Security, Surveillance and Muslims: Taming the ‘unruly’ – Criminal and Barbarian Subjects in Post-colonial India

Segurança, Vigilância e Muçulmanos: Dominar os ‘indisciplinados’ – Criminosos e Bárbaros na Índia Pós-colonial

Noel Mariam George, University of Hyderabad, India

Abstract—Colonial administrative apparatus maintained sovereignty through ‘secular’ indirect rule in India. Surveillance, Securitisation and Codification based on orientalised assumptions of ‘difference’ produced the Hindu majority. Scholarship that set Colonialism as binary opposite to Nationalism did not detail the nuances of colonial encounter that systematised brahminical thought. Colonial sovereign defined subjects as ‘unruly’ (barbarians) to exclude from the political order while at the same time co-opted certain myths of Caste Hindus to redefine European origin story as Aryan. Sovereign power in postcolonial India as a reproduction of the colonial sovereign defines the unruly (criminal Muslims) through criteria of exclusion that make exceptions to reconstitute its power as a Hindu sovereign.

Keywords—Ethno-nationalism, Biopolitics, Securitisation, Governmentality.

Resumo—O sistema administrativo colonial manteve a sua soberania através do governo indireto “secular” na Índia. Vigilância, securitização e codificação com base em suposições orientalizadas de ‘diferença’ produziram a maioria hindu. A bolsa de estudos que definia o colonialismo como o oposto binário ao nacionalismo não detalhava as nuances do encontro colonial que sistematizavam o pensamento bramínico. A soberania colonial definiu os indivíduos como “indisciplinados” (bárbaros) para os excluir da ordem política e, ao mesmo tempo, cooptou os mitos hindus das castas para redefinir a história da origem europeia como ariana. O poder soberano na Índia pós-colonial, enquanto reprodução da soberania colonial, define os indisciplinados (muçulmanos criminosos) usando de critérios de exclusão que abrem exceções para reconstituir o seu poder como soberano hindu.

Palavras-Chave—Etno-nacionalismo, Biopolítica, Securitização, Governamentalidade.


Introduction

SECURITY and Surveillance have traditionally been understood as objective phenomenon outside of language. However, critical scholarship
has shown how both are political phenomenon disguised as neutral, scientific and rational. Studies on Security and Surveillance have traced the genealogical development of the administrative apparatus and the changed conceptions of sovereignty in modernity to point to the development of security and surveillance as technologies of control of the biopolitical sovereign. The archaeology of how power redefined its methods of control in non-sovereign spaces: schools, prisons and families sheds light on surveillance as an expansive method of discipline in modern societies (Foucault 2005). Furthermore, the examination of how power operates through the sovereign, in modern democracies that have the power to suspend ‘normal’ politics and bring in the ‘exception’, through securitisation reveals the totalitarian nature of Biopolitical states (Nikolopoulou, Agamben and Heller-Roazen 2007). The paper places security and surveillance in context of the evolution of the idea of politics as a distinct category from theology – which lead to the emergence of the secular sovereign state and the secularisation of Christianity. The Sovereign as one who decides on the exception, has enabled a rearticulating of ‘politics’ as a secularised concept of theology (Agamben 2012).

The Indian state as a product of colonial modernity, defines as ‘unruly’, on similar lines of what the sovereign colonial power saw as threat. During colonial rule, colonial subjects were politically excluded as Barbarians and legally excluded as Criminals. In the postcolonial Indian state, that has selectively abolished and retained colonial laws, sovereign national power excludes the criminal from the legal-political realm, however also reduces racialised subjects (minorities) to ‘bare life’: a devolutionary political subjectivity that reduces subjects to the realm of the animal –the beast (Mbembe 2008). Exclusion from the legal-political realm as bare life constitutes the slow construction of ‘camps’, not as physical spaces but with bodies of unruly criminal minorities as sites of exception (Sheth and Prasch 2018). The colonial sovereign that produces barbarian subjects, paradoxically through the Enlightenment paradigm, was deeply captivated by the exotic ‘difference’ of the colonised. Oriental scholarship constructed the Aryan myth, to trace European origin story to ‘India’ as the birthplace of the Indo-Aryan civilisation (Figueira 2015). This oriental paradox of seeing certain natives as ‘blood’- the Brahmmins, enabled the production of Hindu majority, as a unified category despite caste while the ‘others’- Muslim and Dalit minorities were seen as ‘surplus’, barbarian unruly subjects (Rao 2009). With the idea of Hindus as the origin people, minorities were seen as parasites that needed to be expelled or exterminated to ensure the territorialisation of a Hindu State.

The paper attempts at the development of the ‘migrant’ as the political subject of the 21st century, as opposed to the citizen- as developed by Thomas Nail. Nail proposed that the migrant as a subject, needs to be understood as the moving subject that is defined by exclusion -the nomad (excluded from territory), the barbarian (excluded from politics), the criminal (excluded from the juridical realm) and the proletariat (excluded from economics (Nail 2016). The paper develops on the idea that the barbarian subjects of colonial state have been transformed into criminal subjects in the nation state. It then focuses on the how the criminal is produced, and who specifically are criminalised. The examination of the criminal justice system through laws points to particular minorities as criminals (Davis 2003).

Furthermore, the paper complicates colonial modernity beyond the nationalism vs. colonial-
ism binary to explore how the various factions responded to colonialism and how colonialism in turn shaped the ‘west’ (Dirks 2011). This is done through an examination of the idea of the development of sovereignty and the state. It exposes the limits of postcolonial thinking that is state or nation centred and instead explores the relational construction of east and west either of which exist as political entities within the nation state. The paper critiques securitisation in the modern nation states that targets minorities through ethno-nationalist paranoia that calls for the state of exception (Bannister 2018). The first section of the paper traces the evolution of political concepts of the modern secular sovereign, securitisation, surveillance and classification in the ‘west’ that constituted colonial modernity and the second section explores how these ideas manifested in the colonial state and are sustained in the nation-state in the postcolonial context.

1 Security as Performance of the Secular Sovereign

Security needs to be understood as a speech act; something is securitised when power (the state in modern context) defines it as threat. It defines ‘existential’ threats and calls for ‘extraordinary measures’ to combat the threat (Rose-Redwood 2012). When the referent objects are defined as existential, there is the ‘need’ to overcome the threat in the eyes of the relevant audience in the state whether it’s a democracy or autocracy. It involves huge tradeoffs, as a high price is involved when something is defined as threat. John Austin, the legal theorist on the state, in How to Do Things with Words (Clarendon 1962; from the 1955 William James Lectures at Harvard), stated a theory of speech-acts as performative. Austin recognised that this wasn’t a new idea; it was a dominant conceptualisation in Christian and Islamic theological debates. Austin provided a secular interpretation to what was dominant in Christian theology, as can be seen in the writings of Herman Bavnik (RD, 4.458).

“The word is not an empty set of vibrations in the air, nor an empty sign, or a cold symbol, but every word, also every human word, is a power greater and more durable than the power of the sword. Encapsulated within it is thought, mind, soul, and life. If this applies to words in general, how much more is it true of the word that proceeds from the mouth of God and is spoken by him? That is a word that creates and maintains, judges and kills, re-creates and renews, and always accomplishes what it is meant to accomplish and never returns empty”

However, what was fundamentally new was the ‘secular’, what he calls ‘scientific’ context in which the idea of speech acts as performative was interpreted. In what can be considered a founding text of legal literature of secular modernity, The Province of Jurisprudence Determined Austin attempted to separate positive law from religion. This attempt was a radically new way of understanding sovereignty. In Medieval Europe, where governance in the Empire was intertwined with church sovereignty, governance was through the principle of ‘hierarchical subordination’. Sovereignty was understood as ‘continuous’, with God as Sovereign; the King as representative and subject of the Sovereign and the people divided unto various estates as objects of power of the Sovereign (Oishi 2006). However, in modernity, post the French Revolution, the King as representative of God was killed and the ‘demos’ emerged as equal subjects without the sovereign as God. Sovereignty was shattered, however the power of the sovereign defined as the divine right to kill remained (Brueggemann 2008).

Austin, in The Province of Jurisprudence Determined attempted to redefine the Sovereign in this context of fragmentation, where the ‘nation’ emerges to replace the Christian God as Sovereign. In his monist conceptualisation, he framed that all power was to be contained in one authority (Cosgrove and Morison 1985):

“There is in every independent political community some single person or combination of persons which has the power of compelling the other members of the community to do exactly as it pleases... This sovereign... has in all such communities’ one characteristic, common to all the shapes sovereignty may take, the possession of irresistible force. ... That which all the forms of sovereignty have in common is the power (the power, but not necessarily the will) to put compulsion without limit on subjects or fellow-subjects” (pp. 349, 350).

Austin formulated the idea of the legal theory of rights, in which legal rights emerged from the political sovereign and the sovereign was beyond
the law. However, the idea of the sovereign was more complexly explored in the works of the German political theorist – Carl Schmitt. Schmitt wrote Political Theology to reveal that most concepts of politics are secularised concepts of theology. He pointed to the ‘paradox of sovereignty’ where the sovereign was both inside and outside the political-juridical order (Schmitt 1985). Primary to understanding the sovereign is the idea of the ‘state of exception’ which was the state of emergency constituted in article 48 of the constitution of the Weimar republic. The article provided the head of state to suspend all constitutional rights and declare a state of emergency in the light of an imminent threat to the state. The sovereign, through a speech act, could decide when the state of exception should be constituted. It is a speech act, much like the miracle of transubstantiation of the catholic tradition where the priest through his speech act transforms the bread into the body of Christ. The state of exception constitutes a singularity in the political-juridical order. The paradox of the sovereign is in that the sovereign derived its power from the constitution, was however at the same time above the law. The sovereign hence is an ‘undecidable’ in the zone of indistinguishability between the inside and outside of the political-juridical order (Williams 2003). Security needs to be understood as the performance, the speech act of the sovereign state in modernity.

1.1 The Sacred Man who can be Killed with Impunity

In direct opposition to the Sovereign is the concept of the Homo Sacer - an undecidable who is like the sovereign both inside and outside the political-juridical order. The Homo Sacer is the sacred man who, through exile from political like can be killed with impunity, but cannot be sacrificed. In the Greek tradition, there were two kinds of existence- Zoë and Bios. Zoë referred to the zoological or animal existence while Bios referred to political life or life in the bios-politicos. The domestic sphere was considered the sphere of the Zoë and included women, children and the senile while the Bios consisted of men who had political voice- the logos. However, the subject of the bios politicos could be expelled or reduced to a state of Zoë, by the Sovereign to designate the new subject as Bare Life without political rights- the Homo Sacer (Latin word in Roman law that designates the one who can be killed without legal consequences). It is a reduced state of prior existence as Bios to Zoë (Agamban 1995). The sovereign securitis- declares as imminent threat an internal enemy of the state; to enable the state of exception that creates the revolutionary political subject of the Homo Sacer.

1.2 Biopolitics as Governance of the Human Zoo

Existence in modern nation states as equal sovereign subjects without the sovereign as God made the ontological conceptualisation of life as fundamentally biological. However, sovereign power- as the divine right to kill remained as fragmented in nations with the state assuming the role of the sovereign, with the human as both subject and object of power. The human, in medieval traditions as the creation of God, was seen as sacred in his/her very ontology. The idea of the ‘Human’ as an ‘object’ of study (a scientific conceptualisation) is a product of secular modernity. The modern secular conceptualisation of the human in the nation state was produced through the development of economics, linguistics and biology (Foucault 1977). There was an ontological change in the conceptualisation of the human, with the emergence of these ‘scientific’ disciplines that attempted to measure and standardise the ontology of the human. Biology as a discipline that attempted to measure life itself combined with statistics enabled the study of ‘populations’; which changed the political ontology of the human. Biopolitics as the politics of administering life of populations emerged as the method of governance in the secular nation state. Biopolitics is a method of governance that changes the human subject to the human object- the animal, the beast. The nation consists of Zoë as subjects in the population that have political rights. The nation, that sees itself as a magnified sovereign, similar to how the Leviathan in medieval times was conceived as the expansive body of the King; now conceives of itself in zoological terms, consisting
of populations that have the ontological status of Zoë, with political rights (Biehl and Locke 2010). The modern secular nation is a human zoo, with biological subjects that claim political rights. Biopolitics, as a method of governance that devolves the ontological status of the Bios enables mass surveillance, securitisation and even denationalisation of its subjects.

Foucault traced the genealogy of the transformation of power both Juridical and Normative in modernity. Juridical power operated through subtraction, the means of which is prohibition—where there is a subtraction of the possibility of action. The individual is the object of power in this case. However, normative power is power in which the individual is both subject and object of power. It is located ‘everywhere’, not just in institutions and works through positive enforcement in unofficial channels. This is power that has given itself the function of administering life. Power operates as ‘discipline’, in prisons and other coercive panoptical institutions and as governmentality amongst populations, in orchestrating and socialising them. Through a historical analysis of the treatment of ‘deviants’ – the mentally ill, prisoners and homosexuals Foucault showed the terms in which the understanding of deviance has changed and how the attempts control ‘deviance’ in modernity lead to the emergence of surveillance as a method of governance (Allen 2002). Modern methods are about measuring and judging deviance through standardisation of education, medicine and law. Foucault analysed the prison as the most telling account of controlling deviance which lead to the emergence of surveillance. The Ancient Regimes punishment was on the body, as direct retribution for injustice done to the sovereign. In modern times, power has moved towards discipline. Education, Military and Citizenship make subjects uphold the norm. Modern secular sovereign power has enabled an internalisation of surveillance. Subjects look at themselves through the eyes of the sovereign power, the state-governmentality. Bentham developed the modern idea of prison as the space for ‘reform’, rather than punishment. It was a utilitarian vision where, surveillance of the prisoner was to produce the desired behaviour from the criminal. However, Foucault was of the opinion that the criminal was not ‘naturally’ a criminal, but rather law, (which operates as power), defined the deviant as prisoner. The law produces the criminal. It is in the intersection of discipline and governmentality, where biopower as surveillance operates (Cisney and Morar 2016).

2 Customary Laws of Barbarian Subjects

Colonial rule in India was a form of decentralised despotism, in which the British exercised power through indirect rule (Mamdani 2001).

“Indirect rule did not imply the simple perpetuation of pre-existing structures of political power. By incorporating ‘traditional’ arrangements into the configurations of colonial domination, the former were frequently transformed in ways that made indigenous leaders far less accountable to the populations they governed on behalf of the colonial powers.”

Customary laws constituted and administered by ‘native’ courts departed from pre-colonial legal systems that were more diverse, flexible and localised. The paradox of customary laws as customary (indigenous), is that custom as distinct category from the ‘norm’ was constituted by colonial rule, not on previously existing local systems, but as standardised, and communally codified along the expanse of colonial rule. Colonial rule replaced customary laws and replaced it with the laws of the colonial sovereign (Prakash 1994). The law is the symbolic order that separates the natural from the cultural; and sovereign colonial law of the state began working in the sense of God, as a transcendent power. The law as transcendent and standardised across the territorial expanse of sovereign rule was a new concept. The British claimed to have ‘modernised’ the natives, quoting

4. Governance of populations in western scholarship is seen as a simultaneous process to the emergence of liberal governmentality in the nation state. It is understood as the paradoxical transformation of the kings ‘subjects’ in the empires of the ancient regime (never fully codified or categorised) to ‘citizens’ in the democratic nation state (completely codified and categorised through the census). However, in the context of the global south such biopolitical governmentality was not a subjectivation of ‘citizens’ but rather of colonial ‘subjects’ of the Empire.
examples of abolishing Sati and child marriage. Modernity as a concept is a deeply debated in the Social Sciences paradigm. Max Weber associated it with a set of processes like Rationalisation, Bureaucratisation and Social Stratification. He attempts to define modernity as the emergence of a new way of thinking, associated with processes like Industrialisation, Market Economies of Capitalism- and most importantly the emergence of the Nation State as the most powerful political organisation. Processes like Secularisation-the division of the private and the public also emerged during this time-through what is today understood as the Secularisation of Christianity (Asad 1993).

The modernisation project of the colonial administration by standardising customary practises and abolishing practises that they felt were barbaric was the operation of the colonial sovereign with its orientalised epistemic assumptions, codifying and marking as ‘different’ colonised subjects to divide and rule. What natives experienced wasn’t modernity, but rather colonial modernity, as the transformation of the political, juridical, territorial and economic order was along the dictates of the colonial regime, with oriental assumptions (Bhabha 2013). The territorial construction, based on oriental assumptions that constituted the geographical expanse of colonial rule along civilisational lines, constructed the Hindus as a ‘religious’ group, based on secular assumptions that were derived from historical events in Europe. Hinduism, Buddhism, Sikhism and Jainism were classified as ‘Indic’ and customary laws that were now standardised across the state categorised all four distinct traditions under the category of ‘Hindu’. In opposition to this, separate customary laws for Muslims and Christians were constituted as they were understood as ‘Non-Indic’, as outside of the colonially constituted idea of India as a Hindu Civilisation (Heredia 2009).

2.1 The Production of the Hindu Subject

Colonial administration also saw to the beginning of the classification of the ‘natives’ along legal and political lines, in an attempt to divide and rule. The divide and rule policy of the British, was codified through the census of India. In the early census, ‘Hindu’ as a category did not exist, and the Hindus of today identified then as Shaivites (worshippers of Shiva) or Shakts (Worshippers of the Mother Goddess) or Vaishnavas (worshippers of various incarnations ó Ram, Krishna, etc, of Vishnu ) and so on, or as many upper caste did, mentioned their caste as their religious category (Sharma 2002). A census, of course is not a passive account of statistical tables, but also engages in reshaping the world through categories and definitions. Categories necessitate definition and definitions impose order. The homogenisation of all Hindus, which was further extended with the Hindu Code Bill (however, which was adopted as four distinct bills in 1955–56 as the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act) (Subramanian 2010), enabled the identification of various groups of people, who had nothing in common but the caste system come together into a unified identity (Majumdar 2010). Hinduism, in its current form in the Indian state was constituted as a colonial, caste based political project through its classification as a ‘religion’ in the census alongside Islam and Christianity. Customary laws that were local were centralised along communal categories, with the Hindu, as the largest category. Customary laws were limited to personal laws and native subjects

5. The main purpose of the act was to amend and codify the law relating to marriage among Hindus and others. Besides amending and codifying Sastrik Law, it introduced separation and divorce, which did not exist in Sastrik Law. This enactment brought uniformity of law for all sections of Hindus.

6. The Hindu Succession Act, 1956 is an Act of the Parliament of India enacted to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The Act lays down a uniform and comprehensive system of inheritance and succession into one Act. The Hindu woman’s limited estate is abolished by the Act. Any property possessed by a Hindu female is to be held by her absolute property and she is given full power to deal with it and dispose it of by will as she likes. Parts of this Act was amended in 2005 by the Hindu Succession (Amendment) Act, 2005.

7. The Hindu Minority and Guardianship Act of 1956 was meant to enhance the Guardians and Wards Act of 1890, not serve as its replacement. This act specifically serves to define guardianship relationships between adults and minors, as well as between people of all ages and their respective property.

8. The Adoptions and Maintenance Act of 1956 dealt specifically with the legal process of adopting children by a Hindu adult, and with the legal obligations of a Hindu to provide “maintenance” to various family members including their wife or parents, and in-laws.
 didn’t have a say in criminal law nor did they have political representation. In colonial law, the colonial subjects were objects of political power, and had no political subjectivity as colonial subjects were excluded from the political realm. As Bentham rightly mentioned, colonial subjects were excluded from the political realm, as ‘barbarians’. They were politically excluded, through the centripetal force of the state, however, territorially included through the centrifugal force of the state.

The attempt of the nationalist project was to create the story of the ‘one’ people against the colonisers (Blackton and Chatterjee 1990). This created the fundamental question of ‘who’ the one people are. Oriental scholars had developed the geographical idea of ‘India’, based on the assumption of the geographical expanse of colonial rule as civilisational and hence ‘original’ (Chakrabarty 2012). The Hindutva idea of nation, as Akhand Bharat, is derived from this colonial episteme. Hence, oriental knowledge produced by the colonial sovereign enabled Hindus the claim as ‘origin’ people of the territorial expanse of colonial rule, who were invaded by the Muslims followed by the British (Devare 2009).

2.2 The Symbolic of Blood and Myth

As early as mid 1800s, there was talk of the Hindus as a dying ‘race’, in the midst of Christian and the Muslim invasions (Thapar 1996). The reproduction of the colonial episteme as the oriental definition of the ‘Hindus’ as a category in religion, where there existed not ‘one’ people, but many people divided unto several castes hid the violence of caste when Hindus were legally produced and politically constituted as a single category (Ambedkar 2014). Hinduism as a colonially constituted ‘religion’ was a camouflage for racialisation of those who did not identify as Hindus, but were territorially subsumed and subjugated by Brahminical myths that claimed ‘Indo-Aryans’ as the origin people (Frawley 2002). The present is shaped by the invocation of a past with a specific ‘we’. The idea of the Aryan race is a shared myth, rooted in a symbolic understanding of blood beyond kin, clan and family. Aryan myth gave historical validity to the idea of a glorious path that the Hindus had, and fuelled the nationalist struggle (Humes 2012).

‘Race’, was not seen as a technology of differentiation of the colonial sovereign but rather as a pre-existing category. The Aryan myth strangely also served the ideological interests of Europe. The history of ‘India’ understood as civilisational was appropriated in the paranoid nationalist upsurge in Europe. Brahmin supremacy and white supremacy as myths were woven simultaneously. Postcolonial scholarship places the Enlightenment paradigm— the development of the rational subject as a binary to the colonised subject’s methods of understanding. However, beyond this binary as can be seen in the writings of G Gozzano in Journey to the cradle of Mankind (Gozzano 2012).

“The Westerner who returns to India no longer recognises his cradle. I am well aware of the Hindus as Aryans of our stock, our brothers; but we are brothers who reach out in one another’s direction. We are too different. Too many millennia divide us. We said farewell to one another long ago, but we are brothers nevertheless.”

Some nationalists focussed on Indo-European solidarity. Justice Ranade for instance believed that colonialism was a predestined event in order that a pristine Hinduism is reborn (Ranade, 1992, 101). Caste Hindus could identify with the British as representatives of the excellence of European Aryandom. However, on the contrary, there were nationalist versions of Aryan superiority that regeneration would only be possible by the reconstruction of the mythical Hindu Aryan society and race-like Dayanand, Tilak and Vivekananda (Bhatt and Mukta 2000).

Brahmin supremacy traced through oriental hermeneutical interpretations of myths— devoid of texts, and the Vedas as ‘Aryan texts’ also built and ideology of the Aryan Race (Figueira 1993). The Hindu is seen as ‘outside’ of time and history— to be present since the dawn of man through the mythic interpretation of absent texts. Hinduism is seen as a natural, non-cultural category as the Hindu is understood in terms of blood (hereditary) which manifests as his/her caste which

9. Mahadev Govind Ranade (18 January 1842 - 16 January 1901) was an Indian scholar, social reformer, judge and author. He was one of the founding members of the Indian National Congress party and owned several designations as member of the Bombay legislative council, member of the finance committee at the centre, and judge of the Bombay High Court, Maharashtra.
s/he obtains at birth which determines the occupational destiny. The Brahmin Hindu, much like racial category of White is not a natural category; but rather a production of sovereign power through several historical processes. The Brahmin is a composite of several processes of racialisation throughout history, the myth of the Brahmin as Aryan being the most recent production by oriental scholarship. The claim to Hindus as the origin people in the Indian nation involved a transformed symbolic of ‘blood’, in colonial modernity with the idea of the Hindus as a race rather than as segregated castes. This was the project of the Dayanand Saraswati through the Arya Samaj instituted in 1875. Dayanand, much like Hindu reformers of his time, rejected polytheism, idol worship and advocated female equality, marriage by choice (Dayanand 1981, 315) and widow remarriage (Dayanand 1981, 282). However, he was more radical in his interpretation of caste as degeneracy from the Aryan Golden Age. He encouraged inter-caste marriages, with a transformed idea of blood as lineage; where inter-caste marriages didn’t strip either of their caste, but rather transformed the identity, into a racial identity of the Hindu as the ‘Aryan’. Hinduism then wasn’t the brotherhood of all religions, but racially, superior to all other religions (Jordens 1978, 278-79). The Aryan Golden Age as interpreted by Dayanand as casteless, monotheistic and gender just is still the fundamental political articulation of the Hindu Nationalist project.

2.3 The Nation as Sacred Territory of a specific ‘WE’

The creation of the nation state as a miracle event, the ‘idea’ of the nation became a territorial reality. There was a transformation of authority and the debate on the origin people and invaders became even more relevant once the colonisers left (Chatterjee 1986). The exodus of Muslims from the nation came from a racialised understanding of the nation as the origin land of the Hindus, with an understanding of the ‘one’, as the Hindu. The exodus was an excretion, the purification of the land from parasites. It was a purification process that enabled a strong centralised state for the nation, in what could otherwise, be a weak federal state with the minorities, the ‘others’, living in the Hindu homeland (Bhagavan 2008).

The miracle of the transformation of power from colonial rule to the ‘national sovereign’ was in that there was the existence of the people: the nation, even as they were being constituted. The constitution declared ‘we the people’; ‘give to ourselves this constitution ‘even as the constitution enabled citizenship—the ‘we’. It was a transubstantiation, in which the ‘we’, constituted to write the constitution, as the constitution also constituted the ‘we’(Ranciere 2010). It is in the temporality of the miracle that the ‘we’, as secular was constituted. The abstract ‘we’, is territorialis; and the nation became a family form which there is no exit. The partition prior to the constitution of the ‘we’ as a political subject was a moment of political emergency; where in the absence of the state; Bare-life- the zoological emerged unto the political. It further strengthened the Hindu nationalist appropriation of the nationalist movement as anti-colonial and anti-imperial struggle against the British and the ‘Muslims’, to constitute be excluded from an unspoken ‘we’, in the secular nation of the Hindu majority (Kaviraj 1997). The nation claimed its territorial identity, in civilisational terms. The barbarians became political subjects, but ‘who’ these political subjects are in a nation of minority and majority need not be asked, when civilisational understandings became dominant in the discourse (Pandey 1999).

2.4 The Paranoiac Regime and the Criminal Minority

Even as the barbarians became colonial subjects, many of the colonial laws remained. The selective abolition of certain colonial laws enabled the creation of a new category- the ‘criminal’. The criminal is defined as subject contained within the nation-state through the centrifugal power of the state, however excluded from the legal-juridical
realm (Abraham 2015). Criminals, when stripped off their power to vote, are also, politically excluded. Section 124(A) of the constitution made it a crime to speak against the state; it was a seditious activity. Sedition replaced blasphemy from medieval to the modern context (Asad 2011). A series of laws that called to the use of ‘exceptional’ force of the state emerged, in which charges under these contexts weren’t seen as ‘criminal’, as juridical under ‘normal laws’, but rather were seen as ‘exceptional’, where normal law which guaranteed political rights were suspended. Security, as a discourse was primary in the institution of laws that enabled the state exception. The use of ‘exception’ by the sovereign, was a peculiar situation in which legal rights were suspended, to institute the reign of the sovereign, to create the Homo Sacer, of the Roman law. Homo Sacer, is the subject who is inclusively excluded from the political and legal ream (Grewal 2003).

The idea of the National Emergency was borrowed from the constitution of the Weimar Republics’ Article 4, and instituted as article 352 in the Indian Constitution (Fuchs and Gajendragadkar 1970). National Emergency is declared in light of armed rebellion or external aggression throughout the whole territorial expanse of the state. It was declared in 1962 during the China War, in 1971 during the Pakistan war and in 1975 by Indira Gandhi (John 2014). State Emergency, instituted in Article 356 allows for Presidential rule in the state and was further strengthened in the 42nd amendment that made it above judicial review. The Financial emergency in Article 360 can be declared in case of financial threats to the state. Modern politics as constituted in the states of emergency in biopolitical states is Sovereign politics acting beyond the law.

Sovereign politics however, as a category of national emergency implies the suspension of the rights of all citizens during its declaration. However, sovereign politics also has the peculiar mutation in which the law constitutes the state of emergency, not at a specific point in time but through all time to tame the ‘unruly’. Beyond the Indian penal code, laws of the colonial regime like the suppression of terrorism outrage act transferred the issues of criminal law which would be under ‘normal’ politics, unto the enactment of sovereign power by securitisation and the state of exception (Tharu 2007). The law targeted leaders of the nationalist struggle for arrest, detention, imprisonment and even death sentence (often as encounter cases) without trial or any political rights. Laws like AFSPA, UAPA, POTA and TADA transformed issues of law and governance into issues of security (Singh 2012). The idea of guilty before proven innocent began more and more true as the security and surveillance apparatus of the state expanded. The peculiar feature of this in the post-colonial context was how the state of exception took exception to minorities to criminalise and reduce to bare life. UAPA, TADA, POTA and AFSPA have laws that selectively criminalise Muslims and other sections of historic marginalisation of tribal groups and dalits. Strangely enough, for all the power of this extension beyond ‘normal’ law, those arrested have a conviction rate as low as 4% (Mate and Naseemullah 2010).

In the nation state, the sovereign is constituted by the majority ‘we’ that has political power, defined often along ethno nationalist lines. This makes the biopolitical nation state a giant gas chamber for racialised subjectivities; as criminalisation through the suspension of ‘normal politics’ becomes the norm. The Indian state has maintained and further constructed and expanded the state of exception through the retention of colonial laws. The Hindu sovereign works in a space ‘beyond the law’. As constitutive of national sovereign as a majority, everything that it divides as the ‘other’-Muslim and Dalit subjects are fundamentally othered in national security and the surveillance (Meer and Modood 2009). Post partition, this has been reinforced through the Gujarat

11. These are laws that transform ‘normal’ politics that deal with issues of law and governance (civil /criminal) into the ‘exception’. Anti-terror laws empower state securitisation to slip into normal politics where ‘suspected’ citizens can be stripped off of rights for acts deemed anti-national and anti-state.
2.5 Marginal Citizenship and the fight against the Hindu Border

Citizenship has become the site of deadly politics today. Ethno-nationalism is project of stripping ‘criminal’ minorities off citizenship to reduce them to bare life (Zoë). Laws that maintain the state of exception inside the state are methods of building camps not in a physical place outside, but on the very bodies of Criminal minority subjects. In the process, the nation state as an enclosed biopolitical entity itself becomes a giant gas chamber that progressively dehumanises its own citizens inside (Pandey 2008). Outside the state, colonially constituted borders are being used to ensure this process of dehumanisation. The politics of defining citizens along the border depending on their ethnic identity is also a method of exercising sovereignty ‘outside’ of territorial boundaries (Rahman and Van Schendel 2003). The blind eye to the Rohingya Crisis was the articulation by the Indian government that it didn’t care for refugees until they were Hindu or even Buddhist (as we had the Tibetan refugees incorporated as Hindus) (Yhome 2018). The National Registry of Citizenship of the Country post which emerged the Citizen Amendment Bill made a clear idea of inside and outside. It made clear that Indians are essentially Hindu, and only those who claim otherwise, are not Hindu. The Hindu is placed outside of time, with Hinduism as a religion with no particular tenet or orthodoxy. However theorising authority through myths of identity proves how the Hindu is a recently constituted identity in collaboration with the colonial sovereign that exercises sovereignty through criminalisation of minorities that it cannot appropriate into its framework.

Politics needs to be made on the context of Equality. Politics changes the partition of the sensible. It disrupts the ‘one’, claimed along racial and ethnic lines to include the excluded or those that have been inclusively excluded. The secu-ritisation of even leading figures in Bhima Koregaon (2018) was disruption of the Hindu nationalist narrative of politics that pit the national struggle against colonialism as a single meta-narrative through a dalit alternative imagi-nation (Teltumbde 2018). It enabled the articula-tion of traditionally criminalised voices of Dalits to interrupt the racialised politics of the state, and hence was regarded a ‘national security’ issue.

12. Gujarat Riots, 2002 was a three day communal pogrom that killed 720 Muslims (certain estimates claim more deaths) amidst rape, looting and burning. Narendra Modi was the Chief minister who got a clean chit despite accusations of instigation, negligence and silence amidst the violence that substantial academic literature claim as planned with the complicity of the state.

13. Babri Masjid demolition was undertaken by extreme right wing ethno-nationalists of Vishwa Hindu Parishad (VHP) in 1992, to secure claims that it had been a Hindu shrine before Muslim ‘occupation’. Babri Masjid was a 16th century mosque in Ayodhya, Uttar Pradesh. The demolition emboldened right wing presence in national media which was seen not as a right wing attempts to consolidate Hindus unto a single category in the context of Mardal agitations against the common ‘other’, who is the Muslim, but rather as the failure of Secularism.

14. The Citizenship (Amendment) Act, 2019 was passed by the Parliament of India on 11 December 2019. It amended the Citizenship Act of 1955 by providing a path to Indian citizenship for illegal migrants of Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious minorities, who had fled persecution from Pakistan, Bangladesh and Afghanistan before December 2014. Muslims from those countries were not given such eligibility. The act was the first time religion had been overtly used as a criterion for citizenship under Indian law.

15. The National Register of Citizens (NRC) is a register of all Indian citizens whose creation is mandated by the 2003 amend-ment of the Citizenship Act, 1955. Its purpose is to document all the legal citizens of India so that the illegal migrants can be identified and deported. It has been implemented for the state of Assam starting in 2013–2014. The Government of India plans to implement it for the rest of the country in 2020.
Security is the eruption of the zoological into the political. It is when the criminal has the right that politics begins. It is an aesthetic performance that enables the disruption of the partition of the sensible, to claim an alternative ‘we’, who claim to the ‘one’ on the basis of equality and justice. Minority subaltern politics of Dalit- Muslims and Adivasis is important to enable dissensus and political subversion that deconstructs the security-surveillance apparatus that criminalises selectively and codes the flow of people of specific ethnic and religious history along the border to assert Hindu Sovereignty (Chakrabarty 1998).

References


