

## **Constructing Native Homosexuality in British India**

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#### *Introduction*

In this paper I will examine how British constructions and criminalization of Indian homosexuality that evolved within the discourse of the imperial project. I will situate my discussion in the late nineteenth century, during which British colonists introduced anti-sodomy statutes to the Indian colony and homosexuality was socially and legally reconsidered in ways without precedent in pre-colonial India. By considering how Indian homosexuality was constructed in this colonial moment, we will be able to better understand the methods by which Britain asserted their colonial authority in nineteenth century India. In order to prove my claim, I will consider previous scholarship that has analyzed British Orientalist representations of Indian homosexuality, trials and testimonies under the anti-sodomy statute, Section 377 of the Indian Penal code, and the political and historical context of the late nineteenth century colonial moment in British India. Drawing upon this scholarship, I argue that British constructions and criminalization of Indian homosexuality served to emphasize the difference between native subjects and British rulers. I demonstrate that by associating “perverse” and “criminal” homosexual identity with native subjects, British rulers accentuated the divide between the ruler and the ruled, thus reinforcing their racial and moral superiority and, in turn, their colonial authority.

I present my argument in three parts. First, I discuss the historical context in which anti-sodomy laws were introduced to India in 1860. I will outline this moment, during which the British endeavored to maintain Anglo racial purity and superiority, through policies and rhetoric that popularized the ostracization of Indian subjects—a phenomenon that I refer to as “imperial isolationism”—and describe the imperial ideology behind this isolationism. Next, I will discuss the various ways Indian homosexuality was constructed and characterized as perverse and degenerate in British scholarship and mainstream colonial discourse. I will present the evidence that Western Orientalist scholarship reframed indigenous treatment of Indian homosexuality in accordance to Western norms, and essentialized homosexuality as inherent to native identity. Finally, I will discuss the ways in which the anti-sodomy statute, Section 377 of the Indian Penal code, criminalized homosexuality in colonial India.

#### *Literature Review*

In order to accurately understand how the British colonial occupation of the Indian subcontinent shaped homosexual identity in India, it is best to consider the topic through a variety of theoretical approaches. Indian homosexuality must be studied in the context of imperial political motivations, queer identity politics, and British Orientalist projects, as each of these theoretical lenses provides significant insight into the ways British colonizers constructed, interacted with, and ultimately, impacted homosexuality in India. I will contextualize my discussion by outlining some existing scholarly analyses of sexuality in colonial India from across disciplinary perspectives. When put into conversation, these separate bodies of scholarship help to provide a holistic analysis of colonial Indian homosexuality.

Queer theorists and Indologists who have studied the evolution of homosexuality in India have focused on the nineteenth century as period of significant transformation in Indian cultural understandings of homosexuality. Throughout this period, a minor strand of pre-colonial homophobia in India gave way to mainstream condemnation of homosexuality. Such changes can be found in the British rewritings of homosexual indigenous literature, the formal banning of sodomy in India, and changes in sexual regulations in the British metropole.<sup>1</sup> Historiographical accounts of Indian homosexuality in the colonial moment tend to focus on the British imposition of Section 377 of the Indian Penal code on October 6, 1860, and address how the codification and, in turn, reinterpretation, of native Indian law affected the treatment of homosexuality. In “Politics of Penetration: Section 377 of the Indian Penal Code,” Suparna Bhaskaran investigates the factors that motivated Britain to impose the anti-sodomy clause in India in 1860. Bhaskaran also discusses changes in colonial policies, militarization, and imperial isolationism.<sup>2</sup> The term imperial isolationism refers to the various tactics used by the British to isolate British colonizers from Indian culture and people through the development of an indifferent bureaucratic imperial state that placed utmost emphasis on the maintenance of British racial superiority.<sup>3</sup> This strategy of imperial isolationism was implemented through a variety of channels, for a variety of purposes, that I will discuss later.

By 1860, criminal courts that had previously followed Muslim law were integrated into British law, and by 1864, Muslim scholars and the Persian language were replaced by jurors trained in English language and law, transferring judicial power from Muslim to British rulers.<sup>4</sup> Finally, with the introduction of the Indian Penal Code in 1860, British rulers secured total judicial authority. Through the project of codification, British officials homogenized highly localized Muslim and Hindu systems of law and created a standardized legal code based upon the British model.<sup>5</sup> By codifying native law, colonizers became newly empowered to regulate the behavior of colonial subjects.

In the first half of the 19<sup>th</sup> century, a variety of measures were taken to maintain British racial purity by preventing miscegenation of British officers. Sexual regulations such as these were influenced by the purity campaign, a British political movement that advocated for the implementation of a repressive sex code and “canonization of sexual respectability” at the British metropole. European understandings of homosexuality were reframed through the rhetoric of the purity campaign, and homosexuality came to be known as an identifiable condition rather than an isolated crime.<sup>6</sup> Bhaskaran and Hyam assert that the sentiments of the purity campaign heavily influenced the content of the new codified Indian Penal Code, and inspired Section 377, the anti-sodomy clause.

Bhaskaran, Chatterjee, Arondekar, and Gupta agree that the homogenization and restructuring of Indian law systems under the Indian Penal Code of 1860 drastically changed the prosecution of homosexual acts in India. Through close readings of testimonies, judicial commentaries, and transcripts of cases tried under Section 377, Alok Gupta and Anjali Arondekar have analyzed how the Indian homosexual was characterized and criminalized through judicial procedures. Under the Indian Penal Code, pre-colonial Islamic systems of law that relied primarily on testimony and confession were replaced by British judicial systems that drew heavily on medical jurisprudence as a source of truth.<sup>7</sup> Thus, the basis for one’s “guilt” of committing a crime of homosexuality was tied closely to the body of the native, and created a “medically verifiable discourse of perverse otherness.”<sup>8</sup> Gupta points to the effects of the terms of Section 377 that

establish homosexuality as nonnormative and inferior behavior, and outlaw “carnal intercourse *against the order of nature*.” This ambiguous terminology allowed British courts to liberally interpret the definition of sodomy, which over time came to be defined as all non-procreative acts involving penetration, including rape.<sup>9</sup> This interpretation technically applies to both heterosexual and homosexual acts, but over the years Indian court rulings have effectively equated sodomy with homosexual sodomy.<sup>10</sup> Such an interpretation has had long lasting impact on the treatment of homosexuality in contemporary India, which is still popularly considered to be “unnatural.”<sup>11</sup> While the treatment of homosexuality in pre-British India is not entirely clear, indigenous literature, art, and religious traditions suggest that homosexuality was practiced ambiguously by individuals from all social classes, and was not seen as part of one’s identity.<sup>12</sup> Furthermore, individuals engaging in same-sex relationships generally did not face legal prosecution in pre-colonial India.<sup>13</sup> As such, the anti-sodomy statutes introduced to India by British rule significantly transformed the regulation and overall treatment of Indian homosexuality.

In the often discussed case of *Queen Empress vs. Khairati*, (1844) the defendant, a native Indian “eunuch” named Khairati, was accused and convicted of sodomy, despite a lack of evidence, on the sole grounds that he was known to dress as a woman and showed signs of a “habitual sodomite.” In contrast, British soldiers tried for similar crimes of sodomy were punished far more leniently, for their “immoral tendencies.”<sup>14</sup> Arondekar argues that this loaded language and uneven enforcement of law, exemplifies the ways colonizers used the Indian Penal Code to prosecute the native for their innate “unnaturalness.” Given the relatively small number of cases prosecuted under Section 377, Boyce argues that anti-sodomy laws had greater impact on the moral climate than legal procedures.<sup>15</sup> Nevertheless, the rhetoric of the courts gives valuable insight into these larger, ambiguous moral shifts.

According to Indrani Chatterjee, the introduction of British legal systems even prior to the formal implementation of the Indian Penal Code impacted discourse surrounding same-sex relationships. Chatterjee argues that European understandings of gender and sexuality were imposed through the language of British police reports and testimonies.<sup>16</sup> For example, British records of native reports of sodomy mischaracterize conflict by ignoring violations of social status and emphasizing gender as the source of the crime of sodomy. Native reports of sodomy given verbally to British officers emphasized violations of social class as the main source of the crime, i.e. a boy slave has sexual relations with an elite male, causing a disturbance in social order by transgressing class divisions. English language translations of such reports ignored the crime of status transgression and instead recorded the crime as the act of same-sex relations itself, transforming the recorded definition of the criminal act.<sup>17</sup> In addition, in the testimonies of British soldiers accused of sodomy, such as in the case of William Orby Hunter, homosexuality was characterized as a mutually exclusive alternative to heterosexuality—introducing a binary understanding of sexual desire that did not exist in pre-colonial discourse.<sup>18</sup> Through this reasoning, homosexuality is framed in moral and social opposition to heterosexuality. This binary understanding of sexuality is a Western construct that indigenous Indians did not hold—by indigenous understanding, homosexual relationships could be practiced alongside heterosexual relationships, and just because one engaged in one act did not mean that they would not engage in the other.

As I mentioned previously, the debate surrounding the nature of homosexuality in India prior to the occupation of the Raj is expansive and inconclusive. Nevertheless, by considering

Orientalist literature one can understand how Western epistemology interpreted indigenous Indian sexuality. Oriental scholars of the nineteenth century were particularly fascinated by the sexuality of Indian natives precisely because it differed so vastly from the norms of the British metropole.<sup>19</sup> In order to inform his anthropological study of ambiguous same sex relationships in contemporary India, Paul Boyce analyzes colonial constructions of Indian sexuality and gender, and argues that contradictory British constructions of the native homosexual exemplify colonizers' inability to associate Indian homosexuality with an identity that fit British norms.<sup>20</sup> While normative discourse in the British metropole associated homosexuality with an effeminate nature, popular Orientalist rhetoric associated homosexuality with the degenerate "manly" and "virile" Indian tribesmen.<sup>21</sup> Simultaneously, the image of the "effeminate Bengali" who was known to engage in "perverse sexual indulgence" pervaded British colonial literary discourse.<sup>22</sup> These two constructions of homosexual identity—each crafted intentionally, based upon the interactions of gender, sexuality, and power—are directly contradictory, and exemplify colonists' failure to construct a singular universal identity for the Indian homosexual.

Despite the differences between colonial accounts, Aldrich and Parry, Benita, and Sprinker highlight the dissonance between Indian sexuality and the norms of the metropole. Common themes throughout British writings include surprise at the fact that homosexuality was not reserved for degenerate social classes as in the West, but was common even amongst the elite, and unease at the general separation between public and private expression of sexuality.<sup>23</sup> The influence of these dissonances is reflected in the legal prosecution of sodomy, as Indian elites were punished much more leniently for their homosexual acts than lower class natives.<sup>24</sup>

Through the construction and implementation of British legal systems, introduction of Western normative understandings of gender and sexuality, and certainly many other aspects existing scholarship has yet to address, British colonialism undoubtedly influenced the treatment and understanding of homosexuality in India. When considered in context of one another, these bodies of scholarship can be used to uncover a new, holistic understanding of the transformation of Indian homosexuality in the colonial moment.

### *Research Design*

In my research process, I choose to examine three distinct bodies of work and consider how they build upon one another to tell the story of colonial homosexuality. I review historical accounts of British India in the nineteenth century as it was during this time that the first anti-sodomy laws were passed in the colony, and homosexuality was given a legal identity that stands to the present day. I then analyze British colonial literature to determine how Indian homosexuality was portrayed in mainstream colonial discourse. This literature captures British colonizers' reactions to indigenous homosexuality, and the language they used to communicate these encounters to the metropole. It also serves as a lens to consider the stark differences between indigenous sexuality and Western sexual norms, and how these two discourses interacted and influenced one another. Finally, I discuss the effects and interpretations of the Indian Penal Code and the colonial anti-sodomy statute Section 377, as the criminalization of homosexuality had heavy implications for both the social and legal treatment of homosexuality. Given personal language restrictions, my research was limited to English language sources, and thus I focused my question on the discourse amongst colonizers and British imperial actors. Building upon this

research, I argue that British encounters with and portrayals of indigenous homosexuality will reflect the racist and isolationist sentiments of the era, and will be employed to emphasize the inferiority and difference of Indian natives.

### *Racialism and Native Inferiority*

Throughout their 200 years of occupation, British colonizers—as well as other imperial actors—leveraged a variety of ideological and political tactics to secure their imperial dominance, depending on the context of the colonial moment. Racial differentiation between British colonizers and Indian subjects characterized imperial discourse throughout British rule, but emerged as particularly potent in the late nineteenth century. Semitic ideology promoted the idea that British colonizers were a superior, civilized race “divinely appointed” to rule over Indian subjects.<sup>25</sup> Scientific scholarship, known as “social Darwinism,” that claimed to prove the biological inferiority of non-white peoples was popular in Europe since the eighteenth century, and by the mid-nineteenth century, mainstream imperial discourse justified imperial domination as the moral calling of the advanced and civilized nations of the West to save and civilize inherently “barbaric” peoples.<sup>26</sup> This Semitic ideology is propounded in the rhetoric of British propaganda, political campaigns, and popular Orientalist scholarship of the nineteenth century.<sup>27</sup> In his address to the Imperial Institute on 11 November 1895, British politician and Colonial Secretary Joseph Chamberlain expresses these racialized sentiments in so many words: “I believe in the British Empire, and... I believe in the British race. I believe that the British race is the greatest of governing races that the world has ever seen.”<sup>28</sup> This confidence in the righteousness of the British race served as a guiding principal of their imperial mission.

### *Isolationist Imperialism in British India*

While the ideology of racial superiority pervaded imperial discourse throughout British rule, its practical implementation was transformed in the mid-to-late nineteenth century. In reaction to the Indian independence movement of 1857, termed the “Sepoy Rebellion,” Queen Victoria took direct control and administration of India, and British governance of India became increasingly militarized and isolationist.<sup>29</sup> During this period, increased emphasis was placed on maintaining racial purity through British social, sexual, and cultural isolation. Mainstream discourse and colonial policy became increasingly concerned with maintaining and emphasizing divide between British colonizers and Indian subjects in an effort to reinforce British superiority and authority.<sup>30</sup> Evidence of this shift toward social and cultural isolationism can be found in the changes in the regulation of sexual lives of British colonizers.

In *Empire and Sexuality*, Ronald Hyam analyses the sexual policies of Britain throughout their colonial moment in order to understand the relationships between colonizers and colonial subjects during British imperial reign. In his discussion of the sexual life of the British Raj, Hyam notes that prior to the 1860s, intermarriage between British army officials and Indian women was common, and socially permissible. According to one estimate, by the mid-eighteenth century, nearly ninety percent of British colonizers were involved in such marriages.<sup>31</sup> Furthermore, it was common for officers to house an Indian woman, known as a *bibi*, as a sexual companion up until the 1860s.<sup>32</sup> Nevertheless, as the climate of British imperial rule shifted towards isolationism, it

became increasingly shameful for officers to have sexual relations of any sort with Indian subjects. In the post-mutiny period, Englishwomen began being annually imported to the British colonies via newly constructed railways and improved steamship technology to be married off to officers, who were feared to otherwise turn to “Oriental vices of Sodom and Gomorrah.”<sup>33</sup> These Englishwomen, termed “memsahibs,” were often described as inhabitants of a cultural vacuum, who interacted only with other British citizens, and expressed nothing but disdain for native Indians.<sup>34</sup> Their presence and the “cultural vacuum” they inhabited may have been a strategic construction of the isolationist moment, which acted as a means to preserve and inflate both the biological and cultural separation of British rulers.

The employment of Anglo-isolationism as an imperial tactic was not unprecedented. A similar separation occurred in reaction to the uprising in the French colony of Santo Domingo in 1791, wherein French soldiers took heightened measures to segregate their lives from native subjects.<sup>1</sup> This unexpected uprising against white rule shook imperial empires around the world, and spurred fears that a similar uprising against British rule could occur in India. In reaction, Governor-General Cornwallis passed a series of policies that prohibited Anglo-Indians (half Indian and half British) from holding military or civil office, and discharged all previously enlisted Anglo-Indian soldiers by 1808.<sup>35</sup> This military purge served to widen the “social gulf” between British rulers and natives, in defense against any rebellious collaboration between Indian natives and half-Indian officers.

When considering the ways homosexuality was constructed in British India it is of utmost importance to understand the context of increased imperial isolationism in the mid-to-late 1800s. The heightened importance placed upon maintaining and accentuating the divide between British colonizers and Indian natives shaped the ways Indian homosexuality was constructed in British literature, as well as how homosexuality was legally prosecuted. Furthermore, the historical context of the mid-nineteenth century is particularly relevant to my discussion of the colonial anti-sodomy clause, Section 377 of the Indian Penal Code, as it was passed in 1860, only three years after the Sepoy Rebellion.

### *Constructing Native Homosexuality in British Literature*

As described by Ruth Vanita, it is important to understand that “prior to late nineteenth century European sexologists’ and psychologists’ use of the words ‘homosexual,’ ‘lesbian,’ ‘heterosexual,’ inchoate sexualities existed but were not perceived as defining individuals, groups, or relationships.”<sup>36</sup> As such, the European idea that sexual expressions, actions, or preferences are associated with one’s personal identity did not frame native Indians’ conceptions of sexuality, and participation in male-to-male relationships or sex acts did not carry the identificatory weight that characterizes one as a homosexual. Evidence of such sexual ambiguity can be found in indigenous poetry, literature, and art prior to the colonial period and has been extensively studied by queer theorists, art historians, religious scholars, and more.<sup>37</sup> In *Same Sex Love in India: Readings from Literature and History*, Ruth Vanita and Saleem Kidwai, among others, examine the literature of ancient and modern India in order to recreate same-sex relationships and their expression throughout Indian history.<sup>38</sup> I will not attempt to relay the nature of homosexuality in precolonial India here, but rather wish to highlight the ways in which indigenous expressions of sexuality came

into contact—and conflict—with Western understandings of homosexuality during the colonial moment. By considering depictions of Indian homosexuality in colonial literature and discourse, one can gain an understanding of the ways imperial scholars attempted to construct Indian homosexuality to fit European normative understandings of sexuality.

In order to understand British constructions of Indian sexuality, one must consider the mainstream discourse of the metropole. From the mid to late 1800s British feminist and social activist Josephine Butler led a national campaign in Britain against regulated prostitution that eventually developed into a “multiple assault of sexual life.”<sup>39</sup> Termed the purity campaign, the movement aimed to legally prohibit or restrict eight targets, one of which was homosexuality. Through the purity campaign’s crusade against homosexuality, illegal homosexual acts were expanded from anal intercourse to include fellatio and masturbation. More importantly, a shift in social understanding of homosexuality took place. Once conceived as an isolated criminal act of sodomy, homosexuality now became an identifiable condition—an effect of one’s diseased disposition.<sup>40</sup> Thus, the normative understanding of homosexuality at the British metropole associated sexual behavior with one’s inherent degenerate essence and social identity. This essentialized understanding of homosexuality is expressed in British literature in two primary ways: first, British discourse aimed to construct a characterized homosexual identity, and second, the expression of homosexual behavior was presented as evidence of the essential inferiority of Indian natives, and could be interpreted as proof of their racial difference from British rulers.

In his anthropological study of the ambiguous expressions of male-to-male relationships in India, Paul Boyce analyzes the interaction of popular constructions of native sexuality in British mainstream discourse. Boyce highlights two portrayals of the homosexual Indian that emerged in colonial imagination: the effeminate Bengali, and the “manly homosexual.” Mrinalini Sinha describes the British trope of the “effeminate Bengali,” who was considered to engage in “excessive sexual indulgence” due to his lack of manly control.<sup>41</sup> This trope, which emerged in the late nineteenth century as a means to insult the masculinity of native Indian elites, directly conflicts with the image of the “manly and virile” native homosexual that simultaneously appeared in popular colonial imagination.<sup>42</sup> The fact that these constructions of native homosexual identity are directly contradictory serves as evidence that, despite the attempts of colonizers to construct a universal homosexual identities, Indian expressions of sexuality did not fit normative European associations of sexual identity.

European norms of gender and sexuality were introduced to the colony and reframed pre-colonial norms through a variety of avenues, such as the language of police records. Indrani Chatterjee analyzes the mistranslations of British police reports of crimes of sodomy and provides further evidence that colonial occupation influenced pre-colonial conceptions of homosexuality. English translations of native reports of sodomy ignored details of social status that were communicated by the native speaker, and recorded crimes as centered around gender violations rather than violations of social status.<sup>43</sup> Furthermore, with the onset of British legal and judicial procedures, Western understandings of homosexuality as an alternative to heterosexuality were introduced to Indian natives through the testimonies and court procedures of British soldiers such as William Orby Hunter.<sup>44</sup> Prior to colonial occupation, Indian sexuality was not understood as a binary of either hetero or homo. Pre-colonial Indian legal discourses also tended to describe individuals by social class, stature, and other more particularistic characteristics, while colonial officials and travelers opted to distinguish individuals by broadly defined gender categories, such as

“high-class women” and “low-class men,” introducing new gender stereotypes.<sup>45</sup> The colonial introduction of gender norms and binary sexuality illustrates one way British epistemology reframed indigenous sexual norms.

One final piece of evidence that indicates pre-colonial Indian homosexuality did not fit British norms can be found in accounts of the homosexual endeavors of soldiers and scholars themselves. For example, European Orientalist scholars JR Ackerly and Alain Danielou wrote extensively of their homosexual liberation through the practice of Hindu religion during their trips to the Indian colony.<sup>46</sup> The Hindu acceptance of homosexuality exemplifies the lack of homophobia in pre-colonial India, and the extent to which British colonizers imposed a foreign moral code that condemned previously acceptable sexuality.

It comes as no surprise that such alternative and foreign indigenous sexual norms captured the curiosity of European scholars. Given the context of the isolationist era, colonial scholarship in the nineteenth century became increasingly condemnatory of Indian culture and made particular effort to emphasize the inferiority of native subjects—a pursuit in which homosexuality became a key component.<sup>47</sup> Homophobic representations of Indian customs emerged as a central theme throughout nineteenth century Orientalist literary depictions of “inexorable” native culture. Orientalist scholars presented Indian sexual conduct as evidence of their general inferiority and inability to uphold civilized standards of behavior. For example, in J. Campbell Oman’s account of the Hindu religious festival of Holi, he recounts:

As they sang and gesticulated in corybantic style, they addressed themselves pointedly to the occupants of the windows and balconies, aiming at them their ribald shafts of buffoonery and coarse indecency, too gross for reproduction or description[...] ‘Did you observe,’ I said to my companion[...]how the lad carried upon the arms of his companions indulged in a deliberate and shameless exposure of his person as he looked eagerly towards her window?<sup>48</sup>

Oman takes special offence at the uninhibited Indian expression of sexuality and emphasizes such sexual expression as evidence of native inferiority. In *The Underworld of India*, Lieutenant-General Sir George MacMunn expresses similar abhorrence toward Indian sexual mores, describing in detail the depictions of homosexuality in Hindu temples as, “excesses and abominations,” that are not only “permitted, but encouraged; and the world does not accept the excuse of imagery allegory and warning that Hindu philosophy urges in excuse.”<sup>49</sup> In his account, MacMunn, like Oman, devotes significant attention to Indian sexuality, portraying it as perverse and repugnant. In *Delusions and Discoveries*, Benita Parry outlines similar records of Indian homosexuality, such as those penned by American journalist Katherine Mayo, who argued that Indians were not fit to rule themselves, for all of their problems were not a result of colonial exploitation and resulting poverty, but were in fact a consequence of their own sexual indulgence.<sup>50</sup> Parry concludes that the abundance of scholarship and debate centered around Indian sexuality discloses how central sexuality was to British colonial imagination. The attention afforded by Orientalist scholarship toward the “perverse” sexuality of the native exemplifies the ways homosexuality was presented to affirm the inferiority of the natives and further justify British withdrawal and isolation.

*Policing Sexual Lives: The Introduction of the Indian Penal Code*



In 1860, the Indian Penal Code was adopted under Governor Lord Macauley. The Indian Penal Code imposed a standardized code of law across the Indian colony, and served as an effective way for British rulers to formally police and prosecute the social and sexual lives of colonial subjects in order to further reinforce British authority.<sup>51</sup> While British leaders claimed to have consulted Hindu and Muslim leaders in an effort to incorporate indigenous laws into the standardized system, the code was largely based upon English systems of law.<sup>52</sup> This codification transformed indigenous court and trial procedures and established a standardized system by which English colonizers could impose and enforce British morality. Such legal regulation was viewed by some, such as Governor George Macauley, as an efficient tool of the British civilizing mission and means to educate and reform Indian subjects by British standards.<sup>53</sup> Others, such as James Stephen, who assumed Macauley's position as law member upon the establishment of the Penal Code, viewed the code as a weapon to forcefully "beat down wrongdoers, to extort respect to enforce obedience."<sup>54</sup> To Stephen, codified law was necessary to police the "grossly ignorant" native population, who are "indifferent to what we [British] regard as the evils of life."<sup>55</sup> Such sentiments are reflected in the ways British leaders used sexual regulations as a means to criminalize, rather than reform, the native.

Following the introduction of the Indian Penal Code, all courts that had previously elected to follow Muslim law were integrated into British law, and by 1864 Muslim scholars trained in Persian language were replaced by jurors trained in English language and law, transferring judicial power from Muslim to British rulers.<sup>56</sup> The homogenization of highly variable and localized Indian law had heavy implications for the cultural treatment of homosexuality. The Indian Penal code restructured Muslim systems of law, instilled a system for criminalizing and prosecuting the native, and formalized homosexuality as a criminal offense. I will examine each of these effects of the implementation of the Indian Penal Code, and discuss how the logistics of the legal system implemented under the Indian Penal Code and the language of cases tried under the colonial anti-sodomy statute, Section 377, constructed Indian homosexuality as a criminal identity.

While only five case records exist under Section 377 of the Indian Penal Code for the period of 1860-1920, there is much to be gained by considering the impact of its implementation on the moral climate in India.<sup>57</sup> There is much debate surrounding the legality of homosexuality prior to the implementation of Section 377. According to Saleem Kidwai, some Islamic emperors expressed distaste for homosexuality, but over all, men engaging in same-sex sexual behavior were not legally prosecuted in pre-colonial India.<sup>58</sup> Prior to the implementation of the Indian Penal code, Islamic systems of law relied on testimony, confession and eyewitness, while the British system associated truth with written and recorded evidence, and medical jurisprudence.<sup>59</sup>

The language of Section 377 of the Indian Penal Code, which prohibits all "carnal intercourse against the order of nature," leaves ample room for liberal interpretation of what constitutes an act of sodomy. The phrase "against the law of nature" came to mean against the British moral standards that inspired the laws of the Indian Penal Code, and thus enabled British courts to prosecute natives on the basis of their inherent "unnaturalness." Sexual regulations such as Section 377 were enacted according to the British moral code, inspired by the Victorian purity campaigns at the metropole, and thus gave British rulers the authority to criminally prosecute Indians for their inherent moral degeneracy.<sup>60</sup> By criminalizing native morality in this way, British

rulers were able to further differentiate themselves from the now-criminal native through legal prosecution.

Some may argue that the anti-sodomy statute passed in India was not intended to craft a criminal identity for Indian homosexuals, and was merely an upshot of the greater project of the Victorian purity campaigns, as similar statutes explicitly banning male-to-male sexual relations were enacted in over thirty other British colonies, including Australia, Ghana, Bhutan, Fiji, and Malaysia, to name a few.<sup>61</sup> While it may be true that the sentiments of the purity campaigns inspired the content of colonial sexual regulations, its effective impact on constructions of native identity in India still stands, as is illustrated by Indian courts' legal interpretations and implementation of Section 377.

One of the earliest anti-sodomy cases tried under Section 377 exemplifies the ways this statute was used to criminalize the natives on the basis of their inherent sexual and moral degeneracy. In the case of *Khairati vs. Queen Empress* (1844), Khairati was found guilty of committing the crime of sodomy despite a lack of evidence aside from an "extended anal orifice" which was the mark of a "habitual catamite."<sup>62</sup> The ruling was defended by the fact the Khairati was known for "singing dressed as a woman" and "habitually wearing woman's clothes."<sup>63</sup> This case is of interest for a number of reasons. By associating Khairati's crime with his "habitual" nature, the court prosecuted him for behavior that was accepted by indigenous norms, but violated British moral standards. This ruling reflects the ways in which the codification of law allowed British colonizers to prosecute native subjects for acting within native standards of morality and social norms. The fact that a native subject could be prosecuted for expressing indigenous social norms—such as cross-dressing and singing like a woman—exemplifies the ways in which the codification of Indian law was much more preoccupied with criminalizing collective native identity than prosecuting individual crimes.<sup>64</sup> Satradu Sen has called such readings of colonial criminality the "Criminal Tribes" phenomenon, through which those in power saw crime as deeply rooted in the structure and belief systems of Indian society, and as an inherent part of the native.<sup>65</sup> Furthermore, the arbitrary use of the term "habitual sodomite," which was also used in the cases of *Esop v Emperor* (1836) and *Ghasita v Emperor* (1844) reflects the British tendency to portray homosexuality as an identifiable, inherent condition. Upon the implementation of anti sodomy laws, this identifiable sexual condition was transformed to be an identifiable criminality.

Not all who were tried for crimes of sodomy were characterized as possessing a habitual homosexual nature. For example, elite Indians tried under anti-sodomy laws were often excused with lesser penalties, such as in the case of Chitaranjan Das, who was sentenced to only two months imprisonment, the mildest punishment of all cases under Section 377.<sup>66</sup> Chitaranjan Das was described as a "highly educated and cultured person suffering from mental aberration"—a ruling that carries far different implications than that of the "habitual sodomite." This verdict fits colonial mainstream imagination that tended to associate hypervirile masculinity and degenerate sexuality with the lower classes, and hyperfeminacy with the elite upper classes.<sup>67</sup> Sexologists such as Havelock Ellis, who propounded the social Darwinist idea that "savage races" had a greater propensity for "degenerate sexuality," corroborated such stereotypes. In his book, *the Psychology of Sex* (1897), Ellis asserts that "on the whole, evidence shows that among lower races homosexual practices are regarded with considerable indifference, and the real invert, if he exists among them, as doubtless he does exist, generally passes unperceived or joins some sacred caste which sanctified his exclusively homosexual inclinations."<sup>68</sup> Ellis's ideas pervaded British conceptions of

homosexuality, as is illustrated in the 1968 case of *Lohana, Vasanthlal, Devchand v The State*, in which the judge quotes Ellis's writings in his ruling; "Cunnilinctus and fellatio cannot be regarded as unnatural for they have their prototype forms among animals, and they are found among various savage races."<sup>69</sup>

The extent to which British citizens were subject to prosecution under Section 377 is unclear, as most cases were deemed classified, and were often handled internally within the military and therefore were not preserved in historical archives.<sup>70</sup> Nevertheless, the case of British Archdeacon Noyes tried in 1891 may provide some insight. Despite an abundance of corroborating evidence that Noyes committed crimes of sodomy, his "immoral tendencies" were excused under the pretense of "aberration and mania."<sup>71</sup> The excusable "immoral tendencies" of Noyes can be directly contrasted to the arbitrary condemnation of Khairati, the "habitual sodomite," to represent the ways Section 377 was interpreted to prosecute the inherent criminal identity of the native homosexual. In each case where the term "habitual sodomite" was employed to justify prosecution, the defendant was an Indian native—such language does not appear once in the trials of British officers.<sup>72</sup> By prosecuting native homosexuality as an identifiable condition, British colonizers constructed a native homosexual identity that was inherently criminal according to British morality infused in the statutes of the Indian Penal Code. This criminal identity imbues an additional degree of inferiority to the essence of the native, in contrast to the lawful British colonizer, who escaped legal punishment due simply to their brutishness.

### Conclusion

British constructions of homosexuality as a degenerate essence and a criminal identity reflect the sentiments of the isolationist moment, as they serve to characterize the natives as inherently inferior to British rulers. In reaction to the Indian Sepoy rebellion of 1857, British mainstream colonial discourse aimed to preserve and emphasize British racial superiority and widen the divide between rulers and the ruled. Transforming the ambiguity of sexual expression in pre-colonial India, British mainstream discourse constructed Indian homosexuality in line with Western norms of identifiable inherent degeneracy, and presented Indian homosexuality as indicative of native perversion and inferiority. Finally, with the implementation of the Indian Penal Code and the colonial anti-sodomy statute Section 377, British colonizers situated homosexuality as a legal violation of British morality and, in turn, constructed a criminal identity of the Indian homosexual, which could be starkly contrasted to the law-abiding heterosexual British colonizer. Given the evidence of the fluidity of sexuality in pre-colonial India, one cannot argue that British colonizers were merely legally enforcing or recreating native attitudes toward homosexuality. It is clear that colonizers instead transformed and reframed colonial conceptions to fit Western norms and moral codes. Through literary constructions of inherent degeneracy and legal constructions of criminal identity, British colonizers interpreted Indian homosexuality as evidence of the inferiority of the native and widened the chasm between the rulers and the ruled.

Given my language and resource restrictions, I was unable to investigate native perspective on anti-sodomy laws or the colonial transformation of sexual norms. I would invite future scholars to explore Indian primary sources and investigate the level to which changes in sexual norms occupied native mainstream discourse, or whether or not a counter-movement arose in reaction to the criminalization of homosexuality. Given the fact that the legacy of British colonial anti-sodomy

statutes extends into the 21<sup>st</sup> century, understanding native reactions to such legislation is crucial to gain a holistic understanding of the current state of LGBTQ rights in India. Over the past century, human rights groups and nongovernmental organizations have worked alongside the LGBTQ community to fight for the repeal of Section 377. In 1994, the ABVA (AIDS Bhedbhav Virodhi Andolan or AIDS Discrimination Movement) filed a petition in the High Court of Delhi, calling for Section 377 to be deemed unconstitutional.<sup>73</sup> Despite diasporic movements and the support of LGBTQ advocacy groups, the petition is still pending, and Section 377 stands today. Nevertheless, over the past decade a vast number of organizations have formed in opposition to persistent heteropatriarchal social and cultural norms that express and maintain systemic homophobia in India.

## Notes

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<sup>1</sup> Vanita, 3-4.

<sup>2</sup> Bhaskaran, 19.

<sup>3</sup> Ibid, 16.

<sup>4</sup> Ibid, 16.

<sup>5</sup> Ibid, 19.

<sup>6</sup> Hyam, 65.

<sup>7</sup> Arondekar, 85.

<sup>8</sup> Arondekar, 86.

<sup>9</sup> Gupta, 4816.

<sup>10</sup> Gupta, 4816.

<sup>11</sup> Ibid.

<sup>12</sup> Vanita, 2.

<sup>13</sup> Bhaskaran, 19.

<sup>14</sup> Arondekar, 85.

<sup>15</sup> Boyce, 89.

<sup>16</sup> Chaterjee, 68-69.

<sup>17</sup> Ibid, 69.

<sup>18</sup> Ibid.

<sup>19</sup> Boyce, 90.

<sup>20</sup> Boyce, 88.

<sup>21</sup> Sinha, 19-22.

<sup>22</sup> Ibid.

<sup>23</sup> Aldrich, 277 and Parry, Benita, and Sprinker, 69.

<sup>24</sup> Bhaskaran, 26.

<sup>25</sup> Parry, 37.

<sup>26</sup> Ibid, 40.

<sup>27</sup> Ibid, 40.

<sup>28</sup> Parry, 40.

<sup>29</sup> Bhaskaran, 16, and Hyam, 118, and Barry, 65.

<sup>30</sup> Ibid, 16.

<sup>31</sup> Hyam, 116.

<sup>32</sup> Ibid, 118.

<sup>33</sup> Ibid.

- <sup>34</sup> Ibid, 199.  
<sup>35</sup> Hyam, 116.  
<sup>36</sup> Vanita, 1.  
<sup>37</sup> Ibid, 4.  
<sup>38</sup> Vanita and Kidwai, *Same Sex Love in India: readings from literature and history*  
<sup>39</sup> Hyam, 65.  
<sup>40</sup> Hyam, 67.  
<sup>41</sup> Sinha, 19.  
<sup>42</sup> Boyce, 89 and Bhaskaran, 21.  
<sup>43</sup> Chatterjee, 68.  
<sup>44</sup> Ibid, 69.  
<sup>45</sup> Chatterjee, 70.  
<sup>46</sup> Aldrich, 277.  
<sup>47</sup> Parry, 66.  
<sup>48</sup> Parry, 69.  
<sup>49</sup> Parry, 71.  
<sup>50</sup> Ibid, 72.  
<sup>51</sup> Bhaskaran, 16 and Boyce, 88.  
<sup>52</sup> Bhaskaran, 19.  
<sup>53</sup> Arondekar, 81.  
<sup>54</sup> Quoted in Arondekar, 81.  
<sup>55</sup> Arondekar, 81.  
<sup>56</sup> Bhaskaran, 19.  
<sup>57</sup> Arondekar, 67.  
<sup>58</sup> Bhaskaran, 19.  
<sup>59</sup> Arondekar, 85-86.  
<sup>60</sup> Gupta, 4816.  
<sup>61</sup> Han and O'Mahoney, 272.  
<sup>62</sup> Arondekar, 67.  
<sup>63</sup> Ibid, 69.  
<sup>64</sup> Arondekar, 70.  
<sup>65</sup> Ibid.  
<sup>66</sup> Bhaskaran, 26.  
<sup>67</sup> Sinha 19.  
<sup>68</sup> Ellis, Quoted in Bhaskaran, 22.  
<sup>69</sup> Quoted in Bhaskaran, 21.  
<sup>70</sup> Arondekar, 83.  
<sup>71</sup> Ibid, 84.  
<sup>72</sup> Bhaskaran, 24.  
<sup>73</sup> Bhaskaran, 15-16.

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