Obscenity and the Limits of Liberalism

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On matters of obscenity in India, the law stages more than the now-familiar tussle between censorship and freedom of expression. Sections 292–294 of the Indian Penal Code (IPC) codify obscenity within the law. Introduced by British colonial order in the 1860s, these laws have been revised and expanded since, and have been supplemented with the landmark Indecent Representation of Women Act (Prohibition) of 1986–87. Sections 292–294 deem representations to be obscene if they are lascivious, prurient, indecent, and corrupt or if they cause depravity. Obscenity is understood not only as lust and lewdness but also as a contagion of sexual depravity. Indeed, the law codifies obscenity as a metonym for the excesses of sexuality. The leading cultural metaphor for obscenity in India, as elsewhere, is the sexualized female body in the visual field, especially the media. Portrayals of women in advertising, sexual displays of female bodies, and cultural depictions of inappropriate clothing in film, TV, and magazines typify (hetero)sexualized excess. Such excess is also represented by suggestive forms of dancing, explicit displays of heterosexual affection in film, TV, videos, cable channels, magazines, public performances involving film celebrities, and so on. Courts constantly adjudicate between popular morality and freedom of expression, sometimes upholding one and sometimes defending the other. Distinctions between obscenity, vulgarity, and indecency are also
cited, since freedom of expression is not unmitigated and protecting public morality remains an imperative of governance.

EVEN AS the dialectics of public morality and private liberty appear to drive the juridical and cultural discourses on obscenity in India, they are at best partially relevant. The Introduction to this collection and other essays included herein speak to the limitations of this discursive framework of obscenity. What is curious about the Indian context is the frequent recourse to law in stances taken against obscenity. Charges of obscenity are regularly levied against women performers as well as actors, directors, and artists who depict sexualized female bodies. Representations of non-normative sexualities—for example, Deepa Mehta’s film \textit{Fire}, portraying sexual love between two women—are also charged with being obscene. The authority of law is constantly called into effect against film, music videos, public performances, and paintings. Self-defined concerned citizens or political and religious groups register complaints at local police stations and/or file writs in court. Reportedly, thousands of public-interest litigations and criminal complaints on related matters clog up the courts even though few prosecutions actually occur. In most cases, enduring the crisis appears to be worst of it. What is additionally relevant is that charges under obscenity law are typically coupled with other laws, often those militating against religious offenses specified in Chapter XV of the Indian Penal Code. The ire of the Hindu Right against the film \textit{Fire} was fueled by the fact that the two leading women characters’ names, Radha and Sita, are among the most revered under canonical Hinduism. Violations of heterosexist respectability and Hinduism are inseparable in this case, and legal charges were filed by the Hindu right under obscenity as well as under religious offenses law.

This chapter takes the recurrent recourse to obscenity law as its starting point in order to reconsider the framework of morality and liberty. The argument develops from three cases. The first case has to do with public wrath and legal charges of obscenity against a beloved icon of Tamil-language film based in Southern India, the second with the Hindu Right’s hounding of India’s best-known painter, M. F. Husain, and the third pertains to the persecution of non-normative sexualities in the northern city of Lucknow. Each case brings together the cultural and legal discourses of obscenity and the coupling of obscenity law with a variety of other laws on defamation, public mischief, promoting enmity between religious communities, and “sodomy law.” Together,
these cases not only foreground the fraught female body that is most often at the heart of popular and feminist debates on censorship. They also underscore the relevance of non-normative sexuality and the ways in which religion and ethnicity deeply mark the terrain of obscenity. While their particulars differ, the three cases help redirect attention to the underpinnings of cultural-legal practices that stage more than the contestations of morality and liberty. I suggest that these contestations are feints for calculated incitements aimed at redefining the boundaries of the social body. These cases call attention less to the limits of censorship and liberalism and more to the need to revise theoretical frameworks through which we read juridical and cultural discourses of obscenity.

The first argument driving this chapter is that routine recourse to obscenity law is a means of policing sexuality and the social body. While building on feminist contributions that draw together sexuality and the social body, I urge reconsideration of our operational understandings of the latter. All too often, the social body that obscenity yokes to sexuality is implied as the nation. Indeed, we have been quick to impugn nationalist discourses for sifting the obscene from the properly sexual, and rightly so. The second argument developed in this chapter suggests the need to multiply our notions of the social body as varyingly predicated upon imagined boundaries of region, ethnicity, and religion, as well as nation. This contingency of the social body suggests that the mechanism through which discourses of obscenity stage the policing of sexuality and the social needs to be theorized carefully. In other words, this chapter comes to grips with the means through which legal and cultural registers of obscenity fuse normative sexuality and the normalized social body. Drawing upon theories of the biopolitical, this chapter makes the case that social bodies, howsoever defined, are forged through normative sexuality. Therefore, the third argument presented below is that the routine recourse to obscenity law is a node of biopolitical regulation, by which I mean power’s infiltration of life, especially through the forging of the collective.

To engage obscenity law in India is to engage English-language juridical and cultural discourses on obscenity. It is a matter of colonial and postcolonial institutions that the rule of law at the national level is in English. However, this hardly exhausts the many and regionally varied understandings of obscenity; for example, ashlil, though generally translated as obscene, is used in more complicated ways in the Hindi
language press. Furthermore, obscene materials are hardly limited to English-language based representations; Lawrence Cohen writes about the secretive Hindi-language publications produced around the bacchanalian festival of Holi. These points cannot be understated even as we need to be careful not to assume that discourses in Hindi or Tamil languages are aimed at the regional, while English is about the national. The advantage of focusing on English-language national-level legal discourses of obscenity is that they paradoxically highlight the fact that their object is not necessarily the body of the nation.

Nightmare one: The actor

In September 2005, the renowned Tamil film actor Khusboo is bombarded by charges of obscenity and defamation throughout the state of Tamil Nadu, India. The Tamil edition of a leading English-language newsmagazine, *India Today*, had invited Khusboo’s commentary on a national survey about changing sexual attitudes. Although more may have been made of the limitations of the sex survey, the rage is aimed unexpectedly at Khusboo, curiously out of proportion to her remarks, especially given her popularity. Khusboo is not ethnically Tamil, but she has been embraced as an icon of Tamil women. The part that ignites the flames reads: “Our society should liberate itself from such ideas that brides should all be virgins at the time of marriage. No educated man will expect his bride to be virgin at the time of marriage. But when indulging in pre-marital sex, the girl should guard herself against pregnancy and sexually transmitted diseases.” That Khusboo has no right to speak on behalf of Tamil women and that she has made “derogatory remarks about the chastity of Tamil women” are allegations first made in a publication of the southern Indian media machine, Sun TV. The crisis ensues. The self-appointed Tamil Protection Movement (TPM), with links to Sun TV, fans the protests against Khusboo. The TPM is forged through a political alliance between two groups with divergent caste-orientations and interests, the Dalit Panthers of India (DPI) and the Pattali Makkal Katchi (PMK). The women’s wing of the PMK is at the forefront of the attacks against Khusboo. Thol Thirumavalavan, chief of the TPM, summarizes the main point of the protest: “Khusboo made the remarks on pre-marital sex to justify her own life’s experience. She had no right to talk of the chastity of Tamil women.” She did not; her commentary was general, not directed specifically at Tamil women or men. A 1990s heartthrob, a deified figure with one temple
devoted to her, a cinematic icon of Tamil women, is swiftly pilloried as a “North Indian,” Hindi-speaking Gujarati Muslim.

Effigies of Khusboo are burned, volunteers of the DPI storm the office of the South India Film Artistes’ Association, demanding an apology from the actress. The apology is issued: “Even in films, I never undertook roles that lowered the image of women,” she says. “I have the greatest regard for Tamils, especially Tamil women. If my remarks have hurt anybody’s feelings, I tender an apology. I am one among you and will always remain with you.” But the protests continue. A competing media source, Jaya TV, with which Khusboo is affiliated, reports that many of those who are gathered for the agitations do not know what has been published; Khusboo is pelted with eggs, tomatoes, and slippers while arriving for an appearance before a magistrate.

Complaints of defamation and obscenity are lodged throughout the state. In Tiruchi, Tamil Nadu, for example, four women lawyers charge Khusboo with committing offenses under Section 292, related to obscenity, and under Sections 504 and 505. Section 504 briefly addresses intentional insult with intent to breach peace, while Section 505 is a lengthy discussion of what constitutes public mischief—circulating rumors and reports that are meant to incite mutiny in the military, to incite fear or alarm, to incite harm against another group, or to promote ill will among groups, especially at a place of worship or religious event. In other cases, defamation charges are invoked against Khusboo through Section 499 (representations intended to cause harm to the reputation of a person) and Section 500 (threat of injury to a person, reputation, or property).

If charges of obscenity under Section 292 seem to relate to the substance of what is said, then the charges of public mischief and defamation appear to be about intentionality. Obscenity is predictably derived from women’s heterosexuality; mere mention of the possibility that (Tamil) women may be sexually active prior to marriage is enough provocation for self-appointed protectionists of Tamil cultural nationalism. That Khusboo recommends change in social attitudes, particularly men’s expectations of women’s sexuality, is seen as incitement to depravity, intended to cause public mischief and defame Tamil women. Her position as an insider/outsider throws suspicion on her intentions and makes what she says obscene. Her popularity as a representation of Tamil women accounts for why she is seen as “speaking for” them and maligning Tamil culture, which leads to her being repositioned as a “Hindi-speaking Gujarati Muslim.” She is caught between Tamil cultural nationalism’s resistance to northern cultural and political hege-
mony and its anti-Muslim taint. Her position as a Tamil-speaking icon of Tamil women accounts for why her remarks can be easily appropriated as pertaining to Tamil culture, and her non-Tamil status accounts for why the remarks can be presented as an attack; how dare she serve as a “proxy and portrait” of Tamil women and culture. The obscenities are seemingly manifold.

The involvement of the key players—the TPM, various contingents of the DPI and the PMK, Sun TV and its competitor, Jaya TV—indicates that charges of obscenity are fraught with more than women’s sexualities, and, in this case, are the effects of political expediency and Tamil cultural nationalism. Informed commentaries speak to how these vituperations are the result of several factors: Khusboo led an earlier charge against a film director and member of TPM, who equated actresses with prostitution, and this was considered payback time; Khusboo hosts a popular quiz show on Sun TV’s competitor channel, Jaya TV; the Dalit party, composed of those who have been historically refused a place in the Brahmanical caste hierarchy, and the PMK, which represents lower caste interests, have dipped into the well of Tamil nationalism for electoral purposes, a nationalism first whipped up by the upper-caste Dravid Munnetra Kazhagam (DMK) party in the interests of electoral politics by the early 1970s. These complicated political, caste-based, and media-staged battles nonetheless are waged over women’s sexual respectability, and Tamil nationalism draws the lines of belonging and battle as necessary.

**Nightmare two: The artist**

A furor erupts in February 2006 against India’s best-known painter and living legend, Maqbool Fida Husain. This is the most recent in a series of Hindu fundamentalist–led uproars, triggered by an abstraction of the Indian map onto a painting of a female figure and a *charkha* (wheel). The body-map is a vibrant, stunning red, offset by a black outline, the blue of the ocean and the darkened silhouette of a male yogi. Reminiscent of the body-map in Mahasweta Devi’s stories, made famous in the United States by Gayatri Chakravorty Spivak, that illustrates the violence rendered on the body of tribal women by Indian nationalism and the state, this depiction is also anguished. It invokes the Hindu Right–led and state-supported pogrom against Muslim women and communities in Gujarat in 2002. The names of cities—Benares, Delhi, Gujarat, among others—literalize the female body as map; Chennai-
based Apparao Galleries entitles it “Bharatmata” (Mother-India). The painting is sold to a private collector in 2004 and has never been publicly displayed, but that does not prevent as many as sixty-six criminal cases being filed in a number of states and in New Delhi on grounds of obscenity and outraging religious sentiments. An apology by Husain for hurting people’s sentiments does not prevent the vandalism of an exhibition later in 2006 in London or the threats of violence—The Hindu Personal Law Board President, Ashok Pandey, announces Rs. 51 crore (Indian Rs. 10 million) to “eliminate” the artist, and, in a show of sympathy, Congress Minority Cell leader Akhtar Baig offers Rs. 11 lakh (Indian Rs. 100,000) to any “patriot” for the painter’s hands.

Husain is a complex figure. Over 90 years old, he has been feted with some of the most prestigious honors by Indian governments, including the post of honorary member of the upper house of parliament. He is a prolific painter, self-described as Muslim and secular, born in a place of Hindu pilgrimage in the state of Maharashtra, first employed as a billboard painter, a founding member of the Progressive Artists’ Group, public figure, and, as is frequently mentioned, a consummate showman. He is flamboyant, accused of crass commercialism for pandering to the market in which his works are the most expensively valued. He responds, “Even marketing is an art form. I’ve created a whole new phenomenon of how to market. And I am not defensive about that.”

The conditions under which Husain is the most maligned painter of the Hindu right wing are also complex. Husain was first deliberately targeted in 1996 when members of the Bajrang Dal, the youth wing of the organization Vishwa Hindu Parishad (VHP), destroyed Husain’s paintings and damaged the gallery in Ahmedabad. The trigger? A 1976 sketch of the Hindu goddess of knowledge and the arts, Saraswati, which was dredged up by Om Nagpal in the right-wing Hindu journal *Vichar Mimansa* as a “nude” desecration. With its greeting-card–like outline of the goddess and her sitar, a lotus in one hand, this simple and bold sketch was part of the preparation for a fully clothed painting of Saraswati made for the O. P. Jindal industrial family. Nagpal’s article was the basis upon which the Maharashtra Minister for Culture and leader of the sectarian right-wing Shiv Sena party, Pramod Navalkar, filed criminal charges with Mumbai Police against Husain for promoting enmity between different groups of people on the grounds of religion and acting to insult religious feelings and beliefs.

Then in 1998, Bajrang Dal members stormed into and vandalized Husain’s residence in Mumbai, this time on the pretext of a lithograph displayed at an exhibition at the Academy of Art and Literature, New
Delhi, based on the mythic tale of the rescue of Sita by Hanuman. Produced in 1984, this depiction stays true to the epic story in which Sita rides on Hanuman’s tail; the point of contention for the Bajrang Dal, however, was Sita’s gray, seemingly unclothed figure. Seen in the context of Husain’s other work from the time period related to the two Indian/Hindu epics, female and male nude figures are everywhere. The canvases belie a pre-occupation with the epics, archetypes of human quandaries and fallibilities, and the mythic figures that embody them. Female and male figures do not appear to be provocative or eroticized so much as they are illustrations of the battle between good and evil that rages within each person.

Over the last decade, hundreds of complaints have been filed with the police in various parts of the country, there have been dozens of marches and burnings of Husain effigies, and dozens of criminal writs have been submitted in courts in cities such as Mumbai, Delhi, and Bhopal. Indeed, subsequent to the Bharatmata controversy, the Supreme Court responded to Husain’s request that the writs from the states of Maharashtra, Gujarat, and Madhya Pradesh be combined and that he should not have to appear in numerous courts and cities. The writs against Husain are based on Sections 292 and 294 of the Indian Penal Code, relating to obscenity, Section 153-A (promoting enmity between different communities based on religion, race, place of birth and language, etc.), Section 295-A (deliberate and malicious act to outrage religious feelings of any class by insulting its religion or religious beliefs), and Section 298 (uttering words with deliberate intent to wound religious feelings of any person).

Since 1996, Husain has been ensnared in a maelstrom of obscenity charges elaborated on the grounds of female sexual representation and religious difference. Who he is and what he paints are collapsed to orchestrate a crisis around the female nude. As art historian Tapati Guha-Thakurta notes, the female nude is a source of deep ambivalence within Indian art history and is precariously situated in the growing rift between representations of high art and popular disapproval, between the aesthetic and the moral, between modern art and the religious, between the erotic and the obscene. The decade-long targeting of Husain, Guha-Thakurta argues, is due to his status as a prominent, venerated artist, embodying the modern, the secular, and the national, coupled with the accident of his religion. Implicit in Guha-Thakurta’s analysis, but necessary to underscore, is that the battle is framed by the Hindu right wing as the struggle to protect the sanctity of Hindu goddesses and Hinduism. Nagpal asks maliciously, why could Husain not
“paint his mother and sister in this modern art style?” “Why does he paint a Hindu goddess in such a disrespectful manner? Why doesn’t he paint Allah?” The strategy is simple and insidious—to show that Hinduism is under attack. The brunt of this irony—that the predominant hegemonic Brahmanical form of Hinduism can be under assault—is borne by religious minorities, especially Indian Muslims, who are framed as the “enemy within.” Hindu goddesses, not gods, become the specific sites upon which the dirty politics of religion, ethnic cultural nationalism, heterosexuality, and masculinity is violently enacted. Obscenity is cited as sexual and religious violence, and used in turn to inflict violence on others.

Nightmare three: The foot soldiers

On July 7, 2001, police in Lucknow, a city in the state of Uttar Pradesh, raid and seal the offices of Bharosa Trust and Naz Foundation International (NFI), two affiliated non-governmental organizations (NGOs) working on HIV/AIDS-related issues. The program manager of Bharosa Trust, Parmeshwar Nair, is arrested with another of its workers, Mohammed Shahid, after which the police take into custody the Director of NFI, Arif Jafar, and a worker, Sudhees Kumar. The police appropriate educational material and items used for the demonstration of safe sex practices. Within a day, stories reportedly fueled by Lucknow police make headlines in English-language newspapers, about “gay clubs” being run from the two offices, and of pornographic materials and “sex tools” used for nefarious purposes. Senior Superintendent of Police Brij Bhushan Bakshi is quoted in a Hindi language newspaper as saying that all the accused would be sent to jail for polluting Indian culture.

The events leading up to these scurrilous reports are as follows. A man files a First Information Report (FIR) with the police that on July 6, 2001, he was lured by another man, who stopped him along a deserted road and sodomized him. Activists close to the case believe that this report was the result of the complainant not being paid for sex. Based on this report, the police raid the cruising park where the complainant says he was picked up, and arrest more people, including an outreach worker from Bharosa Trust. This worker leads police to the office of Bharosa Trust, and the raids and additional arrests ensue.

Nine people are arrested, four of whom are members of the two NGOs. The police charge them under Sections 377 (unnatural offenses), 292 (obscenity), 120b (criminal conspiracy), and 109 (abetment). Oddly
enough, the men are also charged under Section 60 of the Copyright Act and Sections 3 and 4 of the Indecent Representation of Women Act in regard to the educational materials seized from the offices. Applications for bail are rejected twice until they are granted on August 17, and the four men are finally released on August 21, 2001. In their 45 days in prison, the men are beaten, denied food, forced to drink sewer water, and refused treatment when they are ill. The Sessions Judge initially denies bail on the grounds that “they were a group of persons indulging in these activities and are polluting the entire society by encouraging young persons and abetting them for committing the offense of sodomy; that the investigation is still under progress; that the offenses are being committed in an organized manner.”27

If the extra-legal police activities invoke heterosexist nationalism, then these two scenarios remind us that matters are always more complicated. The curious and troubling aspects of this case in Lucknow are the particular mix of charges—“unnatural sex,” obscenity, and criminal conspiracy—not to say anything about charges of copyright violations and indecent representation of women. Section 377, or the “sodomy law,” is another legacy of the British colonial state, and though the language is imprecise, it is widely interpreted to criminalize same-sex sexual practices. Section 377 is a cognizable law (arrest without warrant) and non-bailable (bail can be applied for only after arrest), but also one that requires medical proof of unnatural sex. No such substantiation could be established for the four HIV/AIDS workers under arrest. The imprisonment of and violence against the four men in Lucknow was never about allegations of sexual acts or sex practices; as the initial false newspaper reports and the Sessions Judge indicate, they are about the precariousness of heterosexuality. Enforcement or prosecution of Section 377 requires that a complaint be filed, which did not occur in the case of the four men. Rather, they were rounded up in police raids on the NGO offices, where they were seized alongside educational materials and implements. Their violation was seen to lie in circulating representations of sex, in speaking for the unmentionable subject of non-normative sexual practices. But, perhaps, their most egregious transgression was that these men were seen to stand in place of obscenity itself.

On July 10, 2001, within days of the arrests and amidst the media frenzy, the Times of India, a leading English-language newspaper, broke the story that the Central Intelligence Bureau had tipped off the Government of India about the spreading of “gay culture” in seven cities, including Lucknow.28 Reportedly, the intelligence bureau was pressed
into service to monitor the flow of funds to NGOs in India, since they were coming from Europe and Canada, with the so-called involvement of Pakistani nationals. The news article suggests that although the intelligence bureau report could not be corroborated, NGOs such as Bha-
rosa Trust and NFI were operating as “gay clubs” and “sex rackets”; thus, the report implies that the NGOs were subtly propagating gay culture through foreign aid.

Each of these three cases speaks to the nightmarish links between obscenity and cultural politics within which famous figures and ordinary people are caught. Juridical and cultural discourses on obscenity cohere around representations of sexual excess—wrought through women’s (hetero)sexualities, as goddesses are anthropomorphized, and non-normative sexualities, particularly males who have sex with males. What makes these cases stand out from the everyday interplay of obscenity and cultural politics is their intensity, as happenings are manipulated into events, events into crises.

**Juridical, cultural, sexual**

Obscenity laws were first introduced into late-nineteenth-century colonial India and later incorporated into the post-independence Indian Penal Code. The imperial underpinnings of a juridical system designed to contain the threats of obscenity in Britain and its colonies are addressed by Deanna Heath. Bringing together the analytics of race, nation, and empire, Heath argues that attempts to regulate obscenity were aimed at protecting the superiority of the British “race” and nation from the corrupting influences of the publications and objects originating in the colonies as much as at protecting the colonies from the voluminous exports emanating from Britain. “Purity” crusades were waged in Britain in ways that reverberated in the colonies, especially through the signing of international conventions against the transnational trade in obscene publications and objects. Although the colonial government in India was a reluctant participant in the 1910 International Agreement for the Suppression of Obscene Publications, it was more enthusiastic about the 1923 International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications. According to Heath, Indian colonial officials’ earlier reluctance stemming from the belief that India was more “sinned against than sinning” was offset by
the need to defend India’s civilization from Western vice by regulating obscenity.  

If juridical attempts at curtailing obscenity in colonial India emerged from circulations between metropole and colonies, then, as Charu Gupta argues, they were never simply about Victorian perceptions of decency and propriety.  

In the only book-length treatment of obscenity in colonial India, Gupta notes that emergent concerns with obscenity at the time were equally motivated by the moral concerns of an emergent middle-class and elite Indian nationalism goading British intervention. British and Indian moralists shared anxieties about the transmission of sexually explicit materials, “dirty” literature, and sexual literature couched as scientific or modern. Indeed, for British officials in India the task was doubly challenging—to protect against Western importations of obscenity but also its indigenous versions. It is within the context of British Orientalism and the “woman question” at the center of colonial and anti-colonial encounters that obscenity came to hinge on the control of female sexuality and the restriction of sex to procreation, not pleasure.

Identifying a second strand as “politically obscene,” Gupta notes that these materials blended sexuality, politics, and emergent religious divides. Since the mid-nineteenth century, Hindu writers in Uttar Pradesh, a state in northern India, had slandered Islam and its prophet and had deliberately linked the alleged debauchery of past Muslim rulers to the breakdown of the state and public order. Few Muslim rulers were spared charges of lechery or dissolution, and, by the 1920s, these claims had expanded to allegations of rape and forcible marriage of Hindu women by Muslim men, claims that echo even today. Indeed, Cohen’s description of secretive literature, mentioned earlier, produced during Holi in the city of Benares, also in the state of Uttar Pradesh, points to similar fantasies. Cohen describes these publications, locally marked as obscenity, as not only including men sexually penetrating other men, unequal sexual exchanges among men through traffic in women, and critiques of the state, but also the rape Hindu men must perform on Muslim women in order to justify and counter their own sexual fantasies about the threat posed by Muslim men to Hindu women.

Rather than “political obscenity,” Sections 292–294 of the IPC broadly target the intersections of sexuality and representation in ways that require judicial interpretation. Section 292 specifically prohibits the circulation, selling, printing, advertising, hiring, and profiting from obscene representations in the form of books, writings, paintings,
and the like. Section 292A extends the same prohibitions to materials intended for purposes of blackmail. Any person who benefits from or aids in making available obscene materials to persons below the age of 20 is liable under Section 293. These juridical provisions are the result of legal amendments over the years that have attempted to clarify the meaning and scope of the provisions, with the most thoroughgoing revisions dating to 1969. Intended to introduce contemporary standards into archaic laws, Vishnu D. Sharma and F. Wooldridge note that the 1969 amendments were heavily influenced by the 1959 Obscene Publications Act in England.\(^{38}\)

In their overview of Indian obscenity law, Sharma and Wooldridge observe that, since the 1925 version of Section 292 lacked a definition of obscenity, the courts used the *Hicklin* test, and the only available exception to obscenity was provided on religious grounds.\(^ {39}\) In contrast, the 1969 amendments continued to militate against the circulation and sale of obscene literature, while ensuring that materials justifiably for public good or with a bona fide religious purpose were exempt. Exceptions were expanded to include “public good,” interests of science, literature, religious purposes, a public servant discharging his functions, as well as representations that are protected under the Ancient Monuments and Archaeological Sites and Remains Act of 1958. Most importantly, a definition of obscenity is given which remains in effect today: “(that which) is lascivious or appeals to prurient interest or if its effect or (where it comprises two or more distinct items) the effect of one of its items, if taken as a whole, is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.” Notwithstanding the brief mention of obscene acts in public in Section 294, the laws anticipate and seek to manage sexual transgressions in the realm of representation. The laws not only seek to draw lines between the obscene and the erotic, the moral and the indecent, but also come to be routinely pinned on sexual transgressions involving female heterosexuality and deviant sexualities.\(^ {40}\) The “politically obscene” described by Gupta appears to be accommodated under Sections 292–294, insofar as it may be lascivious, but more likely under the sections on defamation (499–500), if it appears to be non-sexual in nature.

Despite these attempts to revise and refine obscenity law in India, the meaning of obscenity remains vague and ill defined. Judges play a key role in interpreting the law and negotiating prurience and public good, frequently relying on the Miller test.\(^ {41}\) The persistent impreciseness of the meaning of obscenity is thought to contribute to abuse of
the law through routine and frivolous legal filings. Especially since it is years before judicial decisions are announced, filing legal charges promises to tie defendants in court for a protracted period of time. One response is to call for further clarity in order both to prevent such abuse and to encourage successful prosecutions. However, in a landmark decision in December 2006, the Indian Supreme Court ruled against a public-interest litigation asking to curb explicit photographs and ads published in newspapers, on the grounds that a blanket definition of obscenity would hurt freedom of the press.

While the outcome of court charges may be long in arriving, announcements of legal charges of obscenity quickly garner media and public attention. The authority of law is used to leverage the media, and the outcome is a very public drawing and redrawing not only of what counts as obscenity but also of what counts as respectability. On the one hand, Khusboo’s remarks are crammed into the codification of obscenity under Section 292—that by posing the very possibility of women’s pre-marital sexual activity, the words can corrupt or cause depravity. On the other hand, and this seems to me more important, what is not debated is whether women’s pre-marital sexual desire is normal or natural; rather, it appears that Khusboo’s deeper offense lies in publicly suggesting that women are sexually active prior to marriage. Unlike sexual normality, which is tied to the individual, sexual respectability is essentially a social criterion through which individuals and groups are tied to the collective. That the charges of “unnatural sex” (Section 377) need to be trumped up in the case of the four workers in Lucknow while the police release false reports of “gay clubs” and “sex rackets” further confirms that the sexual is seen essentially as a matter of the social.

Alongside and through the incitement of cultural and legal discourses on sexual respectability is also an incitement of discourses of the social body. Sexual excess and its correlates of depravity, lasciviousness, and indecency, to name a few, are reinforced as intrinsically contagious, as easily corrupting the social body. In Khusboo’s case, it would have been possible simply to ignore the comments or refute her opinions publicly without heaping scorn on her. But the hue and cry serves to reconstitute the Tamil community as essentially fragile and easily undermined. Not surprisingly, then, Khusboo’s words on the social acceptance of pre-marital female sexuality are seen as a direct assault on the Tamil community, even though her remarks are aimed at women in general. In the other two cases as well, protecting the collective—whether of Hindus or Indians—requires constant vigilance and a vir-
ile masculinity. In Husain’s case, not only are his visual representations deliberately provoked by the Hindu Right as the sexualization of Hindu goddesses, but they are actively presented as attacks on the integrity of the so-called community of Hindus. The conjoined use of obscenity and sodomy law in the Lucknow case further speaks to the threat that sexual excess poses to the social body, this time seen as the nation.

By excoriating Khusboo as not-Tamil, the internal and external frontiers of the collective become the same. Those at the internal frontiers of the body—by virtue of religion, ethnicity, same-sex sexualities, or gender, caste, and class—are also markers of its external frontiers. It is not so much that the external boundaries of the collective are being defined as that the external and internal boundaries are being collapsed into one another purportedly in the interests of the collective. That in each of the cases obscenity law is coupled with a constellation of other legal charges attests to anxieties regarding the expansive injuries caused by sexual excess. Defamation, breach of peace, and intent to hurt religious feelings, among others, are the laws that signal concerns about protecting the so-called integrity of the social body.

If national-level laws and policies of law enforcement stabilize the appearance of a singular social body, then regional, cultural, and political differences interact with their interpretations and enactments. In 2004, the Delhi High Court ruled on eight cases against Husain related to his sketch of Saraswati, a sketch of another mythic figure, Draupadi, and paintings of the well-known Hindi film actress Madhuri Dixit. This was in the wake of the first politicization of Husain’s work in 1996. The offenses included obscenity, indecent representations of women, promoting enmity between religious groups, and deliberately outraging the religious feelings of a group. The Supreme Court had ruled that the various cases filed in the states of Bihar, Madhya Pradesh, and elsewhere be bundled together under the purview of the High Court of Delhi. Delhi High Court Justice Kapoor dismissed the cases against Husain, but only on a technicality. At odds with the defense arguments that the artwork was done without any malicious intentions, the judge nonetheless dismissed the eight charges on the grounds that the charges had to be filed with the cognizance of the central or state government. Even as the authority of a centralized legal system prevailed, the justice severely chastised Husain for hurting Hindu sentiments. He wrote, “Under the garb of freedom of expression no person can be allowed to hurt the religious feelings of any class of people. This should be known more to the petitioner who belongs to a different religion” (Crl. M(M) 420/2001). Husain’s legal victory was no vindication, as the judge
deployed the centralized legal structure to protect the integrity of a specific and hegemonic social body, namely, Hindus.

A singular notion of the social body is not at work here. Rather, it varies across each of these cases—Tamil nationalism; Hindutva, which invokes Hindus as a community distinct from non-Hindus, especially Christians and Muslims; and (putatively secular-but-Hindu) Indian nationalism. Notwithstanding the provision that the Indian penal code does not extend to the northernmost and embattled states of Jammu and Kashmir, obscenity law and other citations from the penal code operate at the national level. Yet the notion of the collective at stake is neither always national nor uniform. Further, these forms of imagined collectives are not concentric circles expanding from the regional to the national. They are more accurately represented as Venn Diagrams of overlap and difference; for example, Tamil nationalism frequently goes against the grain of what is seen as north-dominated Indian nationalism. It is to theorizing the ways in which discourses of obscenity illuminate the mechanism that ties the sexual to varying notions of the social body that I now turn.

Sexuality, social bodies, and biopolitics

The focus on obscenity across these three cases draws attention to the fact that sexuality is at the heart of how social bodies are fabricated. Sexuality helps forge, produce, and stabilize the collective. Sexuality is not merely a fault line of the collective, sifting normality and its other. Rather, sexuality is essential to how social collectives are imagined, which explains the pre-occupations with it. The three cases indicate that at stake are not matters of individual bodies or sexualities, even though the brunt of the assaults was borne by specific individuals. Rather, the crises proceed through the domain of sexuality to the integrity and continuity of the collective body. Precisely because sexuality is foundational to the production of the collective, it is saturated with anxieties of normality, respectability, depravity, irregularities, and more. Concerns related to obscenity articulate these anxieties and become an available placeholder. Representations of sexualities, particularly female or deviant, that are considered obscene may be politically motivated, but they also echo underlying anxieties about the fabrication and continuity of the community, howsoever defined.

The broad use of obscenity speaks to how sexuality both constitutes and endangers social bodies. In the Lucknow witch-hunt, the putative
threat to the collective makes sense only if we concede that same-sex sexuality may undermine heteronormativity. The possibility of “gay clubs” and “sex rackets,” of consensual same-sex practices and sex work, fans anxieties about reproductive and non-reproductive heteronormativity precisely because of its brittleness, precisely because heteronormativity is seen as the lifeline of the community, and precisely because any threat to heteronormativity constitutes a threat to the political community. At issue are not only same-sex sexualities but anything that may be perceived as a threat to heteronormativity and its rightful place in marriage and community. Interpretations of Khusboo’s words strike as blows to the cultural and biological survival of the collective. Anything other than respectable sexuality calls into question for her critics not only the morality of Tamil women but also heterosexual marriage, inheritance, class, and caste lines, and normative masculinity.

Foucault’s concept of biopolitics, as the fabrication and regulation of the human collective into a “population,” gets closest to theorizing the significance of sexuality in the production of the social body. Biopolitics, for Foucault, entails defining, assessing, managing, and policing the notion of population and reveals the need to regulate it on behalf of collective interests. Births, reproduction, deaths, disease, health, life expectancy, and more make up that morass of conditions through which populations are forged. Biopolitics alerts us to the kind of violence necessary to forge such wholeness.

Central to biopolitics is Foucault’s premise that regulation proceeds by infiltrating life, not through the threat of death. It is motivated toward regularization, not disciplining. Clarifying what he first laid out in the last section of the *History of Sexuality, Volume 1*, Foucault suggests succinctly in his lecture at the College de France on March 17, 1976: “it is, in a word, a matter of taking control of life and the biological processes of man-as-species and of ensuring that they are not disciplined, but regularized.” A few sentences later, he elaborates on the biopolitical technology that is focused on managing life, unlike the pre-occupation with death of an earlier modality of power, namely, sovereignty: “It is continuous, scientific, and it is the power to make live. Sovereignty took life and let live. And now we have the emergence of a power that I would call the power of regularization and it, in contrast, consists in making live and letting die.”

For Foucault, this presents a new relationship between life and history because even though life is posed as biological it is, in fact, penetrated by history’s techniques of knowledge and power. It also presents the growing importance of the norm over the threat of law. The kinds
of phenomena that biopolitics is concerned with, Foucault insists, are aleatory—unpredictable, uncertain—and must be studied within the population over a period of time. Through the technologies directed at improving the life and quality of the population, controlling the random and the accidental through calculation and forecast, biopolitical regulation is aimed at controlling mortality, not wielding the threat of death.

The nexus between life and populations suggested by Foucault has spurred scholarship along two dimensions—the terrain of biology, medicine, and science within which questions of health, genetics, and disease are framed, and the forging of political communities by defining their exceptions, whether through the status of refugee, terrorist, or through the fault lines of race. The concept of the biopolitical is useful in these disparate dimensions precisely because it turns attention to the deeper questions of life and the making of the collective. The concept underscores the various arenas through which “populations” are continually fashioned—for example, at the national level this fashioning occurs through census surveys, by assessing demographics, and through disease and health indicators, among others.

The preoccupations with obscenity in the context of India, especially in the three cases described here, underscore the significance of sexuality to the forging of the collective, to the nexus between life and politics. It is curious that even though Foucault first elaborates the concept of the biopolitical in *History of Sexuality, Vol. 1*, sexuality has so easily fallen out of our theorizing of it. In *Homo Sacer*, Giorgio Agamben’s thinking on the biopolitical lays bare the politicization of life through which (Western) political community is wrought. Focusing on the (deracialized, degendered, desexualized) stock figure of the refugee or the idiom of the camp, Agamben seeks to expose ways in which the state of exception that drives a wedge between natural rights and the rights of citizenship comes to be a foundational, lasting characteristic of political community. In so doing, Agamben significantly revises Foucault’s attempts at linking disciplinary power that operates at the level of the body and biopolitical power at the level of the collective, and yet what is elided is Foucault’s necessary insight: sexuality is the mechanism that links individuals to the collective and connects disciplinary power to the biopolitical.

Similarly, Achille Mbembe offers a thought-provoking revision of Foucault’s reflections on the biopolitical through the concept of necropolitics, to argue that contemporary life is subjugated to the power of death. Using historical and contemporary examples, drawn from Nazi
death camps, slave plantations, the occupation of Palestine, as well as sustained violence and genocide in Africa, Mbembe, like Agamben, neglects a reading of power and sovereignty deepened by attention to the ways in which the domain of sexuality serves as a pathway of power; for example, HIV/AIDS is significantly absent as a crucible of the biopolitical and the necro-political in Mbembe’s analysis.

Rather than auxiliary, sexuality is directly instrumental to the biopolitical forging of collectives. This approach helps us reconsider how life, disease, genocide, demographics—the numerous indices of population, in fact—are grounded in the domain of sexuality, especially heteronormativity. Despite the various complexities of political expediency, the three cases can assume the proportions that they do precisely because the significance of sexuality, articulated through obscenity, strikes at the heart of the collective, its continuity, its stabilization. For the same reason, it is important for some publics to chisel away at representations of indecency or lasciviousness through public protests, the police, and the authority and sanctity of legal provisions. Drawn out discussions in multiple public realms are far more effective than quick, successful convictions from this vantage point.

The three cases also say something more about the functioning of the biopolitical. Precisely in their shape as events, as crises, they do not work in the same way as census surveys and population growth indices. In contrast to the regularization and standardization techniques of biopolitics, these events appear to be irregularities. Yet the irregularities happen with enough regularity, as it were, to make us rethink the conjunctions between regularity and irregularities, between standardization and crises, between making predictable the random and relying on its unpredictabilities. Seen this way, the nodes of biopolitical strategy are not just institutions of governance that shape demographic and population discourses. Rather, the nodes of the biopolitical span structures of governance, institutions such as the media, as well as political groups, parties, and individuals.

Furthermore, while the connotation of the social body has specific meanings within a Western liberal tradition, the social body that is forged through the anxieties and incitements of obscenity in the Indian context needs to be appreciated as not just the national, but also the transnational, the regional, the intra-national ethnic regional, and the transnational religious, among others. Biopolitics is not merely the regulation of social bodies as nation or the political community as the nation-state. Rather, it is the mechanism through which power forges and fuses heteronormative sexuality and the hegemonic social body.
The predictability of charges of obscenity, recourse to obscenity laws, especially with few indications of successful prosecution, needs to be rethought as the forging of hetero-collectives through the use of biopolitical strategies. Considering the significance of sexuality to the collective draws connections between the various nodes of the biopolitical, including pre-occupations with obscenity, census surveys, demographics, immigration policies, the national body, sovereignty, and regional cultural nationalism. Cutting sharply across these various terrains, not in any monolithic or predictable way, is the domain of sexuality. Seen thus, the three cases described here make us take seriously how Khusboo’s utterances, Husain’s paintings, and the four NGO members’ work could cause such anxieties, how these crises could be tactically effective in fueling such anxieties, and how matters of obscenity are directly instrumental to these anxieties. These three cases are imperatives not to underrate the obsession with obscenity and, through it, sexuality’s foundational role in the shaping of social bodies.

Concluding remarks

The perceived need to protect the integrity of social bodies explains the preoccupations with obscenity law in the Indian context. The discourses of obscenity serve to expand but also to protectively retract and retrench the contours of social bodies. Obscenity and its correlates—indecency, lasciviousness, moral turpitude—are seen to corrupt the core fabric of social bodies in ways that warrant attention equal to political instability, war, poverty, and hunger. Obscenity law in India offers a commentary on the foundational significance of sexuality to public order and the threat of unregulated sexuality to individuals and social bodies. The cultural and legal discourses of obscenity demand that we acknowledge sexuality’s foundational significance, especially reproductive and non-reproductive heteronormativity, to the forging of collectives. Obscenity is as much a synecdoche of sexuality as it is of the collective, and while we are likely to concede easily the multiplicity of sexualities, it is necessary to press the issue that there isn’t a singular notion of the collective and that notions of the collective are contingent. The point is not merely to insist on the plural over the singular. The point, instead, is to grapple with the ways in which discourses of obscenity activate social bodies understood not only as national but also as factors in religious, ethnic, and cultural identity.

Turning to the biopolitical alerts us to the underlying mechanism
through which sexuality serves the regulation of social bodies. Sexuality is the chain link between life and political collectives, between life and power. The unrelenting preoccupations with obscenity and sexual excess bear testimony to sexuality not as ancillary but as central to social bodies and to the imagination of political community. These legal-cultural incitements are the means through which power fuses and reinforces heteronormative sexuality and hegemonic social bodies.

On May 8, 2008, Delhi High Court Justice Sanjay Kishan Kaul (CRL Revision Petition No. 114/2007) dismissed the cases against M.F. Husain. In a decision hailed by liberal-leaning public intellectuals, artists, and supporters of Husain, Justice Kaul sorted through the familiar and fraught terrain of public morality and artistic liberty. Opening his lengthy statement by paraphrasing Pablo Picasso—that where art is chaste, it is no longer art—Justice Kaul went on to juxtapose obscenity law in India with that in the U.S., Canada, and Australia. The outcome was an undoubtedly liberal legal endorsement of the need to take a work in its entirety, to sort through the distinctions between obscenity, vulgarity, indecency, and pornography, to confirm that sexuality is not synonymous with obscenity, to protect artistic expression while cautioning against Indian puritanical ignorance that is leading to the desecration of art and the abuse of law. The Justice’s statement can be set up as a tussle between the right to artistic liberty and the requirements of public morality, between the right of expression and the effect of transgression. That this decision and statement uphold the right of expression and artistic liberty is exactly what resounds in the numerous endorsements by public intellectuals.

Yet, to merely read Justice Kaul’s statement in this way omits and elides the imperatives of biopolitical governance and the production and regulation of the social body. In Justice Kaul’s statement, the tug between public morality and artistic liberty is mitigated by the notion of social stability. Unlike the United States, he noted, India has no absolute right to freedom of speech, and while it is up to the state to ensure that it does not impose unreasonable restrictions, the state can introduce restrictions in the interests of the larger social good. Indeed, as Justice Kaul said, there is an inseparable connection between freedom of speech and the stability of society, and the yardstick for determining whether a work is transgressive and offensive is whether it violates the integrity of the social body as whole. The statement upholds the liberty of Husain by paying close attention to the exigencies of sexuality and the social body. For this, Justice Kaul made two primary arguments: he conceded the need to protect the social body by emphasizing that the
painting, Bharatmata, is not about the depiction of lust; and, in a more spirited vein, he suggested that Hindus cannot claim to be wounded by the painting for the nation does not only belong to them. Toward the end of the statement, Justice Kaul cautioned against frivolous lawsuits and enjoined the courts not to entertain such abuse. Insofar as the outcome of such writs is incidental to the use of cultural-legal practices to draw and redraw the contours of the social body and its fault lines through the realm of sexuality, such cautions will be unheeded and such entreaties unenforceable.

Notes

1. See, for example, Brinda Bose, ed., Gender & Censorship (New Delhi: Women Unlimited, 2006).
6. Gujarat is a state in Western India. By maligning Khusboo as Hindi-speaking, Gujarati, and Muslim, she is being interpellated as an outsider and as anti-Tamil.
8. Ibid.
11. I refer, of course, to the important distinctions between representation in the political sense as “speaking for” and re-presentation in the sense of art or acting, first delineated by Gayatri Chakravorty Spivak. In her influential essay, “Can the Subaltern Speak?,” in Marxism and the Interpretation of Culture, ed. Cary Nelson and Lawrence Grossberg (Urbana and Chicago: University of Chicago Press, 1988), 271–313, Spivak brilliantly delineates the difference between representation as “speaking for” (vertreten) and representation as “re-presentation” (darstellen) as in art (275). Spivak’s purpose is to call attention to the mechanics of power and complicity at work in Western discourse and its representations of subaltern subjects, and to confound the possibility of a subaltern “voice” that is sought to be recovered. The interplay of discourse, representation, and the subaltern is muddied when examined from the vantage point of these three cases in which the maligned figures are neither quite subaltern, nor quite elite, but simultaneously both. The semiotics and ideologies of representation are expanded to include ire not only at
“speaking for,” and “re-presentation” of, Tamil or Hindu icons, but also at the “spoken”—the agent who is emblematic of a broader affiliation, a threat, an obscenity.


19. http://www.hinduonnet.com/fline/f11511/15110990.htm, consulted on February 1, 2007. As noted in the article, this unearthing occurred within attempts by the Hindu right wing to “Hinduize” Adivasi (tribal) communities, and efforts to appropriate a religious space around the city of Indore, state of Madhya Pradesh, close to where Husain trained in art.

20. Ibid.

21. Ibid.


25. Ibid.


27. Ibid.


29. While the descriptor of males who have sex with males is a contested one, especially in relation to South Asia, I use it here because they are the targeted clients of Bha-rosa Trust and NFI.


31. Ibid., 164–66.

32. Ibid., 166.


34. Ibid., 53.

35. Ibid., 34–37.

36. Ibid., 243.


39. Ibid., 634–35.

40. Some of the most widely publicized cases historically tried under obscenity appear
to be about deviant sexualities. For example, see Charu Gupta’s discussion on the story “Chaklet” (in *Sexuality, Obscenity, Community*), and the numerous feminist writings on renowned writer Ismat Chughtai’s widely reprinted story “Lihaaf.” It is available online at: http://www.manushi-india.org/pdfs_issues/PDF%20file%2020110/9.%20Short%20Story%20%20Lihaaf%20%5BThe%20Quilt%5D.pdf or http://connectmedia.waag.org/media.opencultures.net/queer/data/indian/Lihaaf_or_The_Quilt.htm. Also see Jisna Menon’s discussion on Sadat Hasan Manto’s “Kali Salwaar,” in “Unimaginable Fine Communities: Identities in Traffic in Rukhsana Ahmad’s *Black Salwar*,” *Modern Drama* 48.2 (Summer 2005): 407–27.

41. The Miller test is the benchmark in judicial decisions in Indian courts to determine whether representations fall under the rubric of obscenity. It directly influences judicial interpretations of obscenity law in Indian courts. The Miller test is the result of the 1973 case, *Miller v. California*, 413 U.S. 15. It includes three considerations—whether an average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; whether the work depicts/describes, in a patently offensive way, sexual conduct or excretory functions; whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.


43. Ibid., 247.

44. Ibid., 143.


