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Sedition, Securitization, Sexuality: A Conversation between Rohit De and Inderpal Grewal

Inderpal Grewal and Rohit De

- 1 **Rohit De** is an Assistant Professor of History and Associate Research Scholar in Law at Yale University. He is interested in how law operates through everyday life, particularly what people—both experts and ordinary men and women—think the law is and how they use this knowledge to negotiate their daily lives. Professor De’s book *A People’s Constitution: The Everyday Life of Law in the Indian Republic* (2018) explores how the Indian constitution, despite its elite authorship and alien antecedents, came alive in the popular imagination such that ordinary people attributed meaning to its existence, had recourse to it, and argued with it. Mapping the use and appropriation of constitutional language and procedure by diverse groups such as butchers and sex workers, street vendors and petty businessmen, journalists and women social workers, it offers a constitutional history from below. His current research, “Rights from the Left; Decolonization, Diasporas and the Global History of Rebellious Lawyering,” offers an alternate history of universal rights and civil liberties that arose out of Asia and Africa during the period of decolonization. The project follows the careers of lawyers who defended unpopular causes across space and time, to offer an alternate history of universal rights and civil liberties that arise out of Asia and Africa and is mediated through Indian, Chinese and Caribbean diasporas.
- 2 **Inderpal Grewal** is Professor and Chair in the Program in Women’s, Gender, and Sexuality Studies at Yale University. She is also Professor in the Ethnicity, Race and Migration Studies Program, the South Asian Studies Council, and affiliate faculty in the American Studies Program. Throughout her career, Professor Grewal has been studying empire as it produces gendered subjects. Her first book, *Home and Harem* (1995) was about the British empire and what could be called the gendered cultures and subjects of empire. What were these subjects, how they emerged, and what sorts of ways did British and Indian women conceptualize themselves as women, as gendered subjects, against and

within the empire? Professor Grewal's second and third books have also been about American empire. The second, *Transnational America* (2005), focused on America in the world, on how America is perceived and inhabited by those who travel and come here, and on the ways in which imperial power created migrant subjects. Her recent book, *Saving the Security State* (2017) is very much about the waning of American empire, and how people work through and live and become subjects of this particular waning empire. In all of these books, Professor Grewal's feminist approach has been to embrace feminism as a project, but also to be very critical, aware and reflexive regarding its inclinations towards modernity and empire, with all of the problems this encapsulates.

- 3 This conversation¹ frames the project of modernity and the state in each of these two scholars' work, and the ways in which questions of modernity intersect those of "national" and "anti-national" subjectivation. Here, they are interested in how modernity has been formulated in relation to nations, nationalism and commensurate reform movements, and how critiquing these relationships is so deeply informed by feminist scholarship on South Asia, by feminist scholarship on race and ethnicity in the US, the critique of empire in all of these bodies of work.
- 4 **Inderpal:** Rohit, perhaps we should begin with your research and the colonial/anti-colonial history of sedition law. Your research shows how anti-colonial lawyering addressed the ways that colonial legal systems created criminality as a threat to the colonial state. And one of the ways that it did so was through these sedition laws. So, sedition/anti-sedition lawyering must have been a big part of this history of lawyering?
- 5 **Rohit:** Yes, there are a number of interesting strategies in Indian anti-sedition lawyering. ² Among the earliest, seen in the cases of Tilak (Mukherjee 2017) or Annie Besant (Robb 1976) for instance, was to argue that the words of the accused were not sedition but legitimate criticism of the government, not demands to overthrow it. For instance, in the case of the British communist Philip Spratt (Noorani 2012), who had written a pamphlet calling for a China-like revolution in India, his lawyers argued that Spratt challenged "British imperialism" and not the "government of India." The term oppressor was used not in a literal sense to the specific government in power, but in a popular sense of people subjected to a foreign rule. The second is a move that Gandhi makes, which is to assert that the impugned act is sedition, that he has committed it and that if the judge believes in the system he works for, he has to give him the maximum punishment possible. This flips the logic of the charge and puts the colonial state on trial before public opinion. After independence, the Allahabad High Court in *Ram Nandan v. The State of Uttar Pradesh* 1959, comes to the conclusion that there can be no room for sedition in an independent country or in a democracy and declares the provision unconstitutional. This exemplifies the idea that the colonial system of rule has a role in a postcolonial state. However, the Supreme Court brings the provision back, reflecting an underlying belief that colonial tools of governance can be used by a democratically legitimate government, but chooses to interpret the provision of sedition more narrowly. So, it's kept on the books (*Kedarnath v. State of Bihar* 1962)
- 6 **Inderpal:** And how is it kept on the books?
- 7 **Rohit:** The argument of the Supreme Court in *Kedarnath's* case is that sedition cannot be mere criticism or an attempt to overthrow the government but has to incite violence and create public disorder (*Kedarnath v. State of Bihar* 1962). The case had involved a communist politician who was charged for criticizing the Congress government as "a tyranny" and threatening to liquidate "Congress goondas" and "official dogs." Despite

violent language in an election meeting, the courts ruled that there was no actual threat of violence or public disorder. The logic being that in a democracy one can argue for a change in government but only through non-violent means. The appellate courts have read “incitement” narrowly, for instance in a case that came out of Punjab following the assassination of Mrs. Gandhi, two Sikh men were charged with sedition for standing in a crowd and shouting “Khalistan Zindabad” and saying they will drive Hindus out of Punjab (*Balwant Singh v. State of Punjab* 1995). Upon acquitting them, the court noted that nobody responded to their cries, they had no weapons or any ability to carry out the threatened violence when they made these statements, so their speech could not be called seditious. Sedition is only an offense which actively has an attendant element of force.

- 8 There was also an interesting argument made in the Indian National Army trials when Indian officers of the British army who had joined the INA were tried for waging war against the King. The INA Defense Committee led by Bhulabhai Desai made the argument that since the INA had declared Indian independence, and their government was recognized in international law by Germany, Italy, Ireland, etc.; the accused could be tried as prisoners of war (Desai et. al. 1947). They could be tried for waging war against the King because legally he was no longer their King subsequent to independence. This assertion of postcolonial sovereignty in the INA trial is interesting because it clearly forms the basis of Justice Radhabinob Pal’s dissent in the Tokyo trials (Pal [1948] 1999).
- 9 **Inderpal:** Your account of the various interpretations of sedition defines sedition in shifting ways: first, in the context of British colonial rule, it is speech intended to overthrow the government as opposed to “legitimate criticism,” though it is also embraced as a political gambit by Gandhi. Later, it becomes defined as something that is inciting violence, but only if it has some “force” behind it. This history reveals both a legal and a political instrumentality of the term. But I am wondering if more recent cases clarify if speech or acts count as sedition, and whether the target of such speech or acts matters? Or as with Gandhi, it now is only about political tactics? What is now happening in India seems to play out purely in the realm of public opinion, the media, and politics. There seems to be, you know, a lot of loose talk about sedition, a lot of government action and criminalizing, without—as far as one can see, and correct me if I’m wrong—any kind of legal cases and judgments clarifying or interpreting—at this moment in time—what sedition has come to mean. Is there anything that’s happening that changes the interpretations of sedition more recently?
- 10 **Rohit:** So, what has happened is like the Pakistani blasphemy case (Jamal 2013)
- 11 **Inderpal:** Oh, that case, yes... but that’s blasphemy...
- 12 **Rohit:** But it’s—there’s a similarity between sedition and blasphemy, right? So, in Pakistan, you can commit blasphemy against the religion of Islam. It’s—
- 13 **Inderpal:** But because it’s an Islamic state...
- 14 **Rohit:** The provision in its current form was brought in only in the 1980s but while convictions are rare and have been overturned on appeal, the violence is the process. Anybody can file a complaint, subjecting the accused to arrest, years of legal machinations and public violence, as several of the accused have been lynched before their cases are even investigated.³
- 15 **Inderpal:** So, is it about identifying those critical of the government and sanctioning violence—though not in the court but in public opinion?

- 16 **Rohit:** Sedition actually mimics that very closely. What stands in—what Islam stands in for in Pakistan, the state or the government stands in for in India, and as you can see, most of the new sedition cases in the last decade are not brought by the government, but a private individual or organization has gone and demanded that someone be prosecuted for sedition and filed a complaint of sedition. It's also the process that acts as the punishment in these cases, and there is almost a dispersal of sovereignty through it. It's interesting that both sedition and blasphemy were brought in as amendments to the Indian Penal Code (India [1860] 2011) to manage the threat of unruly subjects. As Julia Stephens' works show, sedition was incorporated into the Indian Penal Code (India [1860] 2011) out of fear of Wahhabi extremists in the late 19th century (Stephens 2013:22–52). This was framed as a threat to India. So, there is a sort of deep connection between religion and sedition.
- 17 **Inderpal:** There's a deep religious connection or similarity between blasphemy and sedition, there's a similar kind of fear in India which also seems to be elicited by religion, or Hindutva that wants to be a religious state, or Khalistan in the case you mentioned?
- 18 **Rohit:** The offense of sedition is defined in the Indian Penal Code (India [1860] 2011) as promoting disaffection against the state. So, in a way, the analogy is quite clear. The state compels you to love it and have affection towards it. It's a kind of forced patriarchal love, maintenance of a filial bond with the threat of force.
- 19 **Inderpal:** But what's so interesting is that these individual citizens are bringing these accusations and filing cases in the courts. Also, what does it then mean when it's not the state that's saying, "Love the state," but it's people or some citizen who is saying to another, "Love the state or else"? This is a moment in which a kind of Hindu nationalism has fulfilled its dream, right? That the Hindu citizen and the state have become one.
- 20 **Rohit:** But it also goes back to the problem of Indian nationalism. One critique of the colonial state was that it was a foreign state, and foreigners cannot govern Indians as they don't have our interests in mind. By extension, the state form itself should be seen as an alien form. However, many strands of nationalism separate the state from its origin. Many nationalists in 1947 argued that the colonial mechanisms of government, including the police, army, and legal system could carry on because the government had changed in nature and become a representative one. There's also a kind of political fantasy that Narendra Modi demonstrates when upon being elected as prime minister he says Indians are finally free after a thousand years of rule. There's a sense that the imagined Hindu community now owns the state. So even though in the past the RSS and Jan Sangh had their civil liberties curbed, the aim remains to capture the state rather than expand the ambit of civil liberties.
- 21 **Inderpal:** There is also the lack of distinction between the nation and the state in a different way than in the post-independence liberal national period—now the nation-state is imagined as a product of a claimed majority identity. So, whoever is against this Hindutva state is guilty of sedition, and perhaps the standard of incitement is no longer relevant?
- 22 **Rohit:** In both the liberal nationalist and the Hindu nationalist iterations, sedition is not a problem, because the people can vote in an election and change governmental forms. There is a legitimate path to political change—that did not exist under colonial rule—so sedition can continue to exist as an offense. After all, the state is "ours"; and only those who see themselves as separate from "us" will challenge the state.

- 23 **Inderpal:** Now the state is ours. And we are the state.
- 24 **Rohit:** We are the state.
- 25 **Inderpal:** But at the same time, “we are the state” is a gendered expression; it’s completely masculine through the way the logic of nationalist violence works, masculinizing the Hindutva subject and giving him greater power over others—even if there are women followers. But if Hindutva forces are trying to capture both the nation and the state, and both are presumed to have become completely one, this changes citizenship, changes the nature of being a minority in the state, and Indian democracy vis à vis its minorities. The charge of sedition has come up now, in a more intensive way, even if there have been insurgencies against the Indian state somewhere or the other since 1947. Now, as you are saying, particular citizens are accusing other citizens of sedition. What is also frightening is that the idea of who is Hindu, a citizen, a national is being expanded more and more and giving lots more people power over non-Hindus. Perhaps the person who charges someone with sedition shows himself to be a proper citizen of this Hindutva state, or can take advantage of having a Hindu identity to get someone they don’t like into trouble.
- 26 **Rohit:** I think that in 1947 we had a state that had aspirations of presenting itself as pluralist. And now it’s a state that is mono-cultural—homogeneous. I mean, the narrative of this new homogenous state is very much there in Modi’s language, so even the new GST tax that he started is framed as “one nation, one tax.” And it’s about bringing the states together through this new nationalism, despite the federal agreement at independence. There’s an argument that homogeneity is almost natural, all nations have to move towards homogeneity.
- 27 **Inderpal:** But that is such a strange idea, right? The idea of homogenous nations as the model of the nation-state?
- 28 **Rohit:** But wasn’t that the model of the nation-state?
- 29 **Inderpal:** Yes, it was, but that’s such a universalized and problematic notion of the normative nation-state, produced by the treaty of Westphalia that imagined the end of the European religious wars by boundaries that were seen to ensure peaceful, stable sovereign nations and co-existence—maybe between and within the nation too. Conflict with outsiders was the problem, but now we have countries producing large numbers of their population as outsiders from among their own citizenry and attacking pluralism as a problem. State legitimacy is no longer claimed through biopolitics or development or welfare (though those issues are not abandoned wholly in India) but rather through the process of constructing new nationalisms through securitization against new and old enemies. Those who are citizens can now be turned into enemies of the state. For instance, both US and British leaders—as well as others—say, multiculturalism is a problem, as if the notion of the nation as community was about sameness rather than about liberal equality even. Notions of racial and religious monocultures as natural to nation-states seem to be a prevailing idea.
- 30 **Rohit:** So that’s the framing.
- 31 **Inderpal:** The production of India as a Hindu nation—as a monoculture that sees culture as a particular kind of sameness, particularly of religion is prevalent in so many places.
- 32 **Rohit:** There’s a deep sense of inferiority and insecurity that undergirds this imagination of nationalism, where it’s never independent of the West and it’s always in competition

with the West. Hindu nationalism also imagines Islam as a former colonial power and constructs it similarly.

- 33 **Inderpal:** It seems that this kind of insecurity produces the powerful as the most injured. Nationalisms argued that it was the oppressed who were most injured but now this has shifted to the powerful. There is once again the postcolonial condition of using both an anti-colonial nationalism and a colonial form and law—recuperating injury and repression of a Hindu nation that really never existed in this form.
- 34 **Rohit:** Maybe that's a good place to think about your argument about securitization, that what we see now are modes of power that are about sovereignty that is not just the power of the state. That sovereignty is now detached from the state and is diffused—given to some powerful citizens. I was wondering, one, if you could talk a little bit more about that, and secondly, why it is that individuals become willing subjects to carry this out.
- 35 **Inderpal:** There are some connections between what's happening in India and what's happening in the US, particularly the harnessing of “terrorism” as a threat to the nation (now the Hindu nation, unlike in the past) and emergent right-wing nationalisms. The projects of securitization—the use of the idea of a threat to national security that enables the militarizing of the population—is interesting to me because of how people who see themselves as citizens take on the task of national security. What you say about sedition being a charge brought by individuals against other individuals then fits what I see happening in other national contexts such as the US, where the exhortation after 9/11, was “if you see something, say something.” How then, one might ask, is this situation different from the ways in which people participated in nationalism in the past, in either postcolonial or anti-colonial contexts? I think what is remarkable is the emergence of a new nationalism based on a religious idea, Hindutva, that is much more a populist and authoritarian project than the democratic aspirations of the past. Liberal democracy is not a goal of this Indian government, which has rather different sorts of aspirations to power and authority.
- 36 **Rohit:** I was wondering about our own individual relationship with technologies and corporations: it's quite clear our smartphones and our computers are watching us. Your book suggests there are ways in which the state's desire to gather information causes harm to minorities, but it's also frustrated because it allows for a process through which certain citizens carry out personal vendettas using state structures (Grewal 2017:1–33). Also, while people are suspicious of the state's will, there's a lack of suspicion with regard to private institutions, and people voluntarily hand over information to them.
- 37 **Inderpal:** The question of surveillance becomes powerful because of what you are suggesting—that lots of people use digital technology because it signals progress—economic, social and individual. It's a source of fear and of pleasure. It can get people jobs in this tech sector, and it can also seem to be making life easier. Its seductions are many. But part of the problem is that many don't see it as threatening because the tech section is a private industry for the most part, and it seems to be apart from the state. Because it is not the state, many don't have the same concerns about it as the power of government surveillance. That is the way Aadhar was initially marketed, though now it's become a gigantic surveillance mechanism of the state that is bent on enumerating citizens—once again, identifying some as citizens and some as noncitizens. What is also scary is that if the state is now captured by religious nationalism, the project of surveillance and of sorting is now granting even more power of a somewhat different sort. Not biopolitical, and not even pastoral, in the Foucauldian way—but a forging of identities that are both in

and outside the state. The state is also a different kind of entity because it has been captured not just by a Hindutva project but by corporations and oligarchies who are also patriarchal. That means that who's capturing the data and why is sometimes clear and sometimes not. Sedition—and not just sedition but horrendous acts such as lynchings—might be one way to charge those identified as protesting Hindutva and devolve sovereignty onto those who identify with this nationalism. At the same time, there are also upheavals and protests because all nationalisms are unstable and the residual aspects of liberal democracy mean we desire something from the state, while we fear the state and our demands from the state are not ceasing. Hence, we see also the narrative of corruption and concern over surveillance. With Modi and Hindutva, there are ideological ends which are also global-economic ones.

38 **Rohit:** I don't think that the project can be completely explained in a kind of political economy perspective at all. It's also trying to create a different kind of set of hierarchies, a new form of social order which places Muslims in a clear hierarchy below Hindus. And I think this hierarchy allows for several men—both Hindu women and Hindu men of lower castes to claim higher positions than they did historically. I was thinking recently, both in the US context and in the Indian context, with the kind of sort of debates about sexual harassment in the US and the controversies over marriage and conversion in India. So, the same week the Supreme Court intervened on behalf of Muslim women holding that triple *talaq* was invalid,⁴ it also questioned in the Hadiya case the ability of adult women to consent to convert to Islam.⁵ Taken together, it might appear that the project was about taking away male privilege from Muslim men, that they can't divorce at will but neither can they marry women from outside their community.

39 **Inderpal:** I agree that the project is not just about the neoliberal political economy, because the nation is not just an economic entity.

40 **Rohit:** I think there is—and maybe I'm reading too much into this—but these projects put people in a bind because the assertion of rights for marginalized men is framed against that of protecting women.

41 **Inderpal:** Perhaps you can do both—and feminists have done both. The feminist work on nationalism has spent a lot of time thinking about problematic nationalist patriarchies that emerged after women supported nationalism. The intersectional and transnational feminist project has worked to reject the logic of protection of women through war or incarceration that often is punitive only towards poor and racial minorities. But I agree that this anti-Muslim animus is about more than capitalism because Islamophobia is not just that, though populist politics will use it to capture the state and capital as well. I agree that even the “triple talaq” ruling was about the imperial project of rescue of Muslim women from the Muslim men. It's definitely that.

42 **Rohit:** The state makes the case for either being unable to exercise consent.

43 **Inderpal:** But what's also interesting about the Hadiya case is that the court allowed her to leave her father's house but only to go to another carceral space, that of the dormitory, where she was under the custody of the warden (*Shafin Jahan v. Ashokan K. N.* 2018; Scroll Staff 2018). At the time this was written, she was still incarcerated and separated from her husband. This case and the targeting of Muslim males reveals that the state itself is Islamophobic, male and patriarchal. It imagines its goal as destroying the male opposition. However, there is some indication that young women and feminists are pushing against these masculine authorities in movements such as “*pinjra tod*,” for

instance.⁶ Hadiya's case is classic, I think, when a young woman says she has desires and pushes back against the patriarchy of her family. It also means that patriarchy is challenged too.

- 44 **Rohit:** It might be useful to turn to your discussion of the “security moms” in your book, where you talk about how women and some feminists embrace securitization and policing in the name of national security (Grewal 2017:118–43). Since the 1970s there has been a movement of conservative women in the US, but also in the Hindu nationalist movements; women were seen as foot soldiers rather than ideologues (Sen 2007). But over the last eight or nine years or so, we've seen the emergence of the young female, English-speaking, Hindutva supporters on the internet as well, who use vitriolic language against others, particularly other women. Is there a “security feminist” aspect there in India too? I mean, I don't think we have security moms but there are certainly those who work for and support the Hindu nation-state.
- 45 **Inderpal:** In the US context, I defined “security feminism” as a feminism that is empowered by working on counter-insurgency and security projects. I don't think we have the same thing in India because women have not been part of the security narrative in India in the same way or to the same extent. There are heroic policewomen—Kiran Bedi as a supercop comes to mind. She's the closest to the security feminist model that I identify in the US, but it's not a pervasive model of empowerment in India, despite the Hindutva women. Empowerment in India still remains confined within development regimes. Those Hindutva women have always been there and most women are not feminists either. I think the Hindutva women see themselves as patriots and Hindus and perhaps not as empowered by breaking a glass ceiling. Moreover, feminist movements in India have not addressed questions of the border or securitization so much, of the problematic of territoriality as related to nationalism, of counterinsurgencies so much, except of course for activists such as Arundhati Roy, or those who work in regions where the military is used to suppress people—Kashmir, for example. However, there are other sorts of securitizations women do engage in—protecting the patriarchal family against changing sexual cultures, for example, or against migrant and poor men, or maintaining caste boundaries. But this kind of securitization remains as a project that needs to be engaged in a feminist way because the Hindutva project is gaining ground on the back of the racist argument of the sexual predation of Muslim males, an anti-Pakistan narrative, and a kind of transnational Islamophobia generated by US geopolitics. Islamophobia reveals itself through talk of the predatory behavior of Muslim males—the fictitious “love jihad” stuff—but also through narratives that Muslim women produce too many children, the sort of narratives that are identified as signs of racism. So, I think that those aspects mean that there's a renewed narrative of nationalism in terms of Islamophobia that has to be fought in all kinds of venues. Sedition charges are being brought not just against men but also against women, especially those who resist Hindutva.
- 46 **Rohit:** The one difference I find between how US and Indian forms operate is the capacity of the state. The US government is able to track most of its citizens with ease, in ways that the Indian state may fantasize about but does not have the capacity to achieve. To what extent is infrastructural power at the heart of this? The US state is interesting because it claims to be a minimalist state, one that does not guarantee its citizens the range of services that the Indian state and other states do. However, it's able to extend its surveillance and track its citizens far more intrusively than other visibly interventionist states.

- 47 **Inderpal:** I agree that state capacity for surveillance in India may not be as total as in the US, though the biometric project like Aadhar does result in a surveillance state. State surveillance capability, however, can be more powerful in some regions than in others—Kashmir, Punjab, the Northeast? One of the interesting documents that I've been reading is the work of K. P. S Gill (1999), who talks about how he changed policing in Punjab during the 1980s and 90s. And one of the claims Gill makes is that before he was put in charge, the police stations were disorganized, without clear means to gather and share information. Police jurisdictions were compartmentalized. He says his work as security expert was to use police stations to gather information and share it in a systematic way. He states that the obstacle to this process was turf war between bureaucracies and politicians. He claims he eliminated these battles once the power of the police was accepted and acknowledged by the Central government. He relates that he took all village police stations and connected them and made them share their information, creating a very robust web of information. Whether or not he was able to achieve or use this information network to the extent that he claims, his security practices led to a number of deaths through "encounters" and charges of human rights abuses. The region was flooded by security personnel, many of whom did not seem to be accountable to anyone. What this example shows is the state's aspirations towards a surveillance network, rather than its achievement of it.
- 48 **Rohit:** And also, I think certain kinds of bodies are more to experience surveillance than others. So, if you're Muslim, you're more likely to be securitized or surveilled?
- 49 **Inderpal:** Right, but at the same time, the state controls not by totalizing surveillance but by allowing police to randomly kill people—the "encounters" that happened during that period, including the harassment and violence through which police officers acted like vigilantes.

- 50 **Inderpal:** I guess we could turn back to sedition, right? Sedition charges as the securitization of citizenship, but also sedition as protest? Perhaps protest against this surveillance and security state? But what then do we make of the ways in which corporations and media companies are gathering and funneling and using information—and sharing it with the government? We don't have that account in sedition at all.
- 51 **Rohit:** Yeah, and what makes the Indian case different in some ways is the story about piracy, media piracy and hacking. I am reminded of Aaron Schwartz's suicide and how university campuses are heavily policed regarding questions of illegal downloads.⁷ But in India, texts are free, and the Delhi High Court for instance ruled in favor of mass photocopying of college textbooks.⁸ There is a repeated panic and media companies keep trying to educate people about property rights, but the kind of market discipline that has been achieved in the US has not been in India. Demonetization was ultimately an attempt to control and make visible market transactions. There's a way in which the government creates fiscal emergencies to sort of control an unruly market, to use draconian laws to create an economic space.
- 52 **Inderpal:** One of the points to take away from conducting research on the US is that we imagine it is less unruly than it is. There is continual disharmony between the Federal Government and the states, and sharing of information between government agencies

and offices is spotty in some ways and better in others. The struggles over race and class are critical to understanding the faultlines of liberal democracy, as is the violence of the police and military towards racial minorities. Moreover, regulatory actions are often unable (or perhaps deliberately unwilling) to control corporations, because then the government can get information from corporations that they could not themselves collect. Also, capital is wily, deterritorialized and will do anything to disrupt competitors. There is so much cheating and gaming done by capital, and the 2008 market crash was an example of this misbehavior by the banks and the state's unwillingness and inability (or complicity) to control them. That economists are using emotion to study the market shows rather than explains through rationality (or the clear failure of "rational choice" arguments) that rumor and whim seem more useful for understanding market behavior (Akerlof and Schiller 2010). There is a lot of mystification of kind of difference between ungovernability and governability regarding the "West" and postcolonial states. I really wonder about that distinction because I think capital is ungovernable everywhere, even as authoritarian leaders and states try to capture and control it. For one thing, it's too deterritorialized.

53 **Rohit:** That seems to unravel the basis of the modern 19th-century nation-state that tied the idea of a national economy to a territory. I was wondering how this would help us think of older territorial conflicts and the problem of sedition. For instance, to return to Punjab and the demand for Khalistan, where did cultural difference and the creation of Punjab as a keystone to the Indian economy frame both political movements and the state's responses to it?

54 **Inderpal:** As with all nationalisms, the extent and power of that version of Sikh nationalism will be rethought by historians, given the complex caste and religious history of Punjab, as well as the participation of diasporic communities. That insurgent movement was made more powerful by the central government's actions and then repressed by it. This Hindutva nationalism is much more powerful because charges of sedition are just one of the many ways that it claims legitimacy, though it's not the only way that it uses violence for power. And the diaspora is also harnessed in the same way. But the larger point is that territory still seems to matter. Borders and walls remain as a spectacle of the nation-state, performing a claim to sovereignty that is not shared by all citizens, but which might still matter to them. For example, crowds of people still flock to the Wagah border with Pakistan to see the performance of nationalism and national distinction, which is sung and danced through Bollywood songs accompanied by a theatrical, almost parodic, military parade. The crowd is riled up to sing along with the music, and young women are invited from the stands to dance in the very space that will later be the parade route for the soldiers. There is a lot of love of the state generated by the performance, a love that allows amnesia about the violence performed by the state.

BIBLIOGRAPHY

- Akerlof, George A. and Robert J. Schiller. 2010. *Animal Spirits: How Human Psychology Drives the Economy, and Why It Matters for Global Capitalism*. Princeton, NJ: Princeton University Press.
- De, Rohit. 2018. *A People's Constitution: The Everyday Life of Law in the Indian Republic*. Princeton, NJ: Princeton University Press.
- Desai, Bhulabhai Jivanji, Shah Nawaz Khan, Prem Kumar Sahgal, and Gurbakhsh Singh Dhillon. 1947. *I.N.A. Defence*. Delhi: Rajkamal Publications.
- Ganachari, Arvind. 2009. "Combating Terror of Law in Colonial India: The Law of Sedition and the Nationalist Response." Pp. 93–110 in *Engaging Terror: A Critical and Interdisciplinary Approach*, edited by M. Vardalos, G. K. Letts, H. M. Teixeira, A. Karzai, and J. Haig. Boca Raton: Brown Walker Press.
- Gill, K. P. S. 1999. "Endgame in Punjab: 1988–1993." *Faultlines*, May 1. South Asia Terrorism Portal. Retrieved March 8, 2019 (<http://www.satp.org/satporgtp/publication/faultlines/volume1/fault1-kpstext.htm>).
- Grewal, Inderpal. 1995. *Home and Harem: Nation, Gender, Empire and the Cultures of Travel*. Durham: Duke University Press.
- Grewal, Inderpal. 2005. *Transnational America: Feminisms, Diasporas, Neoliberalisms*. Durham: Duke University Press.
- Grewal, Inderpal. 2017. *Saving the Security State: Exceptional Citizens in Twenty-first-century America*. Durham: Duke University Press.
- India. [1860] 2011. *Indian Penal Code*. Lucknow: Eastern Book Company.
- Indian Penal Code. 1860. Section 124A in the Indian Penal Code, "Sedition." Retrieved April 16, 2019 (<https://indiankanoon.org/doc/1641007/>).
- Jamal, Amina. 2013. "When are Women's Rights Human Rights in Pakistan?" Pp. 208–29 in *Gender, National Security, and Counter-Terrorism: Human Rights Perspectives*, edited by M. L. Satterthwaite and J. Huckerby. London: Routledge.
- Mukherjee, Mithi. 2017. "Sedition, Law, and the British Empire in India: The Trial of Tilak (1908)." *Law, Culture and the Humanities*:1–23. Retrieved April 17, 2019. doi.org/10.1177/1743872116685034.
- Liang, Lawrence. 2016. "Sedition and the Status of Subversive Speech in India." *The Wire*, February 14. Retrieved March 8, 2019 (<https://thewire.in/law/sedition-and-the-status-of-subversive-speech-in-india>).
- Noorani, A. G. 2012. "In Jinnah's Defense." *Frontline*, March 24–April 6. 29(6). Retrieved March 8, 2019 (<https://frontline.thehindu.com/static/html/fl2906/stories/20120406290610000.htm>).
- Robb, Peter. 1976. "The Government of India and Annie Besant." *Modern Asian Studies*. 10(1):107–30.
- Roy, Srila. 2016. "Breaking the Cage." *Dissent* 63(4):74–83.
- Scroll Staff. 2018. "Supreme Court Explains How Annuling Hadiya's Marriage Was Illegal and 'Patriarchal Autocracy.'" *Scroll.in*, April 10. Retrieved March 8, 2019 (<https://scroll.in/>

article/875087/supreme-court-explains-how-annulling-hadiya-s-marriage-was-illegal-and-patriarchal-autocracy).

Sen, Atreyee. 2007. *Shiv Sena Women: Violence and Communalism in a Bombay Slum*. Bloomington: Indiana University Press.

Siddique, Osama, and Zahra Hayat. 2008. "Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan—Controversial Origins, Design Defects, and Free Speech Implications." *Minnesota Journal of International Law* 17(2):303–85.

Stephens, Julia. 2013. "The Phantom Wahhabi: Liberalism and the Muslim Fanatic in Mid-Victorian India." *Modern Asian Studies* 47(1):22–52.

Newspaper Articles

Dailybite. 2018. "Hadiya Case: It Took Supreme Court to Rule that Adult Indians Can Marry Who They Want." *DailyO*, August 8. Retrieved March 8, 2019 (<https://www.dailyo.in/variety/hadiya-akhila-love-jihad-supreme-court-nia-kerala-high-court/story/1/22732.html>).

Naughton, John. 2015. "Aaron Schwartz Stood up for Freedom and Fairness and Was Hounded to Death." *The Guardian*, February 7. Retrieved March 8, 2019 (<https://www.theguardian.com/commentisfree/2015/feb/07/aaron-swartz-suicide-internets-own-boy>).

Legal Judgements

The Chancellor and Masters of Colleges of Oxford v. Rameshwari Photocopy Services. 2016. CS(OS) No.2439/2012. New Delhi High Court. Retrieved March 8, 2019 (<http://lobis.nic.in/ddir/dhc/RSE/judgement/16-09-2016/RSE16092016S24392012.pdf>).

Kedarnath v. State of Bihar. 1962. AIR 955. Supreme Court of India. Retrieved March 8, 2019 (<https://indiankanoon.org/doc/111867/>).

Balwant Singh v. State of Punjab. 1995. (1) SCR 411. Supreme Court of India. Retrieved March 8, 2019 (<https://indiankanoon.org/doc/123425906/>).

Dissenting Judgment of Justice Radhabinod Pal, International Military Tribunal for Tokyo. [1948] 1999. Retrieved March 8, 2019 (<https://www.cwporter.com/pal1.htm>).

Ram Nandan v. The State of Uttar Pradesh A.I.R. 1959 All. 101.

Shayara Bano v. Union of India and ORS. 2017. W. P.(C) No.-00118-000118 / 2016. Supreme Court of India. Retrieved March 8, 2019 (<https://indiankanoon.org/doc/115701246/>).

Shafin Jahan v. Ashokan K.N. 2018. CrI.A.366/2018. Supreme Court of India. Retrieved March 8, 2019 (<https://indiankanoon.org/doc/74329092/>).

Sri C. I. Emden vs The State Of U. P. 1959. IR 548, 1960 SCR (2) 592. Supreme Court of India. Retrieved April 18, 2019. (http://jajharkhand.in/wp/wp-content/judicial_updates_files/11_Prevention_of_Corruption/01_illegal_gratification/Sri_C._I._Emden_vs_The_State_Of_U._P_on_15_December,_1959.PDF).

NOTES

1. Our grateful thanks to Kelly Tran for transcribing our conversation. We could not have done this without her work.
2. Section 124-A of the Indian Penal Code (1860) defines sedition as "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to

bring into hatred or contempt, or excites or attempts to excite disaffection towards, [***] the Government established by law in [India], [***] shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine” (India [1860] 2011). For an overview of the colonial history of sedition, see Arvind Ganachari (2009:95). For an account on current debates on Sedition, see Liang (2016), “Sedition and the Status of Subversive Speech in India” (<https://thewire.in/law/sedition-and-the-status-of-subversive-speech-in-india>).

3. For an account of the Pakistani blasphemy laws see, Osama Siddique and Zahra Hayat’s (2008) “Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan—Controversial Origins, Design Defects, and Free Speech Implications.”

4. See *Shayara Bano v. Union of India* 2017. The judgment was the result of a number of Muslim women’s organizations successfully mounting a legal challenge to the practice of triple *talaq* (*talaq-e-biddat*) with the majority of the Supreme Court holding that the practice had no legal value (*Shayara Bano v. Union of India and ORS, Supreme Court of India* 2017).

5. The Kerala High Court annulled a marriage and conversion of an adult Hindu woman to a Muslim man on her father’s complaint that she had not done this of her own choice but was under malignant influence (a “love jihad” case). Instead of overturning the judgment immediately, the Supreme Court reheard the case, ordered the National Investigative Agency to make enquiries, placed her under protective custody and took seven months to uphold her autonomy to make decisions regarding her faith and her marriage. The court did ultimately find in favor of Hadiya and state the fairly obvious point that an adult woman can give her consent to marriage, but this was after several months of being under investigation from anti-terror agencies and being subject to separation from her husband and confinement. For an account, see DailyO, “Hadiya case: It took Supreme Court to rule that adult Indians can marry who they want” (Dailybite 2018).

6. The “*Pinjra Tod*” campaign was led by female college students to protest discriminatory curfew times for women that sought to confine them to their hostels by late evening in the interests of their security. See Srila Roy (2016), “Breaking the Cage.”

7. Aaron Schwartz was an internet activist committed to freedom of information and one of the main coders for Creative Commons. He was indicted by the US government for attempting to download and distribute thousands of academic articles from JSTOR. Facing multiple legal charges, he committed suicide at the age of 26 (Naughton 2015).

8. The Delhi High Court rejected a challenge brought by leading academic presses, including Oxford University Press and Cambridge University Press, against a photocopy shop in Delhi University for infringing copyright by producing course packs for students. It was ruled that large portions of the textbooks could be copied reproduced for imparting education, a constitutional right, to prevent it from becoming a commodity accessible only to the rich (*The Chancellor and Masters of Colleges of Oxford v. Rameshwari Photocopy Services* 2016).

ABSTRACTS

In this article, Inderpal Grewal and Rohit De discuss the history of the application of India’s law against sedition in relation to questions of sexuality and gender. The conversation between them frames the project of modernity and the state in each of these two scholars’ work, and the ways in which questions of modernity intersect those of “national” and “anti-national” subjectivation.

Here, they are interested in how modernity has been formulated in relation to nations, nationalism and commensurate reform movements, and how critiquing these relationships is so deeply informed by feminist scholarship on South Asia, by feminist scholarship on race and ethnicity in the US, and the critique of empire in all of these bodies of work.

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Keywords: sedition, securitization, sexuality, law, India, nationalism

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