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# “Against the Order of Nature”?: Postcolonial State, Section 377 and the Homosexual Subject

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## Abstract

In the light of the theorisation on identity-formation, the present paper proposes to discuss how the post-colonial Indian nation-state, through its multiple apparatus, becomes complicit in the discursive genesis of heteronorm. Issues of national culture and *authentic* tradition create in India a special kind of problem that queer-activism needs to grapple with. The focus of my discussion would specifically be on the debates surrounding Section 377 of the Indian Penal Code. I would like to interrogate how legal discourses appropriate the language of power, stereotyping both non-normative identities as well as the normative definition of Indian *alterity*, and serve to push the sexual minority into a cultural absence within the state.

[**Key Words:** Section 377 IPC, heteronorm, homosexual subjecthood, Indian nation-state, cultural conservatism, national identity.]

Queer studies, as the discipline has evolved over time, have repeatedly raised and debated the question as to what kind of sexual behaviour constitutes the very narrow definition of the heteronorm. The possibility/viability of developing a habit of creative scepticism, necessary for deconstructing existing paradigms and imagining alternative forms of identity based on counter-normative sexual practices, has occupied the centre stage in the recent development of queer critical literature. Anthropologist Gayle Rubin is one of the pioneers of such iconoclasm. Critiquing the forcible marginalisation of non-normative people during the 1980s, she, in her seminal 1984 essay “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality”, emphasises the urgent need to see through the very political construction of sexuality. Rubin asserts: “It is up to all of us to try to prevent more barbarism and to encourage *erotic creativity*... It is time to recognise the political dimensions of erotic life”. (35, emphasis mine) Related to this is Judith Butler’s concept of gender performance, as elaborated in her influential work *Gender Trouble: Feminism and the Subversion of Identity*. At its simplest, Butler’s notion emphasises the centrality of “performance” in maintaining one’s assigned gender role. The stability of the mutually exclusive categories of male and female is insured through repeated iteration of normative performative codes. As Butler comments, “...heterosexuality is compelled to *repeat itself* in order to establish the illusion of its own uniformity and identity...” (Qtd. Hall, 108)

In the light of this theorisation on the very political and contingent nature of identity-formation, the present paper proposes to discuss how heteronorm is discursively and performatively generated in the Indian post-colonial nation-state. I would like to

interrogate the politics of systematic ostracism that is carried out against the Indian queer subject through the post-colonial nation-state's various machineries of power. The focus of my discussion would specifically be on Section 377 of Indian Penal Code. The issue gains in topical significance, given the current atmosphere of hostility that reeks of homophobia and belies India's claim to modernity.

It is pertinent to note at this juncture that the politics of gender stereotyping and of the marginalisation of the sexual deviant in India is marked by particular cultural-national specificities. A blind application of western paradigms to understand the identity politics in India would be misleading. The dominant ideology in India does not always function around a simplistic binary between the heterosexual and homosexual. (Kapur, 237) Therefore the resistance faced by non-normative sexual entities too cannot be explained in terms of homophobia alone. Indian society betrays a discomfort regarding all issues of explicit sexual expression, be it same-sex love or the public display of affection. "Heteronorm" in India does not necessarily refer to male-female mutual attraction. Rather, marital, procreative and domestic sexual activity alone is legitimised. Counter-normative sexual behaviour in India therefore includes homoeroticism as well as all those different kinds of heterosexual love that transgresses the aforementioned categories (Bose, xviii). Any discussion of queer politics in the Indian nation-state, hence, must always take into account this complex network of power that permeates virtually all layers of Indian sexuality:

...[G]iven the sexophobic context that structures our reality, alternative sexual desire... is understood as anything from public kissing between a man and a woman to the representation of lesbian love-making on screen. It is [this] broader phobia regarding sex which sets the framework within which controversies around alternative sexuality can be understood. (Kapur, 235)

Predominance of heterosexism in India again cannot be explained simply on religious/ moral grounds. Culture of nationalism plays a crucial role in the disempowerment of the queer in India. The most effective rhetoric against same-sex love, that has frequently been used to mobilise mass aversion, has insisted on the fact that this particular sexual "phenomenon" is foreign to "Indian" culture. Homoeroticism is projected not simply as aberrant, but more importantly *anti-nationalist*. It is antipatriotic to forge connections beyond the geopolitical borders of the nation-state; in much the same manner, transgression of the strictly defined borders of national culture too constitutes an act of betrayal towards the motherland. Same-sex love evidences an insidious complicity with the West. (Bandyopadhyay, 21) It had been a colonial import, and is now in the era of globalisation a shrewd First-world ploy to mar India's cultural alterity. The postcolonial state therefore must necessarily be ever cautious to guard its borders and repress all manifestations of foreignness. The continued supremacy of Section 377 guarantees this nationalist anxiety. It criminalises alternative subjecthood deriving from non-normative sexual choice, and thus legitimises all possible forms of violence that a paranoid fear of the "other" may give rise to.

The relevant question that needs to be asked at this juncture is what constitutes the *essential* national identity. What is the normative national selfhood all about, against which the homosexual subject gets projected as abnormal? Homi Bhabha compares the process of nation-building to the signifying strategies through which textual meaning is produced. Nationalist discourse celebrates the myth of a culturally homogenous nation. This constructed idea of the nation--- a community of people united voluntarily by an imagined sense of commonality--- gained “pedagogical”<sup>1</sup> (Bhabha: 2001, 361) momentum under the impetus of nationalism. Its authority is unquestioned, and any disavowal of loyalty is deemed blasphemous. Such a concept of “authentic” national identity structures itself around an originary culture, unadulterated and conveniently contained within the geo-political frontiers of the nation-state. However, such projection of a fixed cultural *difference* suppresses the *ambivalence* inherent in the very idea of the nation. There is no fundamental core of a national identity. Rather, the centred discourse of the nation is strategically constituted by positing a particular culture /religion /language /history /gender /race as the crucial signifier for the ever-elusive, yet historically continuous, Transcendent Signified of the nation. The infinite “play” of meanings is provided with a closure.

In India, this essentialised national imaginary, which impelled the anticolonial enthusiasm of the subcontinent and still continues to inform the manifold workings of power in the postcolonial state, turns out to be predominantly Hindu in spirit<sup>2</sup>. Invoking

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<sup>1</sup> The pedagogical definition of nation, according to Homi Bhabha, is the discursively produced idea of a culturally homogeneous, unified, socio-political entity, constituted out of the volition of a people and situated within the geographical as well as conceptual frontiers of a politically defined space. However, that central signified--- the *essence* of national identity, the basis of the national imaginary--- is ever elusive; it always escapes adequate representation.

However, Bhabha affirms, the nation retains the stability of its selfhood through incessant, continuous, multiplication of the *performance* of its meaning. Observance of Independence Day, governmental decisions, political discourses, legal statutes--- all function as different manifestations of this iterative performance. The performance of national sign reifies the borders of meaning, suppressing all traces of ambivalence. See Homi K. Bhabha, “DissemiNation: Time, Narrative and the Margins of the Modern Nation”, *Nation and Narration*. London: Routledge, 1990, 291-322.

For further discussion on the necessity of the performance in maintaining the cohesion of imagined community, see Ravina Aggarwal, *Beyond Lines of Control: Performance and Politics on the Disputed Borders of Ladakh, India*. Durham: Duke University Press, 2004.

<sup>2</sup> Indian nationalist struggle in its cultural manifestations repeatedly borrowed its language from Hindu, more specifically Brahmanical, ritualistic or cultural practices. *Vande Mataram* (“Hail Motherland”) that became the war cry of the late nineteenth century nationalists of Bengal, for instance, explicitly posits the political struggle as an extension of the Hindu religious practice of mother-worship. See Jasodhara Bagchi, “Representing Nationalism: Ideology of Motherhood in Colonial Bengal”, *Economic and Political Weekly* October 20-27 (1990): 65-71.

Even in its more sophisticated form, the nationalist literature of the twentieth century India too, although celebrating India as accommodative and acknowledging the contribution of the Muslims, continually represents the Hindus as the *authentic* inheritor of the land, the *legitimate* torch-bearers of the

Hindu myths, remembering the history of Aryan resistance against Muslim invasion and positing the political struggle as a disguised “religious crusade” (Collins, 27), Indian nationalism implicitly debarred the non-Hindus, specifically the Muslims and the tribal people, from claiming a place in the imagined national community. In addition, the nationalist rhetoric represented the anticolonial politics as a deeply gendered space, peopled by masculine heroes, thus excluding the female and the non-heteronormative subject. In order to maintain the fixity of this national signifier, the decolonised state empowers and represses select groups of people. Homosexuality in that case becomes a dangerous surplus whose presence threatens to destabilise the national identity. Commenting on the post-*Fire* agitation in the '90s, generated by merely a filmic representation of lesbian love, Sibaji Bandyopadhyay observes that the firebrand enthusiasm betrayed by political parties to ban the movie only proves a desperate compulsion of maintaining the stability of an image that is itself unstable by nature. The fixity of India's heterosexual identity must at all costs be preserved against the threat of counter-normative subjecthood:

...[A]ll that hullabaloo around *Fire* ... [shows] a nation-state hotly in pursuit of an ever-elusive ‘other’, an ‘other’, that however, is entrenched well within the state's self-designated, self-regulating borders. ...Whereas prescriptive norms do not necessarily signify the truth or veracity of a practice, being proscribed is a condition strong and sufficient enough to attest to its presence. (Bandyopadhyay, 20-22)

It is pertinent now to ponder over the actual language of Section 377 of the Indian Penal Code, a legal statute that has called forth intensely heated debates from both the advocates of Hindu orthodoxy as well as the NGOs working to protect homosexual right. Section 377 is included in Chapter XVI of the IPC titled “Of Offence Affecting the Human Body”. Within this chapter, Section 377 has been put under the sub-heading “Of Unnatural Offences”. It goes thus:

377. Unnatural Offences- Whoever voluntarily has carnal intercourse *against the order of nature* with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section. (Naz Foundation [India] Trust vs. Govt. of NCT of Delhi and Ors.: 2001, 1)

The phrase “against the order of nature” seems to demand critical attention. The law sanctions only a very narrow definition of eroticism, namely heterosexual, penile-vaginal intercourse. Any other form of sexual behaviour deviating from this is pronounced illegitimate. What is projected as consonant with the “order of nature” is, at a

deeper analysis, revealed to be procreative sex. Intercourse that prioritises erotic pleasure, without acknowledging the compulsion to procreate, is labelled as “unnatural”, and therefore fit to be repressed. Significantly, Section 377 has frequently been vindicated on the ground that the law is necessary to prevent child sexual abuse and any other form of coercive sexual activity without mutual consent. However, the fact remains that the law does not condone consensual non-procreative sexual activity. Consent seems to be a matter of scant importance. Voluntary consent of two adult partners notwithstanding, individuals indulging in “unnatural” eroticism are liable to be punished. The “norm”—heterosexual, procreative, penile-vaginal—holds its sway over individuals’ private choices.

We would do well at this juncture to briefly discuss, without going into the intricacies of legality, the political and legal debates Section 377 has been persistently giving rise to since the beginning of the millennium. In 2001, Naz Foundation (India) Trust, filed a writ petition in Delhi High Court, defying the constitutionality of Section 377 on grounds of violation of right to privacy, dignity and health under Article 21, equal legal protection and non-discrimination under Articles 14 and 15 and freedom of expression under Article 19 of the Constitution. However, the petition meets dismissal at the High Court on the 2<sup>nd</sup> September, 2004. A review petition (RP 384/2004) is subsequently filed in the High Court, but that too is turned down on the 3<sup>rd</sup> November, 2004. The rejection this time is followed by the filing of a Special Leave to Appeal (C.N. 7217-18/2005) in the Supreme Court of India in 2005. On February 3, 2006, the Supreme Court recognises the necessity to review the law, opining that “the matter does require consideration and is not of a nature which could have been dismissed on the ground afore-stated”. (Koushal and Ors. Vs. Naz Foundation: 2009, 5<sup>3</sup>) The final arguments in the matter ensue in November, 2008 before the division bench of Chief Justice of Delhi High Court, A.P. Shah, and Justice S. Muralidhar. On July 2, 2009, the Delhi High Court passes a landmark judgment, striking down Section 377 and pronouncing it to be violative of Articles 21, 14 and 15 of the Constitution, insofar as it criminalises adult, consensual erotic behaviour. However this does not ensure the empowerment of the homosexuals and their continued access to justice. Quickly succeeding the High Court decision, 15 Special Leave Petitions (SLPs) get filed in the Supreme Court appealing against the “reading down” of Section 377. Notably, the most vehement critiques of the High Court decision come from the groups famous for their religious conservatism. Significantly, however, the Union of India does not appeal against the judgment. In February, 2012, before the division bench of Justice G.S. Singhvi, and Justice S. J. Mukhopadhyay, the final arguments begin in this matter and continue till the end of March, 2012. Our recent times witness the final judgement in this matter. On December 11, 2013, The Supreme Court of India reinstalls Section 377, thus criminalising consensual homoeroticism. The law is vindicated on the ground that Indian society does not accept homosexuality and therefore, the Supreme

<sup>3</sup> This is a Special Leave Petition (Special Leave Petition [Civil] No. 15436/2009) filed on July 7, 2009, in the Supreme Court on India by Suresh Kumar Koushal, challenging the Delhi High Court verdict (July 2, 2009) decriminalizing homosexuality. It is one of the fifteen SLPs that have been filed between 2009 and 2011, challenging the aforementioned verdict.

Court, being the supreme representative body, must defer to the general public opinion. Foreign instances of decriminalisation of homosexuality cannot be applied blindly to the Indian context. While the judgement faces stern criticism from all quarters, it is, however, enthusiastically hailed by religious groups and conservative political parties. The Hindu Right safeguards the nation's essentialised cultural borders with an unmatched rigidity, while demands for the protection of the postcolonial state's sexual minorities go brazenly thwarted.

A closer look into these arguments renders two points amply conspicuous. The legal decisions and the series of appeals, petitions and counter-petitions only evidence a persistent attempt to establish heterosexism, not just as the normative mode of sexual behaviour, but as an integral part of the "national culture". "Authentic" Indian ethos does not acknowledge the practice of same-sex love. In reply to Naz Foundation's petition against Section 377, for instance, the Additional Solicitor General (ASG) argues that the law represents the general public aversion against homosexuals. Against the claim that Section 377 violates the right to privacy by imposing regulation on private sexual behaviour, he avers that the aforementioned right is not absolute. The court may, at any time, bring the private domain under surveillance, if individuals' private choices come to threaten public morality. Moreover, as the Indian context varies from its Western counterpart, foreign jurisprudence should not be regarded a reliable precedent for legal decisions in India:

In reply, learned ASG submits that... *[i]n our country, homosexuality is abhorrent and can be criminalised by imposing proportional limits on the citizens' right to privacy and equality. Learned ASG submits that right to privacy is not absolute and can be restricted for compelling state interest. Article 19(2) expressly permits imposition of restrictions in the interest of decency and morality. Social and sexual mores in foreign countries cannot justify de-criminalisation of homosexuality in India. According to him, in Western societies the morality standards are not as high as in India. (Naz Foundation vs. Govt. of NCT of New Delhi: 2001, 23, emphases added)*

Similar notions are reflected also in the court proceeding for the Civil Appeal for retaining Section 377 that began in February, 2012. Mr H. P. Sharma, counsel for one Appellant group opposing the High Court decision of striking down 377, cited the example of *Manusmriti* to prove India's abhorrence of homosexuality. He further notes that procreative sex is the order of nature. It is a practice that has been prevalent for centuries and is commonsensically perceivable, whereas same-sex intercourse baffles rationality. The record of the proceeding of the final hearing in the Supreme Court mentions:

...Mr. Sharma submitted excerpts from the *Manusmriti*, the *Bible* and the *Quran* to the Bench... Mr. Sharma also referred to Mahatma Gandhi's disapproval for 'unnatural vices' in 1929.... Mr. Sharma further submitted that homosexual sex was unnatural and immoral and the Indian society abhorred such perverted practices... Mr. Sharma contended that there was no concept of sexual minorities in the Constitution of India... The Law had clearly laid down what was natural and not

natural in accordance with the prudence of an ordinary man. (Koushal and Ors. Vs. Naz Foundation (India) Trust and Ors: 2012, 22-23<sup>4</sup>)

What then constitutes this Indian “difference”? Why does Indian “morality” and standards of “decency” criminalise homoerotic desire? If we accept that the moral standards are contextually contingent (for clearly the Western and Indian definitions of morality are irreconcilably separate), then how come heterosexual procreative sex is projected as the universal norm, the timeless, instinctive, “natural” behaviour, against which all alternative modes of sexuality get labelled as aberrant perversity? The legal discourses certainly employ a process akin to narrativisation in its attempt to construct the “norm”/ the “real”/ the “true”, against which the abnormal/ the unreal/ the false needs to be judged. An analysis of ancient Hindu and Muslim texts seems to falsify the dominant claim that Indian society from time immemorial had evinced strong detestation for same-sex lovers. Instead, it is the nationalists’ acceptance of the colonisers’ critique of homoeroticism that marks the beginning India’s neurotic hatred of same-sex desire. Ruth Vanita notes the irony of the process through which the coloniser’s moral code becomes a marker of *authentic* Indian tradition for the anti-colonial revolutionary:

Under colonial rule, what was a minor strain of homophobia in pre-modern Indian traditions became the dominant ideology.... Most Indian nationalists, who fought for Indian independence from British rule, including M. K. Gandhi, accepted the British rulers’ view of homosexuality as a vice. (Vanita, 347)

Indian society has always acknowledged the presence of different sexual preferences. *Kamasutra*, for instance, ---the text that has come to be regarded canonical in any study of ancient India’s erotic culture--- abounds in references to male masseurs who indulge in oral sex (another sexual act proscribed by Section 377 IPC). It names the homosexual subject as the “Third Nature”.<sup>5</sup> The ostensibly “natural”, dualistic binary between male and female here gets substantially destabilised. Vatsayana thus covertly acknowledged the necessity to ascribe the homosexual with an autonomous identity based on sexual orientation. If gender categories depend on reiteration of performative codes, then the queer subject must formulate a different set of sexual and/or behavioural performances, one in which her/his “different” gender identity will be encoded. Ancient India recognised the essential fluidity of identity-categories. Further, contrary to the

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<sup>4</sup> The Final Hearing of all the SLPs, including Suresh Kumar Koushal and Ors. Vs. Naz Foundation and Ors. (SLP [Civil] No. 15436/ 2009 and Ors.), continues from February 13, 2012 to March 27, 2012. The hearing takes place before the Division Bench of the Supreme Court, consisting of Justices S.J. Mukhopadhyay and G.S. Singhvi.

<sup>5</sup> The written submission on behalf of Naz Foundation [India] Trust in the Supreme Court, issued in response to the Special Leave Petition (SLP [Civil] No. 15436 of 2009) by Suresh Kumar Koushal and Others, mentions “The History of Section 377”. In relation to this discussion, under the sub-heading “Tracing the Developments in India: Tracing the position on homosexuality in India (Ancient India)”, the submission refers to the use of the concept of the “Third Nature” in *Kamasutra*. See Koushal and Ors. vs. Naz Foundation and Ors., 2009: 18.



modern glorification of procreative intercourse, the ancient Indian text posits bodily pleasure as the end in itself.

Shifting attention from this erotic treatise if we critically analyse ancient discourses on state-craft and law, there too may be discerned a similar recognition of alternative sexuality. Both Kautilya's *Arthashastra* and the Laws of Manu or the *Manusmriti* assign specific modes of punishment for homosexuals. But what is noteworthy is that same-sex desire is not viewed as a monstrous offence capable of attracting severe penalty. Sibaji Bandyopadhyay's insightful analysis of the two texts brings out the fact that "[b]oth Kautilya and Manu treat man's sexual union with man as one of the cognizable offences. Yet in neither case does the 'unnatural deed' attract heavy punishment". (23)

Not only the ancient, or the so-called Hindu texts, but the Muslim legal tracts of medieval India too betray a similar attitude. In his *Fatawa-yi-Jahandari*, Zia ud-din Barni (1295- 1357), the most important political thinker of the era of the Delhi Sultanate (1210-1556), strongly indicts all cross-dressers, male prostitutes and men who are sexually attracted towards them. But significantly he also makes covert allowance for such deviants. Public morality cannot be tarnished by explicit display of homoeroticism represented by the public pleasure-houses. But, the state *should not* interfere in matters concerning individuals' private sexual behaviour. Barni affirms:

In short, the public practice of anything prohibited by the Law should not be allowed. But if in secret and privately, habitual sinners indulge in their practices, sever investigations about their activities should not usually be made... what is secret and hidden should not be so revealed and published". (Qtd. Bandyopadhyay, 24)

The modern homophobia, manifest in Section 377 and the fundamentalists' obsessive urge to ban queer behaviour, then, seems to be a Western derivation. Nationalist rhetoric here suffers a severe self-contradiction: the "distinction" of Indian morality on the basis of which Section 377 is customarily defended in post-colonial India, turns out to be nothing but a continued mimicry of Christian moral standards. Ironically, in their over enthusiasm to assert national tradition, the zealots of the Hindu Right tend to forget the important fact that Section 377 was drafted during the colonial rule, its motive being the preservation of Western masculinity from contamination by Indian effeminacy. Homosexuality, for the coloniser, had always been a purely Oriental phenomenon, against which the hyper-masculine Western Self must be guarded. Infused as it is with the Judeo-Christian aversion of same-sex desire, Section 377 is the brainchild of Lord Macaulay. Beginning as early as 1290, the Christian legislature had marked homosexuality ("sodomy", as it was named in medieval law) as a criminal offence punishable by nothing less than death. Burning alive on the stake, hanging and many other forms of capital punishment had been assigned for the "sodomites" and "it remained a capital offence until 1861". (Koushal and Ors. Vs. Naz Foundation (India) Trust and Ors.: 2009, 15 ) A mid-seventeenth century remark by Sir Edward Coke brings out the staunchly religious nature of Western homophobia, and its language seems to anticipate that of the Indian

Penal Code. Coke described homosexuality as a “detestable and abominable sin, among Christians not to be named, committed by carnal knowledge against the ordinance of the Creator, and order of nature, by mankind, or with brute beast”. (Koushal and Ors. Vs. Naz Foundation (India) Trust and Ors.: 2009, 15). Since homosexuality was meant to be alien in Christendom, the West had to find a cultural “other” that might be blamed for the presence sexual aberration within Europe. In this Orient became an easy target: colonial rule brings the coloniser within an uneasy proximity with the East, resulting in the decline of European masculinity. Interestingly, however, while for the Westerner, homosexuality was an *acquired* habit, Orientalism represented sodomy as a perversion *innate* to East. The eighteenth and nineteenth century colonial imagination saw “the soulless East [as] the original home of male beasts who, knowing only the pleasures of the body, do not even spare other males in physical matter...” (Bandyopadhyay, 25). While framing Section 377 in 1860, Lord Macaulay too, may we say, felt the necessity of providing “the ‘openness’ of geo-political frontiers”, expanded through colonial travels, with “the ‘closure’ of ‘ethnosexual frontiers’”. (Bandyopadhyay, 44)

Challenging such a derogatory construction of the colonised, the nineteenth century nationalists created an essentialised cultural identity for India. Revoking the history of Aryan valour and selectively re-membling the ancient Hindu myths, anti-colonial imagination constructed an imagined India, peopled by *vir* and virile males. The ancient Brahmanical texts’ engagement with issue of homosexuality was conveniently overlooked. Not only these specimens of the so-called “high” culture, but also the localised rural cultural practices, that, even if metaphorically, evinced a saner acceptance of alternative sexuality, came to be subsumed into an artificially generated, sanitised idea of Indian nationhood.

However, what turns out to be problematic for the post-colonial state is the nation’s continued adherence to this strategically essentialised conception of the national imaginary. National self-definition had surely been necessary at a particular juncture in history. But a blind faith in its permanence only creates new networks of hegemonic power within the decolonised state. Discourses of Indian nationhood is still provided with the closure of a seemingly fixed signified: all signs of alterity potentially threatening to the stability of our heterosexual, masculine, North Indian, Hindu, Hindi-speaking, upper-caste imagined community are forcibly repressed. And this repression creates an ever irrepressible excess that refuses to be contained within the borders of meaning. “The nation-state then becomes a site of anxiety as well as of negotiation, where the dissident sexual subject *threatens the social, cultural and economic boundaries of the national imagination* and challenges the ideological apparatus employed by the state for vigilance and containment”. (Bose, xvii, emphasis added)

Protests, agitations and the spurt of queer activism that India witnesses today in the post-Supreme-Court-judgement times are all evidences of such a growing recalcitrance against “the ideological apparatus employed by the state for vigilance and containment”. (Bose, xvii) One feels the urgent need to unlearn received ideologies and

be sceptical of the fixity of “national culture”. Section 377, as has been illustrated, represents a social attitude--- a complicated fusion of phobias of, not just the sexual, but diverse kinds of “other”. Enforcement of the law then becomes one of the many “performances” of the “pedagogical” construction of the national identity, to use Bhabha’s terms. As the 2001 petition of the Naz Foundation clarifies, Section 377 legitimises the cultural violence inflicted on India’s sexual minorities, hindering the latter’s access to socio-economic facilities and denying them their right to free expression. Becoming instrumental in essentialising *Indian-ness*, the legal statute thus negates the genesis of alternative significations of nation-hood that the queer subject may bring into play. Concepts of *tradition* and the so-called “public opinion” on the basis of which the law continues to be vindicated, therefore, need to be questioned. Demand for legal amendment cannot be regarded an end in itself, neither can it be the sole means of precipitating social change. (Narain, 255-262) Queer-politics needs to be more amorphous, penetrating all layers of national consciousness and initiating a larger process of recognising the contingent and constructed nature of, not just heteronorm, but the nation’s identity-politics in all its diverse manifestations.

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