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**Subjects of Privacy: Law, Sexuality and Violence in India**

Section 377 of the Indian Penal Code is a colonial-era law instituted in 1860 in British India to criminalize sexual acts deemed against the order of nature. In 2009, after almost two decades of activism and advocacy by Indian LGBT lawyers, the Delhi High Court amended Section 377 to decriminalize homosexuality by excluding same-sex acts among consenting adults in private from the list of criminal acts under the law. While in 2013, the Indian Supreme Court overruled the Delhi High Court decision in *Naz Foundation v. Union of India and Others*, the Naz decision that decriminalized homosexuality was widely celebrated as an extensive human rights treatise that gave the Indian sexual minorities the rights to equality, dignity, privacy and non-discrimination based on the legal interpretation of various articles in the Indian Constitution.

This paper focuses on the legal right to privacy that has often been invoked in cases relating to intimate bodily experiences, gender and sexuality (Rubinfeld 1989). The Delhi High Court in the Naz case offered a formulation of privacy that linked privacy to persons and not places. By extending the right to privacy beyond the spatial/zonal logic of an intimate private space, this formulation recognized the personal autonomy or the decisional ability of any individual within a sphere of intimacy. The right then implied that one could have privacy in public spaces as well based on one's ability to decide on a structure of privacy. The court's interpretation of privacy that transcended its spatial logic became a salient point that was widely acclaimed by the Indian LGBT activists and lawyers. Perhaps, in purely legal terms, this version of privacy may prove to be certainly more empowering than its "strictly spatial" narrower kin, however in the Indian context where the norms of gender and sexuality within the home and outside shape one's experience of the public and the private, the spatial and the zonal take on a special significance in matters of individual agency.

Through an examination of two nationally prominent cases, one related to the moral policing of a gay professor in an Islamic university in Northeastern India, and the other, a case of sexual violence on a 23-year-old girl, this paper argues that privacy is best conceived as an absence that becomes meaningful only in its violation. Further, once the right to privacy is invoked upon the violation of the individual, it can only address the injury of privacy but never fully reform an entirely private subject. The underlying suggestion here is not one of privacy as an impossibility given that most of our life is indeed privately conducted, however, it isn't usually conducted consciously with a right to privacy in mind. Thus privacy is less a preoccupation than the assumption of an absence of intrusion or interference until the moment of violation. Moreover, once the subject of privacy is constituted through a violation, whether by a state or non-state actor, the subject always remains partially in public view through their circulation as a human rights subject in legal archives, media representations and other cultural modes of visibility.

### **“Homosexuality Immoral Even in the Privacy of Home” - The Aligarh Muslim University Case**

In February 2010, almost eight months after the Delhi High Court decision in July 2009 that decriminalized homosexuality in India, local media-persons along with employees at the Aligarh Muslim University (AMU) entered the bedroom of Professor Shrinivas Ramchander Siras who was, at the moment, with a male companion. They took photographs of him and his friend while they were in a compromised position. Even as the professor begged them not to take pictures and allow him to get dressed, the intruders forced him to be photographed. While local newspaper carried the story of the incident, the professor was suspended from the university for contravening the university's moral code of conduct by engaging in sexual relations with a man in his home that was located on the university's premises. He was served a notice of immediate evacuation of the campus housing and to make matters worse, the university authorities disconnected the electricity meters to create an uninhabitable environment.

The professor's suspension from the Islamic university in Northeastern India caused an outrage among the academic community and LGBT activists across the nation.

Especially in the wake of homosexuality's decriminalization in 2009 that gave the right to privacy to same-sex consenting adults and linked it to persons and not places. However, even as legal action against the university became possible under the changed law leading up to the court order to the university to reinstate the professor, he died under mysterious circumstances in April 2010.

- As a legal victory that ended tragically, Prof. Siras's case highlights a range of issues that relate to the disjuncture between global mandates of human rights and queer activism and the lived experience of non-normative subjects in semi-urban and rural contexts<sup>1</sup>. Judith Halberstam's (2005) discussion of Brandon Teena's many archival lives is relevant here in terms of understanding the social, cultural and political processes through which human rights subjects are constituted through public appeals to justice.

- In the chapter, "The Brandon Archive", Halberstam (2005) considers a number of narratives that constitute the archive of representations created around the murder of Brandon Teena, a transgender woman who was brutally murdered by local men after they discovered she was in fact a woman. These narratives include violence directed at transgender and queer bodies in rural/nonmetropolitan America, the violence and homophobia associated with small town communities in rural America, the class-based stereotypes of white trash that characterize their attitude, the fear and hatred that shape masculinities of men who perpetrate such violence and the postmodern politics of place and location within which queer migration takes place from small town to urban centers. Her analysis offers valuable insights into the shaping of local sexualities and their place within the broader processes like globalization and queer migration. Halberstam's insights offer ways of reading the Professor Siras's case against the grain of global queer advocacy and activism that retrospectively produce normative subjects out of non-normative experiences. Halberstam's observation on the murders of Matthew Shepard and Brandon Teena that "have sparked new considerations of the relationship between mainstream gay and lesbian rights movements and the harsh realities of lives lived far beyond the reach of rights-based policies" (34) speaks to the disjuncture between the space of identification opened up by a politics of queer visibility and recognition, and the space inhabited by queer lives (or those with same-sex desire) shaped by heterosexist ideologies and the fear of violence in semi-urban contexts.

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11. Aligarh is a small, predominantly Muslim town in Northeastern India

The activist action that ensued the outing and suspension of Prof. Siras from the Aligarh Muslim University produced a fact-finding report based on interviews and conversations with employees, administration, and professors at the university. The administration's response was revelatory as far as the right to privacy conferred by the Delhi High Court decision was concerned. The public-relations officer (PRO) of the university told the fact-finding team that homosexuality, even in the privacy of the home, was immoral. He further stated that he was proud to uphold the moral values of the 133-year-old institution where there were several kilometers separating the residences of girls and boys and everyone dressed modestly in accordance with the university's moral culture. Despite the presence of oppositional voices on campus that condemned the university's actions against the professor, the authorities maintained that homosexuality was not part of the institution's moral culture.

The case of Prof. Siras clearly highlights the issue of privacy and its spatial logic that was not granted recognition by the university's moral police brigade. While the invasion of the professor's bedroom privacy was clearly recognized by certain oppositional voices on campus as an infringement, the right to privacy subsequently invoked privacy as linked to the bedroom as a place and not the professor's personal autonomy to engage in homosexual conduct on university premises. The university authorities were able to mobilize a similar spatial logic concerning sexual privacy that in fact attenuated any claims to privacy precisely because it was not permitted in relation to sexual conduct within the campus space. Particularly salient is the fact that the professor's personal autonomy to which the Delhi High Court decision would link the right to privacy did not exist simply because he was likely never out as a self-identified homosexual man. Once he was "outed" and "exposed" by local media-persons and his colleagues, he was perhaps left with little choice but to become a public subject in order to attain justice. Thus, privacy's meaning in this case concretely emerged in a gross violation of sexual space and even though the professor won the case, he did not exactly return to a fully private life.

## **The Delhi Gang Rape Case – Nation’s Daughter**

In December 2012, a 23-year-old woman was fatally gang-raped in a private city bus plying on the public roads of Delhi. The girl had boarded the bus with her male friend while waiting for the public bus to go home. The bus with tinted windows did not stop for almost 45 minutes before dumping its only two passengers under a city flyover after they were brutally assaulted by the five men present in the bus.

The gang rape caused a national outrage as protestors gathered for late night vigils in New Delhi and other parts of the country demanding justice for the girl. The girl who remained in surgery for hours and had to be flown to Singapore for better medical treatment finally succumbed to her injuries two weeks later in late December 2012. Indian feminist writer and anti-rape advocate, Flavia Agnes (2013) critiqued the media for giving her various kinds of epithets like “Nirbhaya” (fearless), brave-heart and nation’s daughter. She also took issue with a right wing woman politician’s characterization of the girl as a “living corpse” that in Agnes’s view reinforced the victim narrative. Despite her vocal critiques about the media and political framing of the gang rape, Agnes herself framed the girl in terms of human rights poster-child when she said:

...Had she survived (as many of us wished she had) she could have been the mascot for the movement against violence perpetrated on women. She might have come out in the open in the wake of the massive support she received across the nation, and by this very act made a strong statement to the world at large that a rape victim does not have to survive like a *zinda laash* (a living corpse), a title awarded to rape survivors by our parliamentarians. Her fight for justice would have become a beacon of hope for many others. Her struggle for justice may even have helped to lessen the stigma attached to the term “rape” itself in public discourse and her struggle might have inspired many youngsters to come out and report incidents of sexual assault. But that was not to be (Agnes 2013: 1).

The assumption behind the instrumental mobilization of a violated body reincarnated as a human rights icon, in some measure, undermines the discourse of privacy as personal autonomy and bodily integrity that attaches itself as a reparative to that body in the first place. The space of a private bus that could not be stopped on public roadways once again demonstrates the dangers of elevating privacy to notions of autonomous personhood especially when such autonomy does not transcend the space

within which the violence is inflicted on the body. Further, the violated body becomes a public subject as a necessary step in the direction of justice but remains irrevocably public even after justice is understood to have been delivered. While the girl died within two weeks of the incident, her family was given a new life – an apartment and monetary compensation – by the Indian government. In a BBC news story, Soutik Biswas (2013) interviewed the girl’s family to understand how life had changed for them after the incident. An excerpt from the news story is poignant for the irony of being a public human rights subject:

...Then there's the unrelenting public gaze: the parents have been on primetime TV news and have attended award ceremonies to remember their dead daughter, and everybody in the neighbourhood knows that the "victim's family" lives here (Biswas 2013).

Biswas further reports that the family’s phone keeps on ringing incessantly with journalists requesting to visit them. Despite the emergence of a more punitive anti-rape framework in India following the Delhi gang rape, the ground reality of women in various contexts – both public and private – has largely remained unchanged.

This paper has offered a critique of the right to privacy conferred upon same-sex consenting adults in private in the decriminalization of homosexuality in India in 2009. Despite its long history of feminist and queer critique, the right to privacy continues to inform modern notions of sexual subjecthood, personhood and bodily integrity. Its legal elevation in its linking to persons and not places overlooks the multiple ways in which subaltern identities are shaped through intricate mappings of the public and the private in the Indian context. The right to privacy remains an absence that is made concretely meaningful in its violation, and further does not reconstitute a fully private subject even after the injury of privacy has been addressed.

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