmatic manifestations. Another aspect examined by some of the authors regards the limitations and caveats of dominant juridical, economic and scientific rationales that currently pervade political struggles and advocacy in relation to human rights.

Lastly, most essays strongly remind us that, broadly speaking, we find ourselves in the midst of the formation of discourses of and on the nation that are enabled by the explicit exclusion of sexual and gender diversity from the body of the citizen. This simultaneously produces notions of normative and ‘acceptable’ forms of sexuality and gender, couches the nation in heteronormative terms through peculiar re-framings of history and often marks the body of the normative citizen in racial, ethnic and religious terms. This might be understood as the rise in ‘xenophobic homophobia’ (Bacchetta, 1999) in several parts of the world, where the question of homosexuality has become capable of being central to the processes of the construction of nation. In East Africa, Eastern Europe and in the Caribbean we thus see the state, or the political

establishment, turning to the active use of the law as a distinctly homophobic tool. This must be considered a break from the post-colonial context of homophobia – thus far we have had, at best, a state homophobia by neglect, in allowing the continuation of colonial laws. We see, thus a moment where the Law and the act of law making has itself become a (cynical) political act, and the emergence of the Queer as that body upon which such Law might act.

The manner in which this peculiar twist in the post-colonial tale has been appropriated is most explicit in the aid conditionality response of western states, most recently the United States of America. As Sylvia Tamale, to whom we are grateful for this intervention in our editorial, argues:

"Some people have celebrated the recent imposition of sanctions on Uganda by the US government in the wake of the passing of the Anti-Homosexuality Act. While I'm totally opposed to the homophobic legislation, I am not one of those that popped champagne at the US government's action. Apart from the fact that sanctions generally have minimum impact as a foreign policy tool, in this case they are bound to cause more damage than benefit to the cause of LGBT people in Uganda. Indeed, the sanctions reinforce the false idea that homosexuality is un-African and an importation from the West. Otherwise how would the US explain its turning a blind eye to all the other human rights violations that President Museveni has committed against Ugandans in the past 28 years? Tagging on corruption to the ban is also grossly cynical given that the Museveni regime's kleptocratic and predatory acts against the Ugandan treasury have been public knowledge well before the anti-gay legislation came into force. The hypocrisy and opportunism behind the US move is clear in the exclusion of military assistance from its ambit, demonstrating that the Obama administration's primary concern is security and not human rights."

Aside from appeasing a domestic constituency, sanctions are nothing more than a blunt tool of coercion in the global geopolitical game, squeezing the ordinary Ugandan (including LGBT individuals) and only symbolically affecting the dictator and his cronies. They will only lead to a renewed backlash against LGBT people as the general populace wag their accusing fingers, blaming them for their suffering. Moreover, as the sanctions against Russian president Putin and his lieutenants over the Ukraine demonstrate, in this day and age, such measures are easily ignored."

We dearly thank the authors who have generously invested their intellectual energy and time to make this collection possible.

Sonia Corrêa and akshay khanna

The Queer body between the Judicial and the Political – reflections on the anti-homosexuality laws in India and Uganda

akshay khanna

Nostalgia for a recent time – or how we miss the ‘post-Naz’ days in India. India is dramatic. Anyone who has felt its sweltering summer and waited — eyes beseeching the cloudless sky — for the first monsoon shower, knows why. The first cough of monsoon thunder is a resounding proclamation that the struggle, for the year, is done. People stream onto the streets to get drenched in the first heavy drops, breaking into dance, singing songs of the rain – just like in the movies. This is not merely relief, it is *jouissance*. Just when one forgets everything but the relentless, oppressive heat, just when the monsoon can only be spoken of in hushed tones, as though it were a mystical, mythical saviour, the clouds arrive and burst in an affirmation of life, of the cycle of life, bellowing out the inevitability of the end of summer’s tyranny. It is a moment of epic emotions. Strangers smile knowingly at each other, joined in a carefree laughter, as though we had won the cricket world cup. But imagine, for a moment, the intensity that this experience could muster where it magically coincides with a victory that those eyes have demanded of the sky not for one summer, but for ten, or a hundred and forty. How does one speak of a moment where the skies burst forth in celebration precisely when, at the end of a long battle that has drawn blood, sweat and tears, a State that has always despised you, attacked and ridiculed you, turns around in an open embrace and announces “you are citizens, free, equal, with the right to be who you are”?

I was not in Delhi that momentous morning, the 2nd of July 2009, when the Delhi High Court ruled that homosexuality could no longer be considered an offence under Indian Law. After a decade-long litigation, the Court had declared that Section 377 of the Indian Penal Code — an anti-sodomy provision brought into force in 1860 by the British colonial administration, under which homosexuality has been deemed criminalised — violated constitutionally guaranteed Fundamental Rights, recognising, for the first time, lesbian, gay, bisexual and transgender folk as citizens. Technically, the judgement simply held that consensual sex between adults of the same sex, in private, is no longer punishable under Section 377. The implications, however, of this judgement are far greater than this. “The terms of the debate have been reset;” argued Gautam Bhan, a Queer activist (and contributor to this collection) on television that evening, “we will now speak as full citizens”. That day will be remembered by Queer Indians across the world as the day when we ‘finally became free’. National television channels ran this as the top story for two days, merging colourful images of the recently concluded Pride marches in five major cities of India with those of my friends, comrades and lovers breaking into tears of disoriented delirium. “India has finally entered the 21st Century,” newspapers reported, even as religious figures across the board shook their heads in angry disapproval – the Hindu Sadhvi, Christian Reverend and Muslim Maulvi echoing each others’ (mis) conceptions of India as ‘conservative’. Having now had a taste of this ‘freedom’, this sense of being ‘full citizens’, it seemed, from here on, there was no going back.

This 21st Century that India had entered, it turns out, is not linear.

The day the Supreme Court cut itself, and us, to size

While I missed the drama of 2009, as luck would have it, I was present outside the Supreme Court of India a mere four years later for an equally dramatic moment. I had spent the best part of the morning shuttling between counters trying to get a pass to enter the premises in hopes of watching the highest court of the land lay to rest doubts on the simple fact that the Right to Life must include a Right to Sexuality, dismissing the irrational demands of no less than 18 appeals against the Delhi High Court's sterling verdict. The sudden commotion in the lawns of the Court, teeming with journalists, television cameras, lawyers, inquisitive onlookers and interns of various international organisations, was inescapable. And as the mass of people elbowed their ways into earshot of lawyers who had just stepped out of the court with news, I heard, in disbelief, the words 'appeal allowed'.

We had waited for more than a year since the arguments in the Supreme Court had been completed, and when the bench had reserved judgement. We had, in this period, imagined all kinds of outcomes and scenarios. And even as the complete reversal of the High Court decision was always a possibility, it had, in honesty, simply been fuel to the perverse enjoyment of imagining the worst case scenario, possible only because such an outcome could not really happen. In the din that followed over the subsequent minutes, hours and days, journalists and TV channels cornering anyone who seemed remotely related to the case for sound bites, for reactions, for tears and anger, and as we waited to read the actual judgement that had so summarily dismissed our struggle, some things became clear – at stake were the juridical possibilities of citizenship, what it means to be a 'minority' in the Indian nation, the balance of powers in the state, and, significantly, our experience of time.

The judgement of the Supreme Court, of which there have now been an impressive slew of analyses and critiques, can barely be summarised in this short piece. This is partly due to the fact that it stands out as one of the worst written judgments to come out of an otherwise prosaic court, being an incoherent cut-and-paste of disparate arguments, a disregard of evidence and jurisprudence. The core of this judgement is that the Delhi High Court judgement relates to what it termed a 'minuscule minority'. The question of the amendment or deletion of Section 377, it held, was not a matter to be decided by the judiciary, but a subject to be taken up by the Parliament. In essence, it stated that the Rights of this 'minuscule minority' are subject to the will of the majority.

At one level, this notion that same sex desire in India is contained and exhausted in discrete bodies that might be considered a 'minority' is itself inaccurate. There is a far greater diversity of ways in which gender diversity and sexualness are experienced, spoken of and transacted in India, and equally, far more complex ways in which hetero-normativity generates exclusions. Activists, including myself, are complicit in the process through which same sex desire came to be intelligible in Indian courts as being contained within an 'LGBT' framework. But given this (mis)recognition, (or rather, the limited recognition of same sex desire as articulated in bodies of those who identify with sexuality and gender non-conforming identity categories) by the High Court of Delhi and by the Supreme Court itself, the implications of the Court's position are deeply troubling.

This statement that the rights of the minority are subject to the will of the majority goes against the very structure of the state as envisaged by the Constitution of India, and as clearly obtained from successive Supreme Court judgements over the decades. The very function of Fundamental Rights, and of Human Rights, in a Constitutional democracy, is the protection of the Rights and interests of minorities in the face of the majority. The role of the Court in this regard, that of Judicial Review, is a key element of this structure – the role of the Court to ensure that the actions of the Legislature and the Executive, and more broadly of ‘law in force’, are in line with the Fundamental Rights guaranteed in the Constitution. While most of the appellants, so enthusiastically celebrating a ‘victory’, represent shades of the Hindu right, including bodies affiliated with the Bharatiya Janta Party (BJP) that has so dramatically came into power at the centre in May this year, several of the appellants claimed to speak for religious minorities such as Muslims, Christians and Jains. The irony of this moment was the inability of these groups to recognise that the core principle laid down in the judgement threatens precisely the rights of communities that are considered as ‘minorities’. This is something akin to dancing at one’s own funeral. Given that India is now set for at least five years of rule by the aggressive Hindutva right wing, one that has systematically played an exclusionary politics and framed the nation and the bounds of citizenship within patriarchal, masculinist, upper caste norms, the power of judicial review in the protection of the rights of minorities is crucial to Indian politics like never before.

And yet, there is something important that this seemingly anachronistic moment inaugurated. At one level, it reaffirmed something that activists had known all along – that the judicial route for juridical recognition has its limitations – and that the true struggle must ultimately to be carried out in the domain of politics – whether in terms of formal politics, or in terms of the realm that, following Partha Chatterjee, we might call ‘political society’. The Court, in throwing the ball to the Parliament had inadvertently begun that political struggle. In the days immediately after the judgement, several of the main national political parties – the Congress (I), the fledgling Aam Aadmi Party and the Communist Parties made public statements in opposition to the Supreme Court judgement. The government itself filed a review petition challenging the judgement. The BJP, on the other hand, made it clear that they supported the Supreme Court verdict, just as they had opposed the original petition when in power in 2001. The question of same-sex desire and the Right to Sexuality, had, overnight, become an explicitly formal political question. The political struggle, in other words, is now upon us. At another level, this failure of the apex Court brought with it the imperative of critiquing the civil society obsession with the Law that has marked feminist, Queer and other struggles, the trust in the power of the formal symbolic realm, with Constitutionalism, and the very possibility of beginning to imagine a project of making the law irrelevant.

Return to a properly Queer politics

There have been, and continue to be, diverse reactions by Queer activists to this moment. On the one hand was the recognition that the political struggle implied more explicit engagement with other people’s struggles and movements, with marginalised groups and other political formations. The need to act upon the intersections of oppressions of class, caste, religious fundamentalism and aggressive masculinity has now returned to the centre of Queer organising, at least in Delhi. The ‘Global Day of Rage’ a week after the judgement brought together expressions of solidarity and dialogue on these intersections, as did the ‘Reclaim the Republic’ protest that explicitly brought together groups recognising the connections between

different forms of marginality. In some ways this was a return to a more properly ‘Queer’ politics, which had, at least in the mainstream public sphere been eclipsed by a neo-liberal absorption of the question of sexuality into a framework of identity, with the emergence of the ‘pink rupee’, and the near monopoly of the male Gay figure over the urban English media, and a complacency of an otherwise privileged class of people freshly rid of the symbolic violence of the Law.

The Supreme Court judgment has thus (once again) united variously located Queer folk in a realm of symbolic injury and opened up the possibility of examining such a unity with others marginalised by related structures of oppression. This requires, on the one hand, an experiential and sincere engagement with other movements – to go beyond symbolic solidarity and to understand and act upon the ways in which the politics of caste, class, region, language, race, gender and sexuality, amongst others, contribute to each other, constitute each other, and how these relate to broader realities of the political economy. On the other hand, it is now imperative that the Queer movement sincerely challenge itself along these axes of caste, class, gender, and the like that have, for the large part, been avoided perhaps by the occupation of a demarcated identity of victimhood based on sexuality alone. In India, we have the benefit of learning from the Feminist Movement which, over the decades, has critically disaggregated the stable category of ‘woman’ as being invisibly structured by upper caste, hetero-normative, Hindu imaginaries, and generated a range of political positionalities relating to specific experiences of caste, class, religion, sexuality and gender itself. It is not my case that we now must now exclusively engage with each other from ‘Dalit Queer’, ‘Muslim Queer’, ‘Trans* Queer’, etc. political positionalities, but simply that it is time to recognise the challenge that the intersectionality of oppressions poses for political praxis.

Diversity within and between Queer movements

This is related to the second, and perhaps more important response to the judgement – a return to the crucial questions of representation, of relative privilege and of the diversity of the experiences of differently located Queer folk vis-a-vis the law. Several of the pieces in this collection, especially those by Nitya Vasudevan, Vqueeram Aditya Sahay and Jordan Osserman, speak directly to these debates and it is these debates that instigate a deeper consideration of the apparent primacy afforded to a certain imagination of the law as the space for struggles for justice. The simple point here is that the law, the state and its functionaries are experienced and negotiated disparately and that there is an exclusionary violence involved in bringing these to speak to a single narrative of the violence, or indeed, the potential of the law. These debates marked a return to a focus on the fissures in the very narrative of a unified movement held together by either the moniker of ‘LGBT’ or ‘Queer’.

This is not, of course, the first time that the diversity of experience has challenged the all too easily made claim of a unified struggle. As a matter of fact, the first response of Queer activists from around the country to the original petition filed by two NGOs, had already articulated with nuance the impossibility of representation, the hierarchies within and between Queer communities, and the conflicts in political struggles of different groups. The fact that the petition had depended, in part, on the argument for a Right to Privacy, or that the prayer in the petition was for the exclusion of ‘consensual sex between adults in private’, for instance, was already dissonant with working class Queer folk, who do not afford the luxury of ‘privacy’, and whose sexuality expresses more often in public spaces, where they have complex

relationships of negotiation, violence and eroticism with the police. This question of privacy also militated against the feminist struggle to undo the falsity of the public-private divide that justified the apathy of the state towards violence and discrimination within the family, and somehow reinforced the patriarchal control over women's bodies and lives. Significantly, it was in the face of the aggressive response of the BJP-led UPA government in the initial years of the litigation, that a series of conversations took place between these groups, and which led to a broader convergence of a movement to rally behind the petition. The Supreme Court judgement allowed for a return to these crucial debates, to these conflicts, pushing towards a more diverse interaction of political agendas. Now that the BJP is back in power, and making a false claim to a broad mandate for Hindutva, I suspect the question of strategically converging yet again will soon be upon us again. And perhaps the challenge will be to either imagine a politics that is based on dissensus (rather than the construction of a false unity) or to engender a politics that transcends one's bonds and identities, one's place in the world.

The judgement has also made necessary a deeper questioning of the potential and limits of Law as the site for struggle. In the late 1990s, when the idea of filing a petition challenging the Constitutional validity of Section 377 had first been broached, Hijra groups had opposed the proposal on the basis that the provision had little relevance to their everyday engagements with the police. While carrying out doctoral fieldwork in several sites across India between 2005 and 2007, as well, it had become clear that before the campaign against Section 377 taken on by civil society groups, there was little social knowledge of the provision. Until quite recently, I was told in all of these sites, the police did not even know about this provision. But the Queer movement generated a social life for the provision and increasingly, in that period, the provision began to be mentioned in interactions between working class Queer males and the police, and used as a tool for extortion and violence. It was not the case that in an earlier period the relationship with the police had been bereft of violence, but the violence was now related to a provision of law. This also engendered a greater demand for knowledge of the specificities of the provision, which criminalises sexual acts and not the mere fact of being Queer. This also gave rise to a greater understanding of legal rights and procedure. The social life of Section 377, in other words, has juridified the relationship between working class Queer males and the police.

It was in this context that the Delhi High Court judgement might have had significance beyond the symbolic: now that Section 377 had become a household object, the declaration of its invalidity implied a broader ability to draw on the status of citizenship in everyday negotiations with not just the state, but in relation to a range of public and private actors. And ironically, it is this fact, of the negation of Section 377 potentially writing itself into everyday negotiations on the ground that makes the Supreme Court's reinstatement of the provision all the more threatening and powerful. Now, in other words, everyone knows about the provision, and also that it has been validated by the highest Court. This raises the obligation on activists to organise wide and close to the ground, such that a collective provision of social, economic and legal support and protection is available to the most marginalised Queer folk. What must follow now, therefore, is a concerted effort at community level organising that goes far and wide.

To summarise the Indian case, thus, it might be said that, on the one hand, the Queer movement must now learn the ropes of formal political struggle and organising, engender the possibilities of an actual politics of

intersectionality and cross-movement engagement, the recognition of the hierarchies within and between Queer communities. On the other hand, the movement must creatively refashion itself beyond the Law, and enter the more difficult and diffuse social, economic and political realms. It must, in other words, re-imagine the very site of its struggle and undermine the centrality of the judicial struggles.

Uganda – Inauguration of the Judicial

If the Indian case is one where the judicial route has come to an end and where the movement must now enter the political realm, in Uganda we see something of the opposite. It was a few days after the Delhi High Court judgement that a version of the Anti-Homosexuality Bill which has been introduced and re-introduced in the Ugandan Parliament over the last several years, was passed as a Law. The Bill, which was initially introduced as a private member's bill by legislator David Bahati in 2009, has been best known as the 'Kill the Gays Bill', owing to a provision of the death penalty for 'aggravated homosexuality', to bring it in consonance with the already existing law relating to 'defilement', or the sexual abuse of children. While the provision of the death penalty has been removed from the final language of the Act, it contains provisions with a very broad reach that criminalise 'homosexuality' (defined broadly to include sexual acts including 'touching' persons of the same sex/gender, and persons), the 'promotion' of homosexuality, (which might be interpreted as broad enough to target activists and organisations that provide social support to LGBT and other Queer folk, or generate discourse around rights of LGBT folk), and broad provisions relating to 'aiding and abetting', and 'conspiracy to engage in homosexuality'. There is nuanced analysis that points to the link between the interventions of Evangelical pastors and activists from the United States of America and the anti-homosexuality impulse in Uganda's political circles. The crucial point here is that the site for struggle was already within the formal political domain with little agency of the LGBT movement in Uganda.

The most peculiar aspect of the Ugandan story, perhaps, is that in the period of more than 4 years that the Law was a Bill, the state, the media, and sections of society, had already begun to behave as though it was, in fact, a law, routinely targeting NGOs and activists working in opposition to the Bill. The Bill, in other words, already had a social and political life even while it did not, strictly speaking, have the legal status as law in force. In this period it was impossible to challenge the instrument – it was not a 'law' subject to judicial review and formal litigation. And yet, it was having the effect of Law, generating fear and action against LGBT folk, activists, artists and the like. Now that the Bill is an Act, a law in force, its Constitutional validity could be, and has in fact been brought to Courts. A challenge has recently been brought in the Constitutional Court in relation to this Act, posing arguments relating to a wide range of Constitutionally guaranteed rights including the right to privacy, the right against discrimination, dignity, the right to freedom from degrading treatment and the crucial procedural question of the fact that the Bill was passed in the Parliament without sufficient quorum. A further challenge has been also been launched at the East African Court of Justice. The possibility, finally, in other words, is to be able to draw the question of sexuality out of the political realm and into the judicial realm where it might be assessed in terms of legal principles and Constitutional validity.

The political production of dangerous Homosexuality

The political life of this object, before becoming law, and the process of its becoming law is demonstrative of the idiosyncrasies and cynicisms inherent in formal political processes. On the one hand, as Stella Nyanzi's

contribution to this collection demonstrates, the Bill was first and foremost implicated in (if not already intended to be so) the construction of the Ugandan nation, the question of African-ness, purporting to signal the delivery of post-coloniality and affirmation of sovereignty. This acted as an articulation of ‘xenophobic queerphobia’ as formulated by Paula Bacchetta – the placing of the queer body outside of the self-same nation, while simultaneously generating an idea of what this nation is. At another level, it is important to note that the Bill was tabled in Parliament repeatedly, most often around the time when other controversial bills with political-economic implications were being discussed and under public scrutiny – Bills relating to the control over the newly discovered Oil, and attempted Bills against corruption. The Anti-Homosexuality Bill, I suggest, was an easily summoned red herring, distracting from the more crucial questions before the political system.

A third series of questions to be asked is relates to the passing and signing of the Bill into an Act as itself a political act, aimed at the electorate, and at the affirmation of the legitimacy of President Museveni. There was a time lag of about two months between the passing of the Act and the President’s assent. Responding to the context of the now powerful Christian conservative voice in politics, and the demands of modernity that formally mark relationships of development aid, Museveni appointed a panel of experts to advise him on the scientific evidence for whether there is a ‘gay gene’, or whether there is a social explanation for homosexual behaviour – a re-kindling of the nature/nurture debate. As Rahul Rao argues in his contribution to this collection, this period was marked by

‘an elaborately choreographed dance intended to retain the support of Ugandan Christian conservatives and anti-homosexuality activists in an otherwise challenging political environment, while retaining his modernist credentials and some measure of plausible deniability (“I tried my best to stop it”) in the eyes of international donors’.

The time lag led to speculation that Museveni was bowing to donor agendas, this as a challenge to his image as the legitimate leader of the nation. In the fan-fare that followed his public signing¹, the mainstream media and social media alike were flooded with expressions of gratitude towards the President for standing up as a strong leader to western powers, for protecting the nation from moral corruption and for establishing beyond doubt Uganda’s sovereignty. This was followed by marches in Kampala in celebration of the signing of the Act, expanding the political mileage to be harvested through the passing and signing of the Act.

A final aspect of the political picture is of course the shifts in the geo-politics of development and the economy. Earlier in the narrative, European and North American donor governments had made statements threatening the stopping of development aid, which, as Stella Nyanzi points out in her piece, only resulted in further confirming a ‘homosexual agenda’ as being a part of a neo-imperialist ploy. Elsewhere, in Europe and North America, over the last few years, this apparent stand-off provided the United States of America, to re-affirm a position of the protector of Human Rights the world over, marking itself as progressive and the

¹Succinct coverage of the signing ceremony and Museveni’s rhetoric and reasoning in assenting to the Act: http://www.youtube.com/watch?v=HV_goBW96Wc

'non-west' as its other, and enabling the erasure of the fact that it continues to be engaged in illegal wars, illegal surveillance and the denial violation of Human Rights both domestically and internationally. The Bill, in other words, provided fodder to the strategies of homonationalism whereby the western nations gain domestic and international legitimacy through symbolic performance of an LGBT rights stance.

These four aspects of the political life of the Bill and then the Act demonstrate the cynical appropriation of the Queer body into quite other equations and political processes. That is perhaps the truth of the political realm – objects articulate in the political realm always in assemblages with other disparate objects, get pulled in by the disparate local and transnational flows. It is a process through which the object is disavowed political meaning in and of itself – in this case the Queer body. This appropriation of marginalised bodies into quite other political and economic equations, I suggest, reveals the cynicism of bio-politics as a crucial feature of political landscapes around the world. The immediate challenge in Uganda is perhaps to be able to extract the question of sexuality from these cynical appropriations and to re-cast it as a juridical question.

Final reflections

What then might we derive from the juxtaposition of the case of India and that of Uganda? From the Indian context, it might be argued that engagement with the judicial, and more precisely entry into the 'field of law' is a process of delimitation which more often than not implies the simplification of and disavowal of the diversity of experience and location. The entry into the Political realm, in this context implies a need to be able to re-imagine the question of sexuality as intersecting with other structures of oppression, marginalisation and exclusion, and to introduce the Queer body into assemblages with other bodies and political objects. From the Ugandan experience we get a sense of the challenges in this entry into the realm of politics – the challenges of ensuring that the Queer body not be reduced to an object, or a bare life, that might be appropriated into quite other political flows. The offering of the Indian experience to Ugandan activists, on the other hand seems to be that the entry into the judicial realm would be better served if it generates political effects. Broadly speaking, thus, the challenge seems to be to be able to not recognise either the law or politics as the site for struggle, but rather, to be able to allow the action in one to bolster efforts in the other. It is in the relationships between law and politics, in the ability to generate strategic permeability between these realms that the potential for movements might lie.

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The Paradoxical Geopolitics of Recriminalizing Homosexuality in Uganda: One of Three Ugly Sisters

Stella Nyanzi

Uganda's re-criminalization of homosexuality is not an isolated case, but rather part of a larger contemporary trend of homophobic legal reversals. Uganda, Nigeria and India are the three ugly sisters who recently ushered into place repressive laws that re-criminalize specific forms of expressing same-sex desire, love, sexualities and eroticism. Born through moments of nationalist struggle to gain flag independence from their singular colonizer - Britain, these three ugly sisters each inherited colonial penal codes that criminalize 'sex against the order of nature'. British prudery prevalent within the Victorian era of expanding empire and manifest through anti-buggery laws, informed the blue-print for encoding laws in the statute books of these colonies prior to their gaining sovereignty. The combined paradoxical vulgarity of Uganda's Anti-Homosexuality Act (2014), Nigeria's Same-Sex Marriage Prohibition Act (2013), and India's (2013) overturning of the decision on Section 377 of the Penal Code is more pronounced in light recent developments in England and Wales of the Marriage (Same-Sex Couples) Act (2013) which yielded the first marriages on 29th March 2014. The vulgar paradox is that while the former colonial master has freed himself of all legal shackles opposing the equal citizenship rights of same-sex loving individuals living under his jurisdiction, these former British colonies are stuck with the homophobic colonial legacy written with repressive ink in their powerful statute books.

This metaphor of the three ugly sisters – Uganda, Nigeria and India, born to a powerful prudish homo-prejudiced father – Britain who has metamorphosed with age into a handsome liberal pro-homosexuality United Kingdom, highlights the intricate connections, continuities, comparisons and contrasts within the politics of international relations governing (homo)sexualities in the world today. In this essay, I explore salient global-local features at the nexus of power, law, religion and sexualities that are brought into sharp relief by the politics of legislating against homosexuality in Uganda. How do recent legal reforms in the regime governing human sexualities within the Ugandan nation relate to the multiple and diverse developments in the global arena of LGBTIQ rights, wellbeing and citizenship?

Protecting State Sovereignty

Public opinion polls (their biased methodologies notwithstanding) reveal that an overwhelming majority of Uganda's population supports the Anti-Homosexuality Act which President Yoweri Museveni assented to on 24th February 2014. This support was illustrated by the jubilant throng that participated in a National Parade and Thanksgiving Prayer Rally held at Kololo Independence grounds on 31st March 2014. Escorted by police officers and military personnel, the marchers chanted anti-gay slogans interlaced with religious choruses as they stomped through a section of Kampala city. Thereafter, they indulged in victory speeches, music and prayers thanking God for the homophobic law. Organized by the Inter Religious and Cultural Leaders Alliance (IRCLA), this national thanksgiving event aimed at publicly thanking the president – who was also the Guest of Honor - for being brave in the face of international pressure and assenting to this piece of legal reform. Many marchers held posters, banners, and placards variously praising Yoweri

Museveni and some leading anti-gay campaigners, for saving the future of Uganda's youths by fighting homosexuality.

The president responded to this praise by reiterating his relatively recent commitment to champion the Anti-Homosexuality Act as a vital tool in the war against cultural imperialism. Several public officials, legislators, religious leaders and youths at the forefront of galvanizing efforts towards the politicization of their anti-gay movement appropriated the idiom of 'protecting Uganda's sovereignty' from the corrupting evil influences of neo-imperialism and neo-colonialism represented by the widespread imagination of a 'Gay Agenda'. At this national celebratory event, fighting against homosexuality was staged and projected as the duty of patriots. Anti-gay activists justified their homophobia by projecting themselves as nationalists embroiled in the defence of Uganda's sovereignty.

Presenting the public opposition of homosexuality as patriotic nationalism reinforces the alienation of homosexuality as a foreign practice which is un-African and thus not indigenous to Uganda. Sugar-coating homophobia with nationalism is a potent strategy for garnering votes in the forthcoming 2016 local elections. Convincing the polity to re-elect the incumbent president and his ruling party is a difficult but critically essential duty considering that Yoweri Museveni's National Resistance Movement has been in power for almost thirty years, but will want another terms of service in order to partake of recently discovered virgin wells of oil harboured within Ugandan territory.

While the rhetoric of protecting Uganda's sovereignty was widely spewed at local audiences within the country, it was mostly hurled at foreign leaders including Barack Obama, Hilary Clinton, and David Cameron who either challenged or queried Uganda's leadership for supporting the harsh recriminalization of homosexuality. Notably, when President Museveni changed from his original stance of delaying the enactment of the anti-gay bill into law because Uganda needed more time for scientists to inform the debate, he publicly declared that he was further persuaded to sign the Anti-Homosexuality Act (2014) because he sought to protect the sovereign wishes of Ugandans working against the recruitment of Ugandan youths into the foreign practices of homosexuality. The Speaker of the Parliament of Uganda, Rebecca Kadaga also used the idiom of protecting Uganda's sovereignty when she was challenged by Canada's Foreign Minister John Baird during the 127th Inter-Parliamentary Union Assembly held in Quebec at the end of 2013. Pastor Martin Ssempa, a leading proponent of Anti-Homosexuality efforts in Uganda always presents homosexuality as an imposition of decadent western mores and the fight against homosexuality as a nationalist project to protect the sovereign laws of the land; i.e. the laws of God, nature and culture.

The paradox within the history of Africa's geography is the very fact that present-day Uganda is a colonial creation. The national borders and boundaries of Uganda were first drawn up during the scramble for Africa that led to the partition of the continent between her greedy colonizers. Simplistic defense of Uganda's sovereignty by fighting homosexuality which is erroneously tainted as a foreign imposition is not only buying into colonial constructions of a pure heterosexual Africa but also failing to critique the colonial creation of contemporary African nations such as Uganda.

The Ambivalence of Foreignness

In public discourse and debates about the homosexuality question in Uganda, both pro-homosexuality and anti-homosexuality factions appropriate the alienating label of ‘foreignness’. The majoritarian anti-homosexuality advocates assert that homosexuality is alien to indigenous ethos, against African cultures, and thus un-African. They claim that it is a foreign imposition that came from either the decadent West during colonialism, exploration and Christianization, or else from the exotic East during slave trade, the building of the railway by Indian coolies and Mohammedization. Furthermore, the anti-gay lobby in Uganda desists from contemporary advocacy for human rights which informs LGBTIQ activism because they believe it is a foreign ideology aimed at universalizing western ideals, foregrounding individuality and normalizing degenerate minority rights that would pollute local mores and corrupt indigenous values. Consequently, local LGBTIQ activists who appropriate human rights frameworks of advocacy and who form alliances with western, international or other foreign pro-gay rights allies are vehemently opposed in public.

On the other hand, the minority pro-gay rights advocates equally appropriate the othering label of foreignness by highlighting that while homophobia is foreign to Uganda, homosexuality existed in several pre-colonial African societies including prominent kingdoms, chiefdoms and societies that form present-day Uganda. They explain that intolerance of same-sex sexualities was introduced into Uganda when colonial administrators codified the law. Anti-Homosexuality statutes were introduced into the Penal Code as ‘sex against the order of nature’ by colonial outsiders. The criminalization of homosexuality is highlighted as part of Uganda’s colonial legacy from the British colonizers. In this regard, pre-colonial histories of same-sex conducts are reclaimed from heterosexist archives and historical records that previously silenced, invisibilized, underplayed or altogether erased this evidence. For example they are reclaiming and reinserting the queer nature of Buganda kingdom’s royal palace in which the monarchical Kabaka Mwanga was known to have same-sex relations with several of his royal pages. Reclaiming Kabaka Mwanga’s same-sex sexuality, necessarily emphasizes the queerness of the historical events of martyrdom and canonization of the royal pages who rebelled against their ruler’s demands for same-sex intimacies after they converted to Christianity which condemned homosexuality as the ‘sin of Sodom and Gomorrah’.

Continuities of the colonial importation of homophobia are revealed by foreign conservative Christian rightist preachers who fly into Uganda to galvanize and strengthen mobilization of anti-homosexuality efforts. Analyses of the local Ex-Gay Movement highlight that conservative pastors and politicians who believe in Christian exorcism of homosexuality and reparative therapies for homosexuals are largely influenced and supported by American Christian Rightists. In spite of impassioned arguments made about the agency of Uganda’s local homophobes, funds and ideologies for the Anti-Homosexuality campaigns in Uganda can be traced back to America and Europe among conservative advocates of the Family Life agenda which opposes the so-called Gay Agenda.

Rethinking the Politics of Economic Sanctions

When the Anti-Homosexuality Bill was first tabled in parliament in October 2009, several western countries publicly threatened to withdraw bilateral aid from the development funds allocated to Uganda. International organizations also threatened to cut their multilateral donations. This international pressure was partly responsible for the subsequent reduction in momentum and stalling of the legal reform process which was

drawn out to four years and four months. When the Anti-Homosexuality Act became law, some foreign donor countries and international organizations took action by cutting or freezing their aid coming into the country. Others redirected their bilateral contributions away from the public fund and into the private sector and civil society organizations. These countries include Sweden, Denmark, Norway, and the Netherlands.

The cutting of foreign aid specified for development programmes was utilized by the anti-homosexuality factions within Uganda, as proof for the foreignness and neo-imperialism of homosexuality. The threats to withdraw economic aid and enforce economic sanctions that leaders of several Western countries issued to Uganda were re-interpreted as autocratic threats to Uganda's sovereignty by wicked representatives of former colonizers and current neocolonialists. The question of foreign aid, as it played out within the homosexuality debates in Uganda, highlighted the superficial hypocrisy within our politicians' rhetoric which overemphasized the need to protect our country's sovereignty and yet Uganda's public budget was greatly dependent on foreign aid donations from the western world.

While the threat of economic sanctions is a great tool for asserting international pressure, the actual implementation of these sanctions is fraught with challenges. For example the week that United States of America threatened to redirect its foreign aid away from Uganda's government in response to the signing of the Anti-Homosexuality Act also included public media coverage of American military aid and support coming into the country to help in the fight against rebels led by Joseph Kony. Furthermore, retracting donor aid from the public purse of developing countries mainly affects the lower classes and social masses who depend on publicly-funded services including health, education, security, transportation, and markets for their agricultural produce. Public officials and legislators directly responsible for legislating do not need public services because they can afford to access them from the private sector.

The Problematic Paradox of Transnational LGBTIQ Alliances

Feeding into the stereotypical caricature of LGBTIQ advocates as colonized agents of westernization and neo-imperialism, many pro-homosexuality activists in Uganda base their campaigns solely upon the need to protect the human rights of sexual minorities. This approach is widely attacked by opponents within the anti-homosexuality camps because they argue that human rights are based on Western ideologies which prize individual freedoms and liberties over communal responsibility which is an African principle. Alliances formed with partners from Europe and America are heavily criticized for imposing western ideals. Universalized strategies and symbols of LGBTIQ activism are flagged as signs of foreignness. However, it is important to highlight that LGBTIQ activism in Uganda is as much local as it draws from transnational support.

Writing off homosexuality in Uganda as un-African and thus a foreign imposition is futile. It is impossible to deny the pre-colonial as well as contemporary manifestations of same-sex sexualities in Uganda. Solely blaming foreigners for stoically spreading homosexuality as the new imperialistic agenda is insisting on an erasure of local indigenous variants of homosexualities. The visibility, articulation and presence of local indigenous same-sex loving individuals in Uganda defiantly asserts claims over Ugandan queerness; a queerness that is indigenous and genuine to the contemporary Ugandan individuals and groups that claim their rights, space(s) and recognition as homosexual Ugandan citizens and nationals.

Conclusions

The geopolitics of contemporary repressive legal reforms that recently recriminalized aspects of homosexuality highlights that homophobia is not a bounded form of oppression which respects cartographic national borders. There are historical linkages and continuities in the colonial legacy of outlawing localized forms of same-sex desire, eroticism, behaviour and sexualities. Uganda, Nigeria and India share the same colonizer whose administrators transposed Victorian prudishness and homophobia that were codified as anti-buggery laws into the new territories acquired during conquests undertaken during the expansion of empire. Thus the current criminalization of same-sex sexualities points towards the depths of an entrenched colonized mentality replicated within the national psyche and sub-conscious of national legislators, judiciary and executives who nonetheless claim to be anti-colonial, post-colonial and opposed to neo-imperialisms. It is important to expand our queer scholarship from specific micro-studies confined to singular national contexts to multi-country comparative analyses, for example a comparison between these three countries' treatment of homosexual subjectivities and citizenship. Furthermore, considering that legislators in Nigeria and Uganda recently passed strict statutes further strengthening aspects of same-sex sexualities, how do contextual factors within these two African countries relate - if at all?

Sovereignty of developing countries within the wider global politics raises important critical questions about relative power and powerlessness. How sovereign is Uganda? What does Uganda's sovereignty mean? How can elitist claims of Uganda's sovereignty be used to inclusively protect the citizenship, rights and wellbeing of minorities within the country? The hollow public rhetoric of protecting Uganda's sovereignty from the supposedly penetrating influences of Western decadence, foreign individualism, and corrupting neo-imperialisms represented by homosexuality surprisingly carries great currency among audiences both at home and abroad. Using the power of the rhetoric of protecting their country's sovereignty, gullible Ugandans are recruited in their masses into fighting against homosexuality. Many individuals buy into the projected nationalistic venture. They willingly and dogmatically oppose homosexuality because they perceive of their homophobic actions as patriotism. Foreign critiques on the other hand are immobilized and paralyzed by the pointed accusations that they are undermining Uganda's sovereignty when they challenge the politicization of anti-homosexuality campaigns. However, it is important to highlight that a country's claims to sovereignty should neither validate the legislating of statutes that violate human rights of minorities nor allow specific countries to contravene their international obligations and commitments. Sovereignty is always relative; especially when a country is dependent on foreign donations to support her national budget.

Finally, the un-Africanness of homosexuality is a powerful and popular argument that several actors virulently deploy in their actions to oppose same-sex sexualities. Although variously flawed, the widespread claim that homosexuality is un-African renders the practice as foreign, alien, other, and thus outsider. The thesis that homosexuality is un-African attempts to fix rigid boundaries around what is African versus what is not. As highlighted above, the "African" versus "foreign" criteria for exclusion and inclusion are appropriated by both the pro-homosexuality and anti-homosexuality camps in Uganda. Thus analyses that dwell only on either the Africanness or the un-Africanness of homosexuality and homophobia in Uganda are partial, lacking in depth, skewed, overly simplistic and unrepresentative of the ethnographic reality on the ground. Homosexuality is as African as it simultaneously is un-African in its variants, just as homophobia is as foreign as it is indigenous in its varied manifestations. Both homosexuality and homophobia are human

qualities that are found in both African and non-African individuals, groups of people and societies. What is important is the critical understanding of the appropriations of the geopolitics of both homosexuality and homophobia.

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Moving forward, perhaps: The 2013 India Supreme Court Decision on Section 377

Gautam Bhan

In the immediate moment, it simply felt difficult to breathe. It was December. After nearly a year and a half of silence, a Supreme Court bench was ready to rule on appeals in Naz Foundation vs Union of India, a celebrated and historic 2009 Delhi High Court ruling². In Naz, the High Court found Sec 377, India's colonial-era anti-sodomy statute, to be unconstitutional. They said that the Section violated the equality and dignity of queer Indians. They spoke not just of LGBT rights but of democratic politics, of the need for a wide and inclusive reading of anti-discrimination, of the necessity for citizens to exercise and possess a "constitutional morality," of the importance in emphasizing dignity rather than privacy as a rationale for expanding rights, and of the spirit of the Constitution.

It seemed to mark a threshold of some kind. Queer struggles had always been much more than about the law, and more than about just one law in particular. Yet the battles that led up to 2009 that spilled outward as the judgment's words travelled outside and beyond the courtroom, it felt impossible to believe that after this one could move – even though still hesitantly – anyway but forward. That morning on December 11th, 2013, no other verdict seemed possible. It was. Only one summary sentence was read out and a two-judge Supreme Court bench overturned Naz³.

How does read this moment? First instincts led to echoes of long held fears. Many, including many among the petitioners themselves, had long publicly voiced fears of letting the legal challenge against Sec 377 become too central and a dominant part of the movement. There were intertwined critiques. The first argued that the law had its own reasons and strategies that could frame, shape and limit the nascent queer politics building outside the Courtroom. Others argued that a focus on the law (and on this one particular section) was misplaced and that the foundations of discrimination and violence on the basis of gender and sexuality was better fought in other battlegrounds – within the family, on the streets, in schools, through the written word, in public parks, in movements, through struggle. A third critique was more strategic: were we playing a game of all or nothing? Could a nascent movement bear the impact of a loss in Court before a wider social acceptance -- or at least awareness and dialogue -- on queerness existed? If we lost, would it not make any further movement impossible? Would a summary judgment, quite literally, not be pronounced on us? In the early years of the case, this last question was, in fact, quite literal: the number of openly queer people and spaces of safety and support were thin on the ground and it was assumed that larger public opinion was firmly against us.

Different parts of the various queer movements across the country – and they have been always multiple -- balanced these critiques in different ways, trying to guard against one or the other, or choosing one over the other. In light of that, the recent loss in the Supreme Court allows us to assess each of these

² Naz Foundation vs Union of India CWP 7455 of 2001

³ Suresh Kumar Koushal vs Naz Foundation Civil Appeal 10972 of 2013, also recorded as SLP 15436 of 2009.

critiques from a privileged site: the exact point where all our fears came true. I seek to do so here from the only vantage point I have, i.e. my own involvement in the case, as well as in queer struggles outside the courtroom. These are personal reflections, still uncertain, still being shaped as they are written. I am a member of Voices against Sec 377, one of the petitioners in the case, though I write here in a personal capacity. Voices is a coalition of organizations with a shared belief in queer politics and its foundations in the intersectionality of gender, sexuality, class, caste, religion, ability and other identities.

So what does it look like from here, from within our fears? What has happened since the Supreme Court reversal of Naz? In one sense, it has been extraordinary. The reversal has drawn widespread condemnation in different forms and sites, from an extraordinary range of voices. The ruling government, led by the Indian National Congress, came out for the first time in strong and public support of queer rights as did several other parties including the Communist Party of India (Marxist), the Janata Dal (S) and the Aam Aadmi Party. At the time of writing, several parties had endorsed sexuality rights in their election manifestos for the 2014 general election making queer rights a part of every election debate. At the time of the judgment, the Attorney General wrote an unprecedented opinion piece in a leading newspaper against the judgment and filed a review petition immediately. Suddenly, engaging with capital “P”olitics of the party kind, something the movement had evaded until now --- certain that there was little support to be found -- became a new battleground for queer rights. However, the other powerful national party – the Bharatiya Janta Party (BJP) – remained steadfast in opposition, and many significant regional parties remained silent. New spaces and battlegrounds remain equally contested.

Yet it was more the support in everyday life that began to show many of us that something had shifted between 2001 when Naz Foundation filed the petition, 2005 when Voices intervened, 2009 when the Delhi High Court ruled and this past December. The sense in the days post the judgment has been one of a sea of voices rising against the Supreme Court. One set comes from a generation of urban young people who have come of age in a post-2009 world, a set of political subjects in one sense created by the queer movement of the past decade.

What's important and a reflection of the movement itself is that the support has come not just from queer people, but across a range of actors, movements and institutions, many of which had been hesitant friends in the early days of the movement. Progressive groups, state bodies like the National Human Rights Commission, teachers associations, professional associations including the medical and mental health establishments, women's groups, student groups, trade unionists, and private companies alike came out publicly against the judgment. Thousands across the country stood together, repeating the chant that brought together our resistance: “No Going Back.” A week after the judgment, No Going Back protests in a “Global Day of Rage” took place across thirty-six cities in the world, including seventeen in India. That resistance remains amidst the uncertainty and the fear – unwavering, unafraid. It is that resistance that stands as the legacy of December, 2013.

In watching what should have been a moment of dismissal and closure turn into a moment of beginning, defiance and resistance, I want to believe that our efforts to not let the queer movement be reduced to just a legal case against Sec 377 must have, at least partially, succeeded. The legal journey of the movement

looms large at this moment but the everyday life of our politics has always been about much more even if the story of that larger politics is lesser told. This everyday politics includes: film festivals, workshops, talks and seminars; books, pamphlets, missives, poems, biographies, charters, manifestos; political visions, solidarities with other struggles, protests, pride parades; the creation of social spaces; facing, countering and recovering from acts of violence, blackmail, rape, assault, and suicide; engaging with the police, with families, with religious leaders; the judiciary, the state; living open, everyday lives despite the odds, despite the pushback, refusing to stay “private”, to stay silent. The 2009 judgment was born not just out of the letter of the law but from this politics that had paved the way for it, that made it possible. The Supreme Court can reverse the judgment but it can reverse nothing else.

Moments of crisis are opportunities not to be lost. If this moment has made us realize that a new set of political voices and possibilities have already emerged around us, we must then ask anew: how should the struggle now be framed? The legal case against Sec 377 emerged as a political strategy at a particular moment. That moment, for certain, is irrevocably altered. We must now listen then to new (and some old) answers as a new political assemblage emerges: to continue to and expand our efforts to build social and peer structures of support that make it impossible for the law to be used; to mobilize and explore engagements with political parties and elected representatives; to stand on the evident solidarities extended to us by other movements to launch campaigns; to expand our own political vision beyond Sec 377 and the law to other forms of shaping what in the end is our object: the everyday lives of queer people.

One thread of this new politics that has particular salience with me is a focus on anti-discrimination rather than the criminalization implied in Section 377. The possibilities of securing queer rights through anti-discrimination seem feasible today in a way they didn't before as engagements with other movements, arms of the state, elected representatives and political parties have emerged, partly due to the dismissal of the case in the Supreme Court. It is important not to romanticize a debilitating defeat in the highest court of the country by simply seeing it as the birth of a new set of political opportunities. The setback is real. Yet it is just as important to not see a legal defeat as the closure of a movement because empirically and affectively this has not happened. There are grave dangers in this moment – the case and its life in the Courts are over determined, the focus of relentless media attention and the dangers of reduction are very real. It is imperative that, as movements, while we exhaust every possibility legally of challenging the Supreme Court, we also remember not to buy into the story being told around us – that queer lives are somehow dependent on a victory against one particular law. This is a tight rope that all movements face – to take our vulnerabilities seriously but not let them erase our strengths. Yet this case has not been the only story of our movement and it must not become so now.

As I write, the Supreme Court has agreed to consider an extraordinary curative petition as the last legal resort we have for a legal reconsideration of the judgment. Whatever happens in that consideration, however, it will not change or impact these new emergent directions in queer politics. These new directions are ones that will move us, as for some time the 2009 victory did, hesitatingly but inevitably forward.

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“When the light of our century may blind us”

Nitya Vasudevan

When does the idea of a global solidarity threaten to compromise contextualised political struggles? When does a symbolic battle lose sight of the material and the everyday? When do translations between practice and understanding utterly fail? When does the law come to possess an iron grip over our political imagination? How do hierarchies come to operate within what is represented as a unified progressive movement? When do the “lights of our century” - to use Agamben’s phrase - blind us so that we don’t see its darkness? These are the questions that this piece is born from. Certain moments in history force these questions to be asked loudly, and this is one such moment in the history of sexuality politics in the Indian context that, however, resonates elsewhere.

No doubt everyone reading this newsletter is aware of the 2013 Supreme Court judgment that refused to read down Section 377 of the Indian Penal Code, which criminalizes acts of “carnal intercourse against the order of nature”. And no doubt you expressed solidarity with the Indian LGBT movement that is fighting this legal battle, one that is similar to battles fought in so many other locations in different forms. I do not argue here that the section in question should be kept intact. As an inheritance from colonial law that seeks to render acts of sodomy and oral sex criminal it no doubt deserves to go. The question here is rather why this particular law and the desire to have it removed or read down have come to form the fulcrum of the LGBT movement in India in the present moment. What has shaped ‘our time’ in such way that people believe this to be our first task?

To provide some context, there has been a two decade-long debate about whether or not the legal struggle against Section 377 should be given center stage position in the LGBT ‘movement’ in India. The questions posed to those who believe that removing this law should be our primary concern, have been many. The first of them was: why to prioritize the fight against Section 377, when it has very rarely been invoked to arrest members of the community? The argument behind this is that highlighting this fight has meant a necessary disavowal of the fact that it is most often only hijras and other working class members of the LGBT community who get arrested by the police, on charges of kidnapping, drug abuse, robbery and soliciting; that therefore, those who are most vulnerable to the law and to police brutality are the transgender community, who occupy public spaces on a daily basis and are therefore the most visible, because of their eroticized gendered-economic practices. A reading down of this section to decriminalize “private consensual sex between adults” would not address their lives in any meaningful way.

Secondly we have asked if the repealing of this law would address, in any substantial sense, the difficult relationships we have, as deviant sexual subjects, with the institutions that we inhabit – the courts, the police, the family, the school? And even if the public attention to this law manages to reduce social stigma and make more people speak out in support of LGBT rights, whose rights are they speaking out for? Are they speaking out for the right of hijras to carry out sex work? Are they speaking for reservations within educational systems and workplaces? For more stringent action against custodial torture and violence? Or

are they simply speaking out for a right to be “gay”? What structural value lies in this demand?

The interrogation has then also raised if this legal battle amounted to protecting the “private” rights of privileged gay men, as opposed to working to change the lives of those who most need protection? The late 80s and the 90s saw the rapid mushrooming of foreign-funded NGOs working on AIDS, accompanied by the discourse of the gay man at risk. It is important to recall that the case against Section 377 was filed by an organization working on HIV-AIDS, based on the argument that Section 377 = forced secrecy = unsafe sex = AIDS. But this did not mean that alliances were built between these organizations and sex workers’ groups, as these two fields continue to remain separated out from each other to this day. LGBT protests do not include demands for sex workers’ rights to health care and government support. Why this is so is a question that needs to be asked.

Last but not least, why have we made one legal battle the center of our movement? Feminist histories in India have taught us not to look only to legal redressing and constitutional change as a way of righting the wrongs of stigma, structural marginality and familial oppression. At every step, feminists have cautioned against trusting implicitly and only in legal change – whether in the debate on a uniform civil code for marriage, or that on sexual harassment laws in the workplace. The Supreme Court judgment backfiring, people starting to see themselves as second rate and criminal, the police taking on more authority than they already have – these are the dangers attached to making the law the primary arbiter of identity and selfhood.

Recently, it should be said the Supreme Court in another case declared that the state would now recognize transgender identity in its governmental and welfare programs. Transgender people were to be considered part of the Other Backward Classes (OBC) and supported in terms of education, employment and health measures. This judgment was immediately celebrated as enlightened and as paving the way for an undoing of the ‘regressive’ judgment on Section 377. None bothered to scrutinize the implications of the judgment in terms of identity definition. The court nodded Yes to transgender identity and there was euphoria. Don’t mistake me, I don’t think this judgment is wrong or unnecessary – as one that implies structural change at every level, I welcome it more than I do the mere reading down of Section 377. My criticism is directed more at those who participate in a blind faith that the law exists at the heart of our lives. The case following the rape of the young girl on a bus in December 2012 ended in a death sentence for the men who raped her. In other words, it has reaffirmed the state’s glorious power to kill. Every day, people from certain communities are killed in encounters or arrested on charges of terrorism and endangering national security. Atrocity and violence in the name of caste goes unpunished even though the ‘evidence’ is the dead bodies of several members of Dalit communities. Large companies get away with land grabbing, dispossession and environmental destruction. Where then does our faith in the law come from?

The 2009 Delhi High Court judgment that announced a reading down of the section was declared a landmark in the history of progressive legal decision-making. This was mainly because of two notions that it generated – one, the notion of a constitutional morality in place of a public morality. The argument was that instead of the colonial idea of public morality and the manifestations of this idea in the sphere of social and political thought and action, what the courts needed to put into effect was a constitutional morality, drawing

deeply from the values embedded within the constitution. A constitutional morality could not then possibly abide the un-freedom that Section 377 was imposing on certain (sexual) communities in the country. Second, the High Court judgment produced a reading of privacy as “personal autonomy”, i.e. privacy is not about private space but about the right to be left alone, to govern your own life. So, even when in public, you have a right to be “private”.

What was obvious within the judgment was a constant slippage between “homosexuality” and LGBT. Large parts of the judgment spoke of Section 377 as criminalizing homosexuality, but wherever necessary, it referred to other identities within the movement, importantly that of transgender people, whose testimonies formed part of the evidence submitted to the courts. Never mind the fact that transgender people and their partners often do not consider themselves homosexuals.

This slippage was repeated in the media frenzy after the Supreme Court judgment in December, 2013: “Gay Sex Criminal Again!” was the screaming headline on every TV channel. Add to this the fact that the protest against Section 377 and the Supreme Court judgment saw 5000 people coming out onto the streets of Mumbai during the pride march this year – an unprecedented number for any LGBT protest. On the other hand, protests against something like the Karnataka Police Act -- which was amended to require hijras to register themselves at local police stations - saw maybe a maximum of 50 protestors and virtually no media publicity. Why is this? Is it because the struggle against Section 377 is a “larger” one, one that speaks to “everyone”? One of the arguments made on a feminist mailing list that I am a part of spoke of the repeal of Section 377 as a “minimum requirement” for the LGBT movement in India. The logic was that once this requirement was met, of “basic” sexual rights, we could then move on to other things.

Getting down to the “basics”, when we compare the number of cases that have been filed under this section, with the number of cases filed under kidnapping, drug abuse, robbery, soliciting and public indecency -- most of these being filed against hijras, sex workers or lesbians and transmen who leave home with their partners-- the latter far outnumber the former. Why then is the former the larger struggle, or even the minimum requirement? Is it because we desire formal sexual citizenship and this is the only way to get it? We want the courts and the state to stand up and recognize our identities as citizens of this country, and this symbolic gesture and what it will give us apparently outstrip questions of education, employment, housing, gender identity on government documents, and the everyday police brutality that marks the bodies of those who have publicly marginal lives.

There is no denying that gay men and lesbian women are often caught in conditions that threaten to destroy their sense of self: their families do not accept them; the institution of marriage looms large over their heads; they are forced out of workplaces on false grounds; they cannot express desire in public places, cannot cruise without being targeted by the police; they are blackmailed by strangers or even lovers; they suffer from depression and loneliness. And a symbolic victory might go some distance in relieving them of these conditions. But what does it mean to tie one’s life to one law? This legal struggle and the mindless media reports around it have made more policemen aware of the existence of this section, have drawn the attention of parents to the “criminality” of their children, and more people are now in danger of being accused of “carnal intercourse against the order of nature”. People who didn’t know what Section 377 was

now know and take up positions.

The section was meant to deal with acts, not identities, and now it is wholly about identities. The fact that most of the cases filed under this section have been divorce cases in which wives have accused their husbands of, among other things, forcing them to have “unnatural sex”, has now been rendered a bizarre piece of information and nothing more. By its original intention, the section includes heterosexual people as well as others. What the Supreme Court judgment, a piece of purely logical writing, did was to question the alleged nexus between this section of the Penal Code and homosexuals as a specific community of persons. It found no such nexus, and stated that the law was meant only to protect public morality and if the law was being used to target only homosexuals, it was being misused. This rational move is not unexpected, it does not make me despair, it does not depress me. It is nothing more than the logical heights that a legal system founded on rational thought can attain. We all know that the law is not a monolithic entity, it is made of judges and court rooms, passionate utterances and biases, and the judgments themselves are not devoid of feeling. But it is essentially a system prone to rationality, one in which the lack of ‘evidence’ often ensures that injustice goes unpunished. It will fail you as a person whose life is not fully contained within rational ideals.

What is the price to be paid when the law becomes the arbiter of sexual subjecthood? We are then left with technicalities through which our lives are said to be defined. Is a legalistic imagination one that believes social change to be a trickle-down effect, moving from the text of the law and the pronouncement of judges into the bodies and practices of daily life? Also, do we participate in creating and generating a private sexual life by disavowing what happens to the most public of us? Or does that question have to wait around for us to first become “citizens”?

Moving to the question of solidarity across or without borders, in every context, whether local, national, even parochial, we need to ask ourselves what it is that travels across borders to constitute this solidarity. And what doesn’t. What presents itself as the face of LGBT politics and why? There is an ominous similarity that is “found” between LGBT articulations emerging from different corners of the world. There is a global graph drawn out, with countries like Uganda being seen as the most oppressive to deviant sexual subjects, and countries like Argentina and Uruguay being hailed as examples of successful political campaigns. This imagined graph is an ugly object, reducing everything in its path to mindlessly simple formulations determined by notions of neoliberal freedom and formulaic statistics of violence. It says nothing of history, nothing of context, nothing of culture. For instance, the cultural lives of hijras are nowhere captured, even in the term transgender. This is not to say that only “traditional” communities constitute context or history, but that histories, memories, practices do get lost when a global solidarity is sought without attention to how the question of identity comes to be framed in each specific location.

We live in an age in which we are prone to a certain blindness. An age in which the language of politics is more and more international in nature. India becomes the worst country in the world for women in these terms. Our Muslims become fundamentalists. Hijras who work at NGOs stop calling themselves such and instead take on the term ‘transwoman’. The Slut Walk renders women all over the world sexual in the same way, very rarely aligning with sex workers. Young men and women who protest against rape do so without

knowledge of Indian feminist arguments against capital punishment. Gay men agree with the ban on hijras begging at traffic signals, arguing that the latter violate their “personal space” (the closeness of this notion of personal space and the notion of privacy in the Delhi High Court judgment is frightening).

The very fact that the legal case headlining our present moment is one that has to do with private sexual acts, is revelatory of something, of the “private” in this moment being a generative concept, and one that is undeniably tied to late capitalist agendas. It is an age in which if we do not constantly scrutinize the ways in which we are complicit with neo-liberal agendas, we will be swallowed up by them. Internationalist narratives push us to first get decriminalized then get gay marriage rights, then adoption rights. Corporate houses are all LGBT-friendly nowadays, and send their banners to pride marches. What this means for a politics of speaking from the standpoint of marginality, is an examination in regard to being worth or not participating in.

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The 2013 Indian Supreme Court decision on section 377: beyond the law

Jordan Osserman

While many LGBTQ activists across the globe expressed mourning, rage and sympathy with the Indian queers who lost the Supreme Court battle against Section 377 (the British colonial-era law widely understood to criminalize same-sex intercourse), some used the opportunity to express their criticisms of the anti-377 campaign. These critics – largely speaking from within Indian queer circles – alleged that the 377 organizers failed to adequately consider the impact of their activism on the most marginal queers in India: lower class/caste hijras, kothis, poor MSM to mention few. In the most biting version of the critique, the 377 campaign was portrayed as an elite middle class movement, fueled by foreign-funded NGOs, against a largely symbolic, immaterial enemy. Rather than fight 377, campaigners should have invested their energies on a number of other issues allegedly more important to marginal queer people.

No doubt the form of this critique, if not its specific content, will sound familiar to anyone with experience in leftist circles. At the end of the day, the critics of the anti-377 campaign share with many on the left a sense of frustration with the scope and style of activism that dominates contemporary rights-based campaigns. While I sympathize with this sentiment, I am often unimpressed by the rigor of their critiques. Oftentimes, these critics seem to effortless tally up a host of “problematic” aspects of a campaign – nearly always revolving around the implicit erasure of a marginalized social group – and use them as evidence of the sins of the organizers. This leftist deconstruction of an activist campaign feels motivated by a knee-jerk rejection of power. Any movement that achieves some measure of public influence, and therefore engages with the power imbalances that structure our world, is “not radical enough.”

Of course one must support the necessary scrutiny of any social movement. However, contrary to this rejectionist impulse on the left, I believe a more thorough analysis of rights-based activism is needed. What is the specific context in which an activist campaign has arisen? What are its structural limitations? What broader accomplishments are possible within the purview of a seemingly narrow, but winnable, demand?

The campaign against 377 is instructive here. While it is not possible to quantify the number of LGBTQ people who suffered as a direct result of Section 377, the campaign’s horizon was broader than its demand to remove the penal code. The fight against 377 made legible the Indian LGBT community and the previously unrecognized violence committed against them. As Akshay Khanna observed (<http://www.openthemagazine.com/article/nation/right-to-sexuality>), the campaign facilitated collective consciousness-raising against LGBT oppression, bringing together otherwise disparate groups—such as hijras, kothis, middle class gays and lesbians -- under a common banner. The effect was that, while other homophobic laws still remained on the books after the original “reading down” of the law by the Delhi High Court in July 2009 (Naz Foundation v. Govt of NCT of Delhi), LGBT Indians and their supporters were empowered to invoke the historic Naz judgment in their advocacy against homophobia, both in their daily lives and in larger struggles. And indeed they did: activists frequently used the decision as leverage against

homophobic oppression or from defending their right to hold pride marches across the country or to protesting against a TV channel for its notorious “expose” on “gay culture in Hyderabad. The News Broadcasters Standards Association injunction against TV9 has directly invoked the Naz judgment to justify its condemnation of the inflammatory news broadcast.

Could a campaign against another law - one which the critics find more relevant to LGBT oppression- have achieved the same or better results? Perhaps. The making of a political decision, such as the one to focus on 377, involves a myriad of factors, from strategic legal considerations to geopolitical considerations and, indeed, the power imbalances amongst the different concerned parties. Naisargi Dave’s recent book (<http://www.dukeupress.edu/queer-activism-in-india>) chronicles how some of these factors played out in the 377 campaign, demonstrating the always-unsatisfactory struggle to balance the “ideal of social justice and the reality of practical legal choices.”

A couple important points in defense of the decision to fight 377, however, are worth noting. Firstly, many of the legal arguments against 377, and the broader public campaign, put the issue of violence against the most marginalized sexual minorities at their center. Secondly, article 377 of the Indian penal Code is a colonial vestige and plain example of cultural imperialism; a campaign against it combats the ever-popular nationalist belief that homophobic laws prevent foreign cultural invasion. Relatedly, 377 remains on the books in many other ex-colonies, where it is also used to justify homophobic violence. The Indian campaign served as inspiration, and a chance for solidarity-building, amongst postcolonial LGBT activists worldwide. Not surprisingly, numerous postcolonial activists across the globe expressed their disappointment in the Supreme Court judgment, viewing it as a setback for a worldwide cause.

We must also recall here the expansiveness, inclusiveness and moving eloquence of the Delhi High Court decision, and the road it paved for future instances of legal redress. As many have noted, the judgment didn’t simply read down a bad law. The Naz judgment affirmed fundamental rights of dignity, equality, and the expression of sexuality; offered an innovative conception of “constitutional morality” against majoritarian oppression; and connected the Indian judiciary to progressive human rights case law worldwide. As Khanna writes, “The Delhi High Court judgment generated the conditions for developing a far more nuanced and radical legal landscape for the rights of all minority communities, whether based on religion, ethnicity, caste, or gender and sexuality.” Against an alarming trend in the West wherein LGBT rights are protected at the expense or exclusion of other minority communities, the Naz decision offered a blueprint for a progressive legal alternative.

Another common criticism was levied against the petitioners’ embrace of the right to privacy. Sexual freedoms that hinge on the “right to privacy,” it is argued, apply only to those middle class people who possess private space within which to express their sexuality, implicitly excluding lower caste/class sexual minorities. This argument ignores the innovative way in which the petitioners defined the constitutional right to privacy, as both “zonal” and “decisional.” Whereas this criticism of privacy applies to the former “zonal” definition, the latter “decisional” definition is significantly more expansive, associated with freedom of choice and personal autonomy regardless of private property ownership. Indeed, the Naz judgment’s own words regarding what it understands as the right to privacy directly contradict the critics’ claims: “The [right to]

privacy recognises that we all have a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community. The way in which one gives expression to one's sexuality is at the core of this area of private intimacy. If, in expressing one's sexuality, one acts consensually and without harming the other, invasion of that precinct will be a breach of privacy." While there may be classist deployments of privacy in popular discourse, as far as the case law is concerned, the inclusiveness is crystal clear.

Despite these admirable accomplishments, it must be acknowledged, as the critics remind us, that the oppression and exploitation of the most marginalized of any community often remains unscathed following successful rights-based campaigns. Rather than condemn the organizers of these campaigns, however, we must confront the unsurpassable limit of sexuality and identity based activism, no matter how inclusive or broadly conceived. While gender and sexuality are key vectors of violence, the unequal distribution of wealth among queers (and society at large) enables some to live in relative safety and comfort over others, no matter the social/legal climate around queerness. The major problems facing socio-economically marginalized queer people cannot be solved by a queer movement alone. These problems — which include lack of adequate shelter, food, healthcare and leisure time; exposure to police violence; severely restricted opportunities for education and employment — cut across various groups (though they manifest in different ways) and demand a different kind of solidarity and struggle. This kind of struggle requires radically transforming the internal organization of socio-economic life. Though I am speaking here about "class," I deploy the category not as an "identity marker" equivalent to race or gender, but as the fundamental structuring principle of social reproduction. Each of us has a particular social identity, but all of us rely upon the prevailing economic order for our survival. (I refer here to Nancy Fraser's excellent response to Judith Butler on role of cultural struggles within capitalism, or as Fraser puts it, the difference between misrecognition and mal-distribution (see <http://bit.ly/QL3I0u>.) Criticism against the 377 campaign for failing to adequately address this concern is thus misplaced. For, such a struggle is not one that rights-based movements, circumscribed as they are within the logic of liberalism, are equipped to wage.

Political intervention of any kind necessarily involves undesirable concessions and exclusions. One does not change a violent system without implicating oneself in its violence. It is important to make known the limitations and erasures involved in activism and organizing. However, it is equally vital to recognize when a political struggle, however flawed, deserves one's (critical) support.

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The four figures of the law: Brief theoretical inquiries into the Queer movement's relationship with law

Vqueeram Aditya Sahay

This piece is about what the law means to the queer movement in India. While I study the campaign and mobilization around Section 377 of the Indian Penal Code that criminalizes non-procreative sex, what I attempt to understand is the construction of the figure of the law by the movement. I offer four such readings and the tensions so produced.

The first takes forth from akshay khanna's work that shows how the queer movement invested the law with the symbolic and the social lives it has come to occupy. I am primarily interested in how the queer movement entered regimes of governmentality of law, and on what terms. The petition (and supporting interventions) filed against Section 377 presented the queer subject as betrayed by law. The petition itself attempts to create an affective intimate public with a law that actually seems to know very little about the lives in question. It does so by brimming with a certain testimony of discrimination, stigma, and an objective presentation of the subject in pain. Trauma, here, becomes the truth of the subject. Affect replaces the radical call to infrastructure or, perhaps, becomes the infrastructure that renders the subject transparent. This sentimental politics reauthorizes universalist notions of citizenship in a national utopia: the law shall eradicate systemic social pain, the absence of which pain constitutes nothing less than freedom. The law is imagined as reparative therapy to the caesura opened up in the political, by covering the wrongs in what becomes a politics of protection and rescue – one beyond ideology, beyond contestation.

This gesture of reparation is repeated by the Naz judgement of 2009 that set up the Private as the utopian site for the seamless flow of desires. The queer movement too imagined that once Section 377 would go, desires would flow seamlessly. Within this framework of decriminalisation, desires work against restrictions. If we know anything about desires, through psychoanalysis, however, it is that they work in relation to constraints and the law. This notion of sexual privacy is drawn from a lexicon of romantic sentiment⁴ – a longing for a space where there is no trouble, where freedom and desire meet in supra-political expression, where the abstractness of the model citizen is left unchanged. Against accusations that privacy is a privilege mostly for upper class gay men, some have argued that the judgement gave us a radical reading of privacy, as both 'personal' and 'zonal'. But such scholars, I think, forget that the law has its own structure. Consider, for instance, that the Supreme Court judgment of 2013 was badly argued, with no trace of reasonable argument or constitutional empathy. And yet, the same legal scholars tell us, it already affects queer lives as law. This brings us to the second figure of law that emerges from the Queer movement: the figure of law as not only reparative of the political, but of itself – since it lacks structure and is always already open. What is remarkable here is that the burden of repair falls on the subject marginalised by law, abjected by law.

⁴For more on privacy and sentimental politics, see Berlant, Lauren (1999) 'The Subject of True Feeling: Pain, Privacy, and Politics', in Austin Sarat and Thomas R. Kearns eds. *Cultural Pluralism, Identity Politics, and the Law*. Ann Arbor: The University of Michigan Press.

The sacrifices made at the altar of privacy, this giving of the symbolic space in politics to the law, is often justified in terms of strategy: law as strategy. This is the third figure of law. It was at a certain moment in third wave feminism that strategy came to become part of thinking of radical politics – with Denise Riley's irritant feminist politics, Judith Butler's second preface to 'Gender Trouble' and Gayatri Spivak's strategic essentialism. I wish to quote Spivak here, from her essay on '*Subaltern Studies: Deconstructing Historiography*'⁵ to remind us of that earlier moment and its politics:

*'From within but against the grain, elements in their (*Subaltern Studies*) text would warrant a reading of the project to retrieve the subaltern consciousness as the attempt to undo a massive historiographic metalepsis and 'situate' the effect of the subject as subaltern. I would read it, then as a strategic use of positivist essentialism in a scrupulously visible political interest. This would put them in line with the Marx who locates fetishization, the ideological determination of the 'concrete', and spins the narrative of the development of the money form; with the Nietzsche who offers us genealogy in place of historiography, and the Derrida of 'affirmative deconstruction'. This would allow them to use the critical force of anti-humanism, in other words, even as they share its constitutive paradox: that the essentializing moment, the object of their criticism is irreducible'.*

It is this desire for immediacy of the self that overlooks the complexity of the production of (a) sense(s) of self. This is a reproduction of the subject effect as subject consciousness, one that doesn't engage with the 'line' so outlined. Most importantly, this suggests the inability to think of the double binds of strategy that I find dangerous in the queer movement's making of the law as strategy.

My final reading of the figure of the law within the queer movement sees the law as impossible to locate. There are two ways of speaking about the law at work here. One speaks of the law as dispersed, spread out in the social and the symbolic and/or its reflection, i.e., the law as part of this larger law which permeates the field. So, Section 377 here becomes representative of the larger heteronormativity and its phobias. The second way is to speak of the law as mere reflection of the prejudices of the court. This becomes increasingly relevant in a judge centric judicial system. The Koushal judgment of 2013 was berated in queer circles as a prejudiced judgment from judges who had made up their minds and were not willing to listen. The law, then, either becomes part of this larger symbolic or mere reflection of the prejudice of a person. In each case then, when we speak of the law we do not speak of the law at all, since the law as such is nowhere. It merely and always stands in for something else.

In summation, there are four figures of law that haunt the queer movement in India – the law as reparation of the political, the law as constantly repairing itself, the law as strategy and the law as everywhere and therefore nowhere. While the first two figures have helped consolidate the drive towards the production of good queer citizens of liberal Constitutional democracy, the last two seem to tug the former move apart by revealing the tears or silencing the remainders.

⁵Guha & Spivak eds. Selected Subaltern Studies. New Delhi: Oxford, 1988

While the queer movement attempts to become an umbrella movement in India, such an eclecticism of the law, I worry, is terrifying, and perhaps like terror, paralyzing.

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Staying positivist in the fight against homophobia

Rahul Rao

In recent weeks, arguments against homophobia have been made in two paradigmatically positivist registers – science and economics – with varying degrees of persuasiveness. In both cases the arguments have come from outside the LGBT activist community, forcing activists into a tactical engagement with discourses that may not have been their preferred lingua franca. What has been gained and lost in these encounters?

Science

In Uganda, President Yoweri Museveni seemed to hesitate before signing the Anti-Homosexuality Bill passed by Parliament in December 2013. In a letter to parliamentarians following the legislative passage of the bill, he declared that he would not sign the bill because of his view that homosexuality was a biological ‘abnormality’. Seeking scientific confirmation of this view, the Ministry of Health constituted a panel of ‘expert scientists’ who were charged with offering an opinion on whether there is ‘a scientific/genetic basis for homosexuality’ (or, as Museveni put it more bluntly: ‘are there people born like this?’) and whether ‘homosexuality can be learned and unlearned’. In its mostly reasonable report, the panel acknowledges the presence of homosexuality across space, time and species boundaries; insists that there is no gay gene or other singular determinant of homosexuality; opines that sexual orientation is a function of biological, psychological, sociological and anthropological factors; and insists that homosexuality is not a disorder and ‘not a disease that has treatment’. Nonetheless, a final somewhat disconnected section of the report expresses the need ‘to contain the present explosion of overt and coercive homosexual activity with the exploitation of our young children’. Museveni seized on this and analogous sentiments in this section, as well as the non-confirmation of the gay gene, to justify his decision to sign the Anti-Homosexuality Bill into law on the basis that ‘experts’ had now confirmed that homosexuals were not ‘born like this’.

The question of whether Lady Gaga (‘Born this Way’) or Simone de Beauvoir/Judith Butler (‘one is not born, but becomes’) are tactically more useful in this moment is interesting but ultimately something of a red herring, for the answer is probably neither. Museveni’s twists and turns were most likely not the result of a new-found interest in the nature/nurture debate, but moves in an elaborately choreographed dance intended to retain the support of Ugandan Christian conservatives and anti-homosexuality activists in an otherwise challenging political environment, while retaining his modernist credentials and some measure of plausible deniability (‘I tried my best to stop it’) in the eyes of international donors. But let us assume, for a moment, that Museveni was genuinely interested in the science. What follows from the shift in register from questions of rights and justice, to those of naturalness and normality?

It is important to remember that Museveni set the terms for the engagement with ‘science’ in his December letter to the parliamentarians. That letter suggested that he might have been prepared to maintain his defiance of Parliament’s will if scientists backed his view of homosexuality as biological ‘abnormality’, as ‘nature go[ing] wrong in a minority of cases’. There is an interesting paradox in Museveni’s view of nature as set out in the letter. He declares nature to be purposeful and its purpose to be that of perpetuating the

human species. Homosexuals cannot be part of this purpose because of their putative inability to reproduce. Ergo, they are abnormal even though part of nature, an instance of natural abnormality. Nature here is broadly teleological but not infallible; it makes mistakes, but the mistakes do not detract from its broader purpose because of their presumed infrequency. If we are tempted to ask whether this is theology disguised as pseudo-science, we must also be curious about the theological presuppositions of ‘real’ science. The meta-question here is not so much whether to conduct this discussion in the registers of theology or science, as whether those registers are as distinct as we presume them to be.

All of this presents Ugandan kuchus⁶ with a Faustian bargain in which their acceptance in the nation becomes premised on acknowledgement of their abnormality, of their status as a mistake. The chilling implications of this become clear enough when Museveni asks in the letter ‘What do we do with an abnormal person? Do we kill him/her? Do we imprison him/her? Or do we contain him/her?’ Equally disturbing is his bizarre typology of lesbians, whom he categorizes as being born abnormal, or resorting to lesbianism for ‘mercenary reasons’ or as a response to (heterosexual) ‘sexual starvation’. While some of his proposed ‘solutions’ such as economic development sound benign enough, even if beside the point, it does not take much to see that it is precisely tropes such as ‘sexual starvation’ that lend themselves to brutal practices such as ‘corrective rape’. As for those who are ‘born abnormal’—the category to which he appears least hostile—Museveni offers the curiously miscellaneous examples of local kings, presumably the late 19th century king Mwanga, but also of other chiefs and the British scientist and World War II intelligence analyst Alan Turing, as examples of ‘sexually abnormal person(s) [who were] much more useful to society than the millions of sexually normal people’. Here we are offered a different set of terms for the acceptance of queers, namely their occasional super-human utility in the defense of the nation.

Economics

Perhaps expectedly, the language of utility is prominent in a recent World Bank report setting out the economic case against homophobia. The report purports to offer a conservative estimate of the cost of homophobia to the Indian economy, quantified as ranging from 0.1-1.7% of its 2012 GDP (US\$1.9-31 billion). The core of the argument is that homophobia lowers productivity and output as a result of ‘employer discrimination and constraints on labour supply; inefficient investment in human capital; lost output as a result of health disparities that are linked to exclusion, such as HIV/AIDS, violence, depression, and suicide; and social and health services required to address the effects of exclusion that might be better spent elsewhere.’ If procreation is the currency of the ‘scientific’ register (at least in Museveni’s conceptualisation of it), productivity plays an analogous role in the economic one.

Leaving aside the crucial methodological questions about how this estimate was reached, we ought to reflect on the implications of having an argument about queer inclusion on the basis of claims about productivity. What does such an argument do to those not judged to be ‘productive’ within its terms—the disabled, the illiterate, the unemployed, the elderly, the development-induced displaced, and others who are constitutively unable and/or unwilling to function as good capitalist citizens?

⁶Kuchu is the local Ugandan language term to name a gender non conforming person.

Of fundamental importance here is the relationship between capitalism and queer movements. Historian John D'Emilio long ago pointed to the inherently contradictory nature of this relationship in the West. Capitalism enables the expression of sexuality as an aspect of individual personhood by promoting the individuation of wage labour, thereby disrupting traditional family and kinship arrangements. But capitalism has historically maintained an allegiance to heteronormativity in order to reproduce the next generation of workers. Hence its alliance with socially conservative 'family values' agendas, for whom the feminist and the queer provide convenient scapegoats for the very forms of precariousness for which capitalism is responsible. This makes queers both creatures of, and potentially antagonistic to, capitalism, in much the same way that Marx considered the proletariat to exemplify the internal contradictions of capitalism.

Lisa Duggan's account of homonormativity cautions us that these early hopes may have been overly optimistic. Far from contesting dominant heteronormative forms, a new neoliberal sexual culture seeks inclusion within the protective embrace of the nation precisely by making its peace with state and market. In some ways queer movements outside the West are even more beholden to capitalism because the vectors of Euro-American originated identities such as 'LGBT' - global media, HIV/AIDS funding, human rights discourses, diasporic travellers - have journeyed along the circuits of transnational capital. Although these identities take their place within enormously complex and variegated landscapes populated by older indigenous gender matrices, their disproportionate power and leadership role in those landscapes might render the movements that they lead less antithetical to capitalism than Western queer Marxist utopian texts had hoped.

Already, even without decriminalization, we can read the signs of an emerging homonormativity. Jasbir Puar identifies one of the subtler trajectories of homonormative nationalism or 'homonationalism' in the phenomenon of 'homonational spending', in which the market proffers placebo rights to queers who are hailed by capitalism but not by state legislators or judges. When the Indian Supreme Court delivered its devastatingly retrograde judgment affirming the constitutional validity of section 377 -- the anti-sodomy provision of the Indian Penal Code inherited from the colonial era -- in December 2013, some major Indian corporations advertised their products in ways that underscored their opposition to the decision. The luxury jeweller Tanishq advertised a set of glittering earrings with the tagline 'Two of a kind always make a beautiful pair. #377'. In Puar's argument, far from suggesting an opposition between state and market, in moments such as this the market functions as a sort of escape valve, offering a form of recognition and achievement that sucks some of the zeal out of queer movements, obviating and precluding a more concerted attack on the state. The World Bank report seems to take the logical next step in providing a market-friendly argument that might appeal to the state. By offering a growth-oriented argument against homophobia, it could have the insidious consequence of effecting a reconciliation between gays and growth, thereby demobilizing any incipient queer Indian opposition to capitalism-as-usual.

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