

## **SITES OF EXCEPTION: GENDER VIOLENCE, DIGITAL ACTIVISM AND NIRBHAYA'S ZONE OF ANOMIE IN INDIA**

### **ABSTRACT**

Gender violence in India exists as a state of exception for the ways in which it occupies a non-legal, liminal space of existence as 'bare life' or 'life itself'. The rape and murder of Jyoti Singh Pandey unprecedentedly brought this to the surface. This article aims to highlight the ways in which the movement which emerged out of this case engaged with gender violence as a state of exception while the use new digital technologies by 'digital subjects'/'digital parasites' have constituted 'sites of exception' leading to new forms of organising and creating an emerging politics of gender justice in India.

### **INTRODUCTION**

Gender violence in India has both a normative and exceptional status. The normative status of gender violence—which has been problematically either written into (Criminal Amendment Act), presented through reified patriarchal interpretations, or ignored within legal statute in India—highlights how gender-based violence (GBV) has failed to be effectively recognised by the Indian state. The December 2012 rape and murder of Jyoti Singh Pandey brought this issue to the surface and highlighted the ways in which gender violence is in fact embedded within, rather than an exception to, the Indian state's laws which govern sexual and gender-based violence.

On December 16 2012, Jyoti Singh, a female physiotherapy student from New Delhi, was repeatedly raped by six men in a moving bus while making her way home with a male friend after watching a movie. Her male companion, who tried to protest, was also gagged and beaten. After they lost consciousness, the beaten and half-naked bodies of both victims were thrown

from the bus into the street. They were discovered by a passer-by and were immediately taken to hospital. After 13 days spent fighting for her life, Jyoti Singh passed away. Under the Indian Penal Code Section 228-A the name of a rape victim cannot be revealed and is a punishable offense, other than in the circumstances noted therein (CNN-IBN 2 January 2013). Abiding by Indian law, the actual name of the victim was never used by the media and pseudonyms such as ‘Damini’ (transl. lightning), ‘Jagruti’ (transl. awareness), ‘Amanat’ (transl. treasure), or, most commonly, ‘Nirbhaya’ (transl. fearless) were used. (CNN-IBN 2 January 2013).<sup>1</sup>

Foucault defined government as ‘the conduct of conduct’ and thus as a term which ranges from ‘governing the self’ to ‘governing others’. Overall, in his history of governmentality Foucault endeavours to show how the modern sovereign state and the modern autonomous individual co-determine each other's emergence and existence (Foucault 1982 in Lemke 2002). Hence the concept of governmentality plays a decisive role in his analytics of power and governance. According to Lemke (2002), ‘it offers a view on power beyond a perspective that centres either on consensus or on violence; it links technologies of the self with technologies of domination, the constitution of the subject to the formation of the state; finally, it helps to differentiate between power and domination’ (ibid 2002, p.3). In India colonial laws of governmentality, which have subsequently evolved into postcolonial laws of governance and governmentality, highlight the functions and aims of the state in relation to its citizenry. This can be specifically identified within the realm of gender and the law where the governmentality of gendered relations and what is legally deemed ‘violence’ and what is not.

Following Agamben’s (2000) theory, the first section of the paper addresses the idea of the ‘state of exception’, a space in a constant state of emergency and legal control, arguing that in

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<sup>1</sup> There have been considerable debates about using Jyoti’s actual name including her parents using her name publicly on several occasions (BBC 6 January 2013; BBC 16 December 2015). In this paper, however, I have used the name Nirbhaya and not Jyoti Singh since the case popularly came to be known as the ‘Nirbhaya case’. Further the name ‘Nirbhaya’ bears significance as it has become a symbol for social change and large scale gender activism in India.

India GBV exists in a continual state of exception because of the patriarchal nature of Indian society, embedded in societal practices and legal loop holes. However, this article subsequently highlights how the use new digital technologies by the ‘digital subjects’ can create a mode through which critique and protest against governmental control and societal practices can lead to the creation of ‘sites of exception’ in cyberspace, an alternate space for resistance and dissent, where contestations are simultaneously and interconnectedly taking place. The Indian state has a fraught position in relation to upholding principles of democracy which simultaneously appear to defend rights through the Constitution while taking them away through measures such as the Armed Forces Special Powers Act (AFSPA) and Unlawful Activities (Prevention) Act (UAPA) by suspending all ‘rights’ and law. While these ‘exceptions’ conceptually highlight how, in India, violence has been built into the state’s functioning, laws pertaining specifically to GBV and the movements aimed at protesting against or amending them have shown new forms of engagement that utilise the cyber-space. Finally, using the December 16 2012 Delhi Nirbhaya rape case in India as a primary case study, this article highlights the ways in which the movement that emerged out of the Nirbhaya case engaged with gender violence as a state of exception, at the same time constituting ‘sites of exception’ through digital activist spaces and new forms of mobilisations, political organising, media, and protests, creating an emerging politics of gender justice in India.

### **GENDER-BASED VIOLENCE AS A STATE OF EXCEPTION**

In defining the state of exception, Agamben drew from Carl Schmidt’s definition of sovereignty, which states that sovereignty is the power to determine the state of exception, to decide to whom the law applies and to whom it does not, and, finally, to declare a state of emergency (Burchard 2006). The state of exception has, as Agamben argues, gradually been emancipated from the context of war to be applied during times of peace in order to cope with social disorder or economic crisis (Humphreys 2006). Over time, the state of exception, which

was meant to be a provisional measure, has become a normal paradigm of government in which ‘that modern construction of located exceptionality, is no anomaly or anachronism’ (Chappell 2006, p.316) but, rather, is the materialization of ‘the hidden matrix and nomos of the political space in which we still live’ (Agamben 2000, p.37). According to Agamben (2005), it is not the case that only some subjects are abandoned by the law; rather, in modern times, ‘we are all virtually *homines sacri*’ (ibid 2005, p.115) or potentially *homo sacer* ‘a person outside the law’.

Agamben identified two main schools of thought on the legality of the state of exception. The first views it as an integral part of positive law and directly linked to the idea of sovereignty. This approach is codified in many national constitutions through the notion of derogation and emergency. On the face of a public emergency that threatens the sanctity of a national entity, international human rights treaties and many constitutions allow states to suspend the protection of certain basic rights. According to Humphreys (2006, p.678), ‘the existence of derogation like clauses is generally represented as a ‘concession’ to the ‘inevitability’ of exceptional state measures in times of emergency, and also as a means to somehow control these’. Derogation clauses have been viewed as the ‘greatest achievements of contemporary international law’ (Oraa 1992, p.134), for their ability to limit and control the exercise of power by the various national legal systems in times of emergency. However, in reality, the derogation model creates a space between fundamental rights and the rule of law in which states can remain lawful even while infringing individual rights, thus effectively giving rise to a double layered constitutional system (Humphreys 2006).

According to the second school of thought, the state of exception is ‘essentially extrajudicial’, something that is ‘prior to or other than law’ (Swarup 2008, p.10). For scholars subscribing to this school of thought, the constitutional validation of a state of exception is a rational acknowledgement of a limitation of constitutional power. They further argue that control of executive action in times of emergency by means of standard judicial liability practices is

neither possible nor desirable. This specific perspective endorses an opening of a state of exception to accommodate the issue via this power only for the time it takes to restore the constitutional order (Humphreys 2006). Agamben (2005), however, discarded both these views and argued that ‘the state of exception is neither internal nor external to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with one another’. At the heart of his argument, he asked: ‘How can an anomie be inscribed within the juridical order?’ (ibid 2005, p.27).

It can be argued that, in India, GBV exists in a continual state of exception because it is relegated to a space in which the lines between the states of legality and illegality are perpetually blurred either by legal practices or through patriarchal interpretations and social pressures, forcing its existence as ‘bare life’ or ‘life itself’. Reports released by the National Crime Records Bureau in India on 30 August 2016 showed that at least 34,651 cases of rape were reported across India in 2015. The reports further revealed that victims ranged from female children younger than 6 years to women over 60 years, with women aged between 18 and 30 reporting the largest number of rape cases - totalling almost 17,000. In 33,098 of the 34,651 reported cases the victims knew their alleged rapists (Al Jazeera 31 August 2016). However, these figures must be approached with caution as rape is highly under-reported in India as social structures of an Indian society still continue to restrict women’s autonomy, especially sexual autonomy, which is often justified in the name of culture (Sirnate & Nagarathinam 25 April 2015). This is especially common in cases of incestuous rapes or sexual assaults that take place within the family (Talwar 2013).

The protests after the Nirbhaya case resulted in a change in law through the Criminal Law (Amendment) Act of 2013 that altered various sections of the Indian Penal Code, the Code of Criminal Procedure and The Indian Evidence Act which dated back to the nineteenth century.

However, irrespective of the change in law the two issues that remained untouched were marital rape and rape by armed forces. Marital rape was not included in the new amendments as the lawmakers decided that it would potentially disrupt the institution of marriage and the entire patriarchal family structure in India thus denying that rape can occur within the sacred bonds of marriage (Rana 26 March 2013). The armed forces, especially in areas of instability (such as Kashmir and the North-East Indian states) are still effectively immune from prosecution for rape and sexual assault as they are protected by special laws such as the AFSPA. These laws legitimize impunity for systematic or isolated sexual violence by making government permission necessary before security forces can be prosecuted for any criminal offences. Since such permissions are rarely granted, these provisions effectively place security forces above the law, violating their victims' rights to remedy. Thus, the armed forces 'benefit from the boys' club protections that are enhanced in situations of sanctioned violence, committed against communities they are seriously alienated from' (BBC 28 March 2013). In these cases the patriarchal India state moves in to control the state of exception – that is why its control (through legal practices or their non-action in cases such as marital rape) is also a manifestation of patriarchal values.

## **METHODOLOGY**

I have conducted the data collection and analysis for this research using the Netnographic approach which combines online ethnography and participant observation with face-to-face qualitative semi-structured interviews. Netnography provides the methodological guidelines and is a disciplined approach to the culturally-oriented study of the technologically-mediated social interaction that occurred through the Internet and other forms of Information and Communication Technologies (ICTs) (Kozinets 2010). To adequately understand social life in contemporary society, it is becoming increasingly important to incorporate the study of the Internet in the realm of research. Online I have collected data from social media sites such as

Facebook groups and Twitter accounts of the most prominent individuals and organisations who were participating in the conversation using Hashtags such as #Nirbhaya, #DelhiGangRape, #DelhiProtests, #braveheart, #JyotiSingh, #Nirbhaya and #IndiasDaughter. I have further considered independent English online publishing/blogging platforms such as Youth Ki Awaz', 'Got Stared At' and 'Kafila'. I chose these blogs for their constant and critical engagement in the conversation around gender based violence after the case.

Following this, I conducted 30 semi-structured interviews with activists, organisations, journalists and civil society actors who participated in the Nirbhaya protests both online and offline in cities such as Delhi, Mumbai, Pune and Kolkata. Most of the interviews were conducted face-to-face. However, some interviews were also conducted on Skype because of availability and logistical issues. Finally, I conducted some interviews in the UK when activists who had attended many of these protests in India, were visiting London. I conducted, all aspects of data collection and analysis following a feminist approach. Further aligning with Clisby (2001), I have used the term 'participant' in this research instead of 'interviewees', 'the researched' or 'respondents' in order to establish a more egalitarian relationship between myself and the people with whom the research was conducted.

### **‘SITES OF EXCEPTION’ AND THE ‘DIGITAL PARASITE’**

Agamben (2005) elaborated on a theory of law suited to account for the existence of a realm of human activity not subject to law. The legal production of the state of exception appears in his work as an ongoing imperative to colonize 'life itself'. The stakes of this encroaching process could not be higher: it signals the slow disappearance of meaningful political action (Humphreys 2006:678). This has been made evident in modern politics with the rise of autocratic governments, right-wing fundamentalism, post-truth politics, and the loss of trust in democracy and freedom, all of which bring to life both Agamben's hypothesis on the state of exception becoming the law and the image of the *homo sacer*. In this backdrop, new digital

media technologies are providing a parallel space for activism. I call these digital spaces ‘sites of exception’, as they have opened up enormous opportunities for people to connect, collaborate, make demands for justice, and reclaim power.

To fully understand the ‘sites of exception’ we first need to understand the ‘digital subject’ who in their interactions and communication with others, often mediated by digital technologies, have created these sites of exceptions. In doing so, I draw from Bolton’s theory of ‘digital autopsies’. His theory offers a composite of the concepts offered by Michel Serres’s work *The Parasite* and N. Katherine Hayles’s *My Mother was a Computer*. According to Serres, all human are parasites and all human interactions create systems in which participants parasite one another. Further, since humans live among the parasites, the parasites not only consist of other humans that they interact with but they also form the environment in which they live. Serres describes the environment of parasites as a system constructed of ‘the flow of messages passing through the lines’ (Serres 2007 in Bolton 2014, p.17). This environment is also highly technologized and includes any pathway by which information can be transmitted and received. Hence, Serres’s parasitism replicates a model in which the host transmits and the guest/parasite receives and he calls them ‘biological parasites’. However, Serres redefines the roles of the host and the guest by introducing a second definition of parasite which he calls- ‘social parasite’ where the relationship between two parasites can be biological and social. The host and the guest can take on both roles and they parasite one another in recursive loop. Hence, this information loop creates a system, a feedback loop between the guest and host where they are both ‘simultaneously consuming and nourishing one another’ (Bolton 2014, p.18).

However, this parasitic relationship between two digital subjects will remain in a state of deathlike harmony unless a third definition of parasite is introduced- the noise, the interrupter, the disruptor- which facilitates dissent to challenge the status quo and consequently for new thinking to emerge. According to Serres, the relationship between two subjects is always



initiated and facilitated by a third party. Hence, a parasitical noise is used to simultaneously interrupt and reorder the communication between parasites. Serres further writes, 'Noise destroys and horrifies. But order and flat repetition are in the vicinity of death. Noise nourishes a new order' (Serres 2007 in Bolton 2014, p.18). Through this, we see the emergence of the possibility of agency as the subjects continually interrupt the flow of information while working within and transforming the environment and its structures. Further, in this system, the autonomy of the subject is always dependant on its relations with other subjects and their ability to constantly reimagine their function within the system. Hence, according to Bolton (2014, p. 19), 'agency and autonomy, therefore, become inextricably bound together, as agency is a necessary feature of self-making and thus autonomy'.

Bolton (2014) in theorising the process of digital autopoiesis draws an analogy between Serres's cybernetic parasites and the analog/digital subjects theorised by Hayles. According to Hayles, human subjects have always been mechanical and shaped through their interactions with technology. Hence, the emergence of digital technologies, with which most people now interact in some way or another, has given rise to the 'digital subject'. Hayles defines the digital subject as one which 'instantiates hierarchical coding levels that operate through a dynamic of fragmentation and recombination.' (Hayles 2005 in Bolton 2014, p.20). Such codes are free to engage in radical fragmentation giving rise to more substantial changes. Thus, the aim of the digital subject is to restructure and create a unique system and not return to its previous state of equilibrium. Since the digital subject is capable of drastic fragmentations, more possible ways to reorder the system can be achieved resulting in developing a further dimension to the potential for achieving agency within the technologized environment.

Serres's concept of parasitism talks about a form of communication, a reciprocal exchange of information between subjects or between a subject and its environment. This is completely true with the digital subject where the digital technologies are widespread in their lives, but

communications between two digital subjects are increasingly mediated through digital technologies. According to Bolton (2014, p.22), 'The human subject can be re-imagined in terms of the digital parasite. Not a self-contained entity merely exploiting or being exploited by other parasites and by its environment, but a decentred and hybrid being capable of embracing and even influencing its own transformations'. Hence, I argue that through the creation of the 'sites of exceptions', the 'digital subjects' have found a platform to fight oppression, challenge authority and shape their own transformation. Digital platforms offer great potential for disseminating ideas, shaping new modes of discourse and connecting to different constituencies and stakeholders allowing creative modes of protest to emerge. Within feminist scholarship, there is a wide range of literature on the use of social media to challenge rape culture and combat violence against women (Horeck 2014; Mendes, Ringrose, & Keller 2018; Phipps, Ringrose, Renold, & Jackson 2018; Rentschler 2014; Thrift 2014) giving rise to a renewed feminist thinking and politics in the digital environment (Baer 2016; Clark 2016; Fotopoulou 2016; Hill 2018; Jackson & Banaszczyk 2016; Losh 2014; Shaws 2012).

However, while digital subjects have created radical spaces of dissent within the digital environment, the large scale use of digital technologies have also given rise to concerns about privacy and surveillance. On one hand, digital technologies have given activists the opportunity to observe elites and government bodies making them more aware of their actions leading to self-regulation. On the other hand, it also placed power in the hands of the authorities to monitor dissent activities and leading to the curbing of social action (Garrett 2006). The Edward Snowden leaks have shown us the pervasiveness of surveillance techniques used by governments across the world transforming democracies into totalitarian regimes in the name of protection. The conjunction of transnationalisation, digitisation, and privatisation has led to blurring on the boundaries within which national security functions (Bauman et al. 2014).. Among others, countries such as Belarus, China, Azerbaijan, Egypt, Turkey and India are all

examples where the state has censored the uses of mobile networks and social media sites under circumstances it deemed politically necessary to curb dissent.

### **NIRBHAYA: ONLINE NARRATIVE AND DIGITAL ACTIVISM IN INDIA**

Over the last few decades, whilst ICTs and social media have become increasingly popular and widely used tools for activism around the world, it is only in the recent past that they have started being used as an alternative platform for activism in India. One of the most extensive uses of digital technologies was witnessed in the nationwide protests staged in India in the wake of the Delhi Nirbhaya rape case of 16 December 2012, making it one of the biggest gender movements that the country has ever witnessed. This case triggered an intense introspection into the nature of Indian society, its ideas of patriarchy, and the current structures of the government, which had clearly failed to provide justice to the women of the country.

Large number participants in their interviews pointed out that, when the Nirbhaya case was first reported, a vast section of the conversation on social media sites such as Facebook and Twitter were being generated by individual men and women, many of whom had no aspirations of being associated with any organisations. This participation of individuals resulted in a big shift in activism in India. It resulted in a shift in the tone of conversation and also a shift in the style of content. For example during the Nirbhaya case, on many occasions, the defining voice online was not any organisation or NGO but some previously unknown individual sharing his or her experiences and understandings related to the case which resulted in galvanising the public opinion. According to one participant,

Previously the only people who would discuss such issues would be activists in court, people associated with the women's rights movement, people affiliated to certain non-profit organisations or academics and researchers working on the issue. But, the Internet has opened up the conversation to all people leading to not only consciousness raising but also building solidarity and commitment.

(Participant 8, 22 October, 2014, interview with author, New Delhi)

Before the current technological revolution, protests in India largely depended on the mainstream media for setting the agenda and promoting their views. However, ICTs have provided an opportunity to individuals, civil society actors and activists to construct, shape and export the objectives of a movement including farming of ideologies, setting the agenda and constructing the flow of the narrative (Martin & Valenti 2012). While before, movement actors depended heavily on mainstream media, during the Nirbhaya protests many 24-hour news channels depended on social media, including stories from Facebook, Twitter and YouTube, to develop their narratives around the case. The voices on social media, on many occasions, determined mainstream media's stand on the issue. An example of this is nineteen-year-old Shambhavi Saxena who was at the protests at Jantar Mantar<sup>2</sup> on December 25, 2012, which was broken up by the police. Saxena along with some other agitators were taken into police custody (Anwer & Shrinivasan 31 December 2012). On her way to the police station and during her detainment, she shared with the world what was happening through her tweets, 'Illegally being held here at Parliament St Police Station Delhi w/ 15 other women. Terrified, pls RT' (Barn 10 March 2013). There was no denying that her voice was heard and more than 1700 people retweeted her message. According to Favstar, a social media analytics site, her tweets reached over 2,00,000 people all over the world (Barn 10 March 2013). This resulted in galvanising of the civil society where activists and lawyers arrived at the police station where she was detained to challenge the unjustified arrests of the protestors and to provide them with help and advice. Celebrities and the individuals from across the world also joined in to condemn the police on different social media sites. Following this incident, New Delhi Television (NDTV), a very popular all-news cable channel, ran an hour-long special program

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<sup>2</sup> An 18th century astronomical building that is a site of various protests in New Delhi

on mainstream media titled, “Young India Rising” about Saxena’s arrest and the ensuing public reaction (Rao 13 March 2013).

Agamben (2005) argued, as the state of exception becomes the rule, it leads to a steady decline of meaningful political action. This has been especially made evident in the context of gender violence in India. Being a woman in India can be difficult because of the countless discriminations women experience, in various forms, every single day; yet, this was the first time in more than a decade that India witnessed an internal gender movement of this nature and scale. 2012 saw social media creating a new phenomenon. According to Anwer and Shrinivasan (31 December 2012), ‘it saw the rise of the virtually connected Indian youth, which is likely to redraw the terms of engagement between the state and its urban population’. On December 2012, a pew research study established that nearly 45% of Indian web users, most of them from urban areas, connect on social media to discuss politics. Only Arab countries scored higher than India on this account. The numbers were backed by GlobalWebIndex, which noted in their September 2012 report that India was the third most socially active country with around 78 points (Anwer & Shrinivasan 31 December 2012).

Following Agamben’s (2005) thesis, the sovereign system (in this case, the government, the legal system, and the people in authority—such as the police and doctors, or even families) denies thousands of women across the country their basic human rights such as equality, safety, freedom of expression, and, most importantly, justice for crimes committed against them. Previously it was mainly women’s organisations and non-profits that were responsible for spreading awareness on such issues and creating solidarity. However, in the digital sphere, women in India started fighting to take the power back into their own hands by telling their stories, inspiring other women to do the same and demanding justice for the crimes committed against them. Women started addressing issues such as perceptions of safety and patriarchal

notions about gender violence on social media as such issues seldom received attention on mainstream media (Participant 2, 7 March 2014, interview with author, London).

Having been subjected to severe abuse at the hands of their perpetrators, victims and survivors of gender violence are often forced to relive the whole experience in the form of mental abuse at the hands of the authorities (Campbell & Raja 2005). These experiences of abuse have been called ‘the second assault’ (Martin & Powell 1994), ‘the second rape’ (Campbell, Wasco, Ahrens, Sefl, & Barnes 2001; Madigan & Gamble 1991) or ‘secondary victimization’ (Williams 1984). Hence, due to hostility, victim blaming, and trivialisation, large numbers of women are unwilling to report crimes—such as rape or sexual harassment—committed against them (Purkayastha, Subramaniam, Desai, & Bose 2003). Frequently, women also find it increasingly difficult to speak to their families about their experiences and to get support from them. This is largely due to the concepts of ‘honour’ and ‘dignity’ that exist to this day, and the shame and stigma attached to sexual violence (Kabeer 1988). Thus, women and girls are largely told to keep quiet and, even within the premises of the law, they receive little to no legal support. They are stripped of their basic biological and political rights, which leaves them exposed and unprotected.

Many participants I spoke to said how stories posted by other women on blogs and social media inspired them to talk, many for the first time, about their personal experience of abuse and harassment. One participant, who is a Supreme Court lawyer, said that she was repeatedly harassed by a senior lawyer who she worked for. On relating her story, she said that she never had the courage to speak about this and battled doubts for several years until she read a blog post by a young lawyer who said that she was sexually harassed by a Supreme Court judge. The participant further stated that she broke her silence not because she wanted to press charges but because she wanted to support others with her story who had suffered similar harassment (Participant 5, 20 October 2014, interview with author, New Delhi). Following this blog post,

many women lawyers across the country came out online with similar allegations. Another participant, an academic in a prominent university in New Delhi, said that even after teaching and writing about gender for several years she never had the courage to speak about her personal experience of violence until she read other women talking about similar experiences online after the Nirbhaya case. She said she spoke about her experience because it was time to demand a 'social and legal system where people could freely discuss sexual violence without being blamed or belittled' (Participant 6, 22 October 2014, interview with author, New Delhi). Both the state and the family as patriarchal institutions also work to silence women or regulate their narrative through framing the ideal victim-survivor and the ideal rape (Dey & Orton 2016; Patil & Purkayastha 2015). In that case the law or the patriarchal interpretation of it is used as a yardstick, even outside the courtroom, to measure and judge one's experience of rape. In 1988, feminist scholar Liz Kelly (1988) proposed her thesis on 'continuum of sexual violence' suggesting that women's experience of sexual violence and harm are interrelated and could not be contained within legal parameters that defined sexual offences. Hence, according to Loney-Howes (2018, p.38), 'by coming out and claiming an experience that may not fit within the parameters of legal definitions of rape, victim-survivors also challenge the permissibility of labelling one's experience without calling on "expert" knowledge to validate their claims' also giving rise alternate forms of justice and healing. Powell (2015), supports this views and states that that some online spaces have the potential to foster informal justice for victim- survivors of rape who have been denied recognition, support and justice by formal mechanisms, including criminal justice processes and restorative justice initiatives. These sites of exception have allowed women to establish a counter-narrative to the mainstream silencing mechanisms experienced by them and in doing so challenge dominant understandings of gender based violence (Alcoff & Gray 1993; Fileborn 2014).

Platforms like ‘Youth Ki Awaz’ (the voice of the youth) and ‘Got stared At’ have also given a platform for women to share their personal experiences of harassment and violence, not only to raise awareness, but also to create potential solidarity. The platform was launched so that women could share the pictures of what they were wearing when they were harassed along with their story. The platform received overwhelming response and people shared pictures of themselves in a wide range of outfits including traditional Indian clothes, western wear and even burka (Participant 8, 30 October 2014, interview with author, New Delhi). This campaign was specifically launched to create awareness about street harassment in India. Women in India who wear western clothes are often blamed for their own harassment saying that they were ‘asking for it’ when they decided to wear that kind of clothing (Kearl 2010). Through their campaign, ‘Got stared At’ also wanted to raise awareness about the fact that clothes are not the real reason behind street harassment as women, irrespective of what they wear or do, can be subjected to violence. Therefore, to fight street harassment deep-rooted issues of patriarchy and misogyny need to be addressed (Participant 8, 30 October 2014, interview with author, New Delhi).

ICTs and mobile phones have led to the blurring of the lines between the private and the public. Plummer (2002) noted that the wall between the private and the public has crumpled, resulting in our most private and personal narratives having the freedom to become public in ways that were not possible before the advent of ICTs. We have moved from a very ‘private personal story’ to a much more ‘public personal tale’ (Plummer 2002:8). Following a study exploring the discussion of sexism on twitter, Foster (2015) concluded that, when women were asked to tweet about sexism, they did so in a collective fashion, resulting in the creation of collective action, solidarity, and an increased sense of general wellbeing for women (Foster, 2015). Similar trends were noticed in India after the Nirbhaya case. Many personal stories of violence



and injustice had been lost in the real world. However, in the digital space, in the ‘site of exception’, women across the country used these same stories as a weapon to challenge the system, demand social change, and create a sense of community that would inspire other women to join the cause (Participant 2, 7 March 2014, interview with author, London).

Women have also become more aware and found several innovative approaches to fight against abuse. Many women, who have failed to get support from the authority in the first instance, have turned to social media for support. For example, some women have used mobile phones in India to shame the offenders by either filming what happened or taking pictures of the perpetrator. These pictures or videos are then uploaded on social media sites. Though such ‘naming and shaming’ techniques have been criticised as problematic, the reaction received by such posts on social media have, in many cases, compelled the authorities to take action against the perpetrators (Participant 10, 20 February 2015, interview with author, Skype). In a country where the system of law and ‘due process’ does not function the way it should, such digital techniques have provided many women with an avenue to fight for justice and change.

According to Powell (2015), it is perhaps the routine failure of the criminal justice system to receive conviction in rape cases that have driven women to document crimes by themselves. After Nirbhaya, the number of reported rape cases also increased considerably across the country. To a large extent, this was the outcome of the attention received by the Nirbhaya case, encouraging women to believe that they would get support and, if they did not get it from their families or the authorities, they could find it on an alternative platform. In this regard, a participant commented that ‘women had always been told to keep quiet about assaults, but that, post-Nirbhaya, a lot more women had been reporting rapes because, for the first time, they had felt that they had social sanction’ (Participant 3, 11 July 2014, interview with author, Skype). However, the conviction rate of rape still continues to be abysmally

low. Data from the National Crime Records Bureau (NCRB) show that in 2016 only 1 in every 4 cases of rape ended with conviction. The already-low conviction rate of 29% in 2015, fell further to 25.5% in 2016. The data for the years 2017 and 2018 is not available yet (Newslick Report, 07 June 2018).

However, at this stage it is important to consider the extent to which online activism post-Nirbhaya has become material action that resulted in sustainable change. Right after the case was reported a commission, headed by Supreme Court judge J. S. Verma was set up on December 23, 2012 to identify what changes should be implemented to the Criminal Law to provide more severe punishments for those convicted of sexual assault. First few words of the report submitted on January 23, 2013 stated , ‘The constitution of this Committee is in response to the country-wide peaceful public outcry of civil society, led by the youth, against the failure of governance to provide a safe and dignified environment for the women of India, who are constantly exposed to sexual violence’ (Verma, Seth, & Subramaniam 2013). Following the Verma Commission’s report, the quickest and most substantive overhaul of Criminal Law was implemented in India resulting in far-reaching changes.

Another important aspect of the Nirbhaya case was that the activism post-Nirbhaya did not remain stagnant. It resulted in the creation of online communities of actors regularly engaging in debates and discussion around gender and actively using the internet as a resource to spread awareness. The Nirbhaya movement also inspired several other gender movements across the country, creating a gender-dominated agenda through public discourse in India. Nirbhaya not only paved the way for future movements but became a symbol of gender activism and social change both amongst the domestic and the diaspora Indian community. Post-Nirbhaya, groups on Twitter such as ‘I am Nirbhaya’ have helped in documenting reports of violence against women and children in India and raise awareness. Editors of both ‘Youth Ki Awaz’ and ‘Got

stared At' confirmed that since Nirbhaya they have witnessed a substantial rise in interest around articles related to gender and women's rights.

Domestic gender campaigns such as *Hokkolorob* (let there be voices), *Happy to Bleed*<sup>3</sup>, *Ain't No Cinderella*<sup>4</sup>, *Pinjra Tod* (break the cage)<sup>5</sup>, and protests on sexual harassment on campus by students of Jawaharlal Nehru University have all received global attention. Baer, (2016), emphasises the interesting interrelationship between body politics experienced in a local context and feminist actions whose efficacy relies on their translocal and transnational articulation linking local experiences of sexual harassment to transnational narratives of inequality. She further states that central to digital feminist activism is its ability to highlight the global scale of gender oppression and bring together feminist protest movements across national borders. Supporting the domestic movements in India, other transnational campaigns organised by the Indian diaspora including the *emBODYindia* photo campaign organised in Harvard and Cornell, *No Country for Women* and *Make Love Not Scars* have helped spread awareness and encourage more women to reclaim spaces. Further, ICTs have allowed both individuals and institutions to connect with one another, share both experiences and expertise. Thus the voices that once existed in silos now have the opportunity to connect, unite, share intelligence and tactics, fight against patriarchy, build international solidarity and create a global gender movement (Martin and Valenti 2012).

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<sup>3</sup> - #HappyToBleed is a Facebook campaign to protest against a sexist statement made by an Indian temple chief. He said that he would allow women to enter the temple shrine only after a machine was invented to detect if they were "pure" - meaning that they were not menstruating.

<sup>4</sup> In August 2017, a 29-year-old woman was chased and harassed by 2 men in a white SUV in Chandigarh. One of the perpetrators was allegedly was Haryana BJP chief Subhash Barala's son, Vikas Barala. In talking about the incident Haryana BJP Vice-President Ramveer Bhatti said- "The girl should not have gone out at 12 in the night. Why was she driving so late in the night? The atmosphere is not right. We need to take care of ourselves". Protesting against these comments of victim blaming, women posted photos of themselves on nights out in cities across India with the hashtag 'Ain't No Cinderella'

<sup>5</sup> With the idea of reclaiming public places, in 2015 an autonomous women's collective of students and alumni of colleges from across Delhi called Pinjra Tod was formed to make hostel and paying guest accommodation regulations less regressive and restrictive for women student. Pinjra Tod work towards countering the 'security narrative' which is structured around securitisation of the bodies of women and patriarchal protectionism.

The state of exception has a long history in India, which throws notions of democracy, 'rights' and citizenship into question. However, the emerging politics of gender justice in the 'sites of exception' can no longer be ignored as it has augmented the space for gender activism in India, bringing in not only new players but also broadening their scope giving rise to new counter-publics and contestations.

The idea of digital counter-publics is rooted in Nancy Fraser's (1990) conception of the subaltern counterpublic which emerged as a critique of Habermas's idea of the public sphere which imagined it to be a space of where citizens could democratically engage in debate and enact political participation through the medium of talk. She argues that historically members of subordinated social groups including women, workers, peoples of colour, queer people have been systematically excluded from the public sphere and minority communities across the world have repeatedly found it advantageous to constitute their alternative publics. Fraser (1990) calls these subaltern counterpublics suggesting that they are 'parallel discursive arenas where members of subordinated social groups invent and circulate counter discourses, which in turn permit them to formulate oppositional interpretations of their identities, interests, and need' (ibid 1990, p.67). In the current context, as we see digital technologies becoming a natural extension of our everyday lives, many of these subaltern counterpublics have also migrated and extended to virtual and digitally networked spaces resulting in the formation of digital counterpublics (Hill 2018; Jackson & Banaszczyk 2016; Shaw 2012). However, Fraser (1990) warns that the subaltern counterpublics are not always democratic, egalitarian and virtuous spaces and even if they are, they are not always above practicing their own exclusions and marginalisation. Due to low cost and easy accessibility a large section of feminist discussions have moved online (Khalil 2014; Loney-Howes 2015; Zlitni & Touati 2012) however to say all women's voices are equally represented in the virtual environment would be also be incorrect. As internet and digital technologies become a

natural extension of our daily lives, the social exclusions and inequalities in the real world also start manifesting in the virtual. Hence according to Shaw (2012), 'the study of politics online must take exclusion, affect, identity, power and inequality into consideration, and therefore cannot require an ideal public in which these things do not exist' (ibid 2012, p. 43). Intersectional conversations around privilege, power dynamics and hierarchies have been largely absent from the feminist discourse both online and offline in India (Ayyar 2017; Bargi 2017). We have seen very similar patterns within Dalit activism where the question of patriarchy is ignored in favour of the caste question (Chadha 2018) or even within the left or radical left political groups where the ideology of class struggle often trumps questions of caste and patriarchy (Ghosh 7 November 2017). Even though Dalit, Bahujan and Adivasi (DBA) women in India have historically been deprived often of even the most basic of human rights, the feminist movement has been largely led by privileged, upper-class, upper-caste women. This then extends to the kind of issues that are championed by the feminist community (Dhanaraj 18 November 2018).

However, with the embedding of digital technology with the social and cultural narrative of society we see the emergence of a new kind of radical politics. Dalit groups in India have turned to alternative spaces online not only to challenge dominant discourse through discursive practices but also to build solidarities nationally and transnationally (Kumar 2015; Kumar & Subramani 2014; Mishra 2017; Nayar 2011). New media has also had significant impact on queer communities in India providing them avenues to not only establish their own political narratives but carved a social space for interaction and dialogues (Dasgupta, 2014, 2017; Mitra & Gajjala, 2008). Within the feminist movement, most recently, following the #MeToo movement in India hundreds of women came out online with their own narratives of sexual harassment and abuse (Chadha 2018; Datta 2017; Gajjala 2018; Pujari 2017; Sen 2017). It was perhaps one of the first times where voices of minority feminists were are the

forefront decentring Savarna (high-caste) feminists and disrupting the 'nationalist framings of Indian feminism by revealing a vast terrain of multiple contestations and power relations' (Roy 2019). So, while the feminist counterpublic discourse in India is still rife with exclusions, it is in these 'site of exceptions' that we see the emergence of a new kind of feminist politics that is intersectional and inclusive. According to Mouffe (2005) 'no radical politics can exist without challenging existing power relations' (ibid 2005, p.51). Hence, the sites of exception not only challenge the discourse in the public sphere but also in the counterpublic sphere constantly raising questions about power dynamics and hierarchies. It allows for the noise, the interrupter, the disruptor that Serres (2007) speaks about. It has made the gender movement in India far-reaching, and, in other ways more contested, making it a more dynamic, internally debated movement than before.

However, on one hand, as digital technologies have given power to people, on the other hand, it has also given rise to further exclusions and discriminations. Following the Nirbhaya protests, a lot of conversations online have been problematic and severely critiqued by the feminist community. For example, there were extensive conversations on communities concerning protection, security and how men need to 'man-up' and protect their women, which is inherently patriarchal (Participant 19, 30 October 2014, interview with author, New Delhi). Conversations such as this can potentially lead to the diluting of the important conversations around gender. There has also been a steep rise in online harassment against people talking about gender and sharing their experiences, silencing many who fear a severe backlash. This leads us to question that to what extent are the 'sites of exception' spaces of equality, free speech and dissent or are they extensions of the 'state of exception'?

This concern is further amplified due to laws such as the Information and Technology Act (IT Act) that was originally enacted in 2000 and amended in 2008. This law mirrors a law passed

during the colonial era giving the government rights to intercept communication in the ‘occurrence of public emergency or in the interest of public safety’ (Litton, 2015). India’s formal surveillance program called Central Monitoring System (CMS) also poses a serious threat to privacy and free speech. Following the implementation of CMS, according to Litton (2015) ‘India is poised to see a marked shift in the way speech is regulated. The former system of "private censorship" will give way to arbitrary monitoring through CMS and the subsequent prosecution of citizens. This will have a chilling effect on the Indian populace. Ultimately, the implementation of CMS will lead to widespread self-censorship and the suppression of ideas in the marketplace’ (ibid 2015, p.108).

### **CONCLUSION**

The governmental state in India relies upon a perpetual state of exception so that citizens can be given ‘rights,’ on the one hand, while simultaneously be denied them. The history of gender violence in India shows disregard for the victims, not only by the legal system but by all other aspects of a staunchly patriarchal system, including the family, community and the state itself. As I have argued, gender violence in India exists in a constant state of exception due to its position in a non-legal, marginalised space in which victims receive little or no support for either self-recovery or getting justice. Gender violence continues to be trivialised, and its victims are blamed for the crimes committed against them, thus pushing them into a space devoid of any legal obligations.

The patriarchal system sustains itself within and alongside the machinations of the Indian state. However, while the state of exception in India exists in the colluding spaces across the state’s functioning and the hegemonies of patriarchy, the digital world has brought into existence an alternate space for activism, a ‘site of exception’ in which the digital subjects are not powerless. Armed with the power of information, the power to communicate, connect, and collaborate, activists across the globe have started using the digital space to mobilise as well as generate

collective action and solidarity. New layerings of ‘exceptions’ can be identified as responses to the states of exception which continue to evolve and develop new methods, tools and platforms of organising. In India, this was made evident in the protests that followed the Nirbhaya case when protests against the state of exception of GBV were met by sites of exception which supplanted the policing of the anti-rape movement by augmenting and bolstering on-the-street protests with online activism.

The findings of this article specifically demonstrate three important aspects of these ‘sites of exception’ within the context of feminist activism- their ability to generate online solidarity, transnationalisation of the feminist movement, and development of more intersectional and inclusive approaches.

A participant, in her interview, speaking about her experience of sexual violence and said that she has never been able to articulate it previously. Even though she worked in an NGO, she went to the Nirbhaya protest for herself because she wanted change. This however is not an isolated story. Large number of individuals who went to the protests with their personal stories suddenly found others, both on ground and on social media, who shared almost exact same experiences. They were not alone and soon support structures, solidarities and communities started emerging. So, even though some people joined the movement as individuals, very soon became part of a collective because of shared experiences leading to the development of social and political consciousness (Mendes et al., 2018). Hashtag feminism highlights this interplay of this individual and the collective behaviour. Individual stories of oppression, when compiled under one hashtag, demonstrate collective experiences of structural inequality (Baer, 2016). 15). Furthermore, survivors who often have been silenced by fear of retaliation, humiliation or their experiences not being believed, have been carrying around the burden of this agony for months, years, and even decades. In their case, the experience of speaking out is not only transformative and empowering but is also cathartic (Alcoff & Gray 1993).



Digital gender activism has also demonstrated the power to mobilise thousands of people across the world encouraging them to take political actions at an unprecedented scale and speed producing remarkable effects and changing the ways in which advocacy and action are conducted within the feminist community in India. Over the past few years valuable global collaborations have not only allowed the feminist movement to expand but also for local and national movements in India to get transnational support. As an engagement with India's state of exception, a crucial aspect of online activism has been its ability to raise consciousness, spread awareness and hold the government and people in authority accountable for their actions. In this context one participant states, 'the Indian government and people in authority now know that they are being watched, not only by the Indian population but also by people across the globe. More support means that our movement shall grow stronger' (Participant 4, 23 September 2014, interview with author, Skype).

Finally, bringing together diverse feminist constituencies, these sites of exception have enabled new kinds of intersectional conversations (Baer 2016). These sites are becoming important spaces to challenge the internal exclusions within the feminist movement looking at gender based violence through the lens of caste, class, religion, citizenship and sexuality. In this context these sites of exception challenge not the dominant public sphere but also the counterpublic feminist discourse to advocate for a radical feminist politics which is more intersectional and inclusive than ever before.

The examples highlighted here have shown how social media have not only created an alternative space in which women can share their experiences, but they have also created a space in which women can manoeuvre the legal and state limitations to their protests. Digital technologies have provided individuals and groups with an extraordinary medium to build movements, generate interest, and enhance participation both locally and globally, without the help of mainstream media sources. However, these sites of exception are neither entirely

autonomous from states of exception nor are able to single-handedly overthrow the state's hold on its tools of control to guard its authoritative decision-making powers of where the law applies and ceases to exist. The co-option of online platforms by the state and its discourse on inclusion and response is one limitation to maintaining the critical edge of these sites. In order to maintain their exceptionality, sites of exception must maintain their autonomy while also continuing to track the state's shifting invocation of homo sacer as and when it deems necessary.

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