

“I’m only here to do *Masti*”

Sodomy Law and the Limits of Subjectivation

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Much has been said about the role of the law in the constitution of various subjectivities. Section 377 of the Indian Penal Code, as do other sodomy statutes, are said to call into being the identity of the homosexual and to construct him as inherently abject, innately criminal. Opponents of sodomy statutes, and in particular those amongst the legal community, often call upon rights to defend against the intrusive nature of these laws. Rights are envisioned as something that every human, by virtue of being a human has; that the essence of one’s humanity is the ability to exercise these rights. And hence a denial of these rights is seen as a denial of that which is inherent to human beings. Therefore when one is able to exercise these rights, only then does that person come to embody true subjectivity. It is as if by becoming a rights-bearing subject, one moves from being a partially formed subject – the sodomite, the slave, the prisoner of conscience – to one that fully recognised, a complete human, the self.

I wonder, however, if we yield too much space to the Law in constructing identities. These characterisations of the law, give the law a certain omnipresence; it is present not only at every moment and at every place, but is embedded within the very persons that it criminalises or liberates, and the psychic life of homosexuals is occupied by this criminal abjection of sodomy laws or by the emancipatory potential of rights. Because in these narrations of the law, the realm of power is completely occupied by the law and it appears to operate through technologies of panoptics, there is no world that can be imagined beyond the law, since the law pervades, sees and constitutes all.

Using ethnographies of persons situated in cruising spaces, this paper argues that there are limits on the power of subjectivation that section 377 bears; that one's entry into sociality can occur through practices of pleasure and through the erotic, rather than upon being criminalised, and that power, and indeed the law, cannot be understood to be internalized by an existing subject, but that power and the law have more ambivalent effects on the formation of the subject. It further argues that often narratives provided for in 'liberatory' legal texts are, to an extent, fictitious, and often conjure the subjects that they name. Using these ethnographies, I hope to provide an account of the law as an everyday presence, but one that is limited, confined and constrained.

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