BODY POLITIC: SEXUALITY, HEALTH AND HYGIENE IN

COLONIAL INDIA (1860-1930)

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The paper will be an attempt to examine the role of biomedical knowledge and practices in the perpetuation of colonial rule by focusing on the institutional development of biomedicine in colonial India. The framework adopted will be that of Michel Foucault’s theory of biomedicine as a ‘new technology of power’ which at the individual level is centrally focused on the human body as an object of power, and at the collective level aided political power in controlling populations through public health measures.

Using historical literature in the form of reports on lock hospitals in the Central Provinces and North-Western province and Oudh of India, the objective will be to argue that introduction of biomedicine in the colonies was as much an administrative necessity as it was a part of a larger project of cultural hegemony and the spread of Western ideas, institutions and practices.

Unlike what the reports suggest the attempt will be to highlight colonial concern as a hegemonic one far beyond the concern of the public health of the “natives”. Health and medicalization of the body hence, as a site for the construction of the empire’s authority and control. In other terms, the paper will be based on the relationship of knowledge, power and sexuality and on sexuality as surveillance. Surveillance and control over the body constructed the “ideal social behaviour”. Law-taboo-censorship in tandem became mechanisms of control to examine the sexuality of individuals. Control of women, in particular prostitutes will be the focus of this paper. The feminine body during the colonial era came to be analysed, qualified and disqualified as being thoroughly saturated with sexuality. The feminine body was integrated into the sphere of medical

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practices. Foucault terms it as the “hysterization” of women’s bodies. This medicalization of feminine sexuality meant her being kept under close watch.

The paper will also be an attempt to delve deeper into issues around sexualities and body politics, taking into consideration alternate sexualities. In order to do so, the attempt will be to look beyond archival resources for they provide limited information around this theme. Ronald Hyam and Anjali Arondekar have termed it as “the politics of the archives” for there has been a deliberate omission and an invisibility of alternate sexualities (for it disturbed the image of colonial heterosexual masculinity). In the absence of official records the attempt will be to use unofficial cultures of sexuality, i.e., the fictions of the British raj as well as “footpath” magazines.

Public discussions on sexuality became directly linked to the individuals, the society and the nation as a whole. These themes were common in journals of sex-education as well as ‘advice’ and ‘discussion’ publications, the most widely circulated of which were Nar-Naaree and Hum Dono. An entire range of experts turned their attention to the family and advised against the dangers of “bad” sexuality and ensuring its “good health”.

David Arnold wrote, ‘Western medicine is also sometimes seen as one of the most powerful and penetrative parts of the entire colonizing process’ (Arnold 1993:4). The limited scope of the public health initiatives and their targeting nature made it public health only for ‘Europeans in the tropics, especially of troops- the ultimate guarantors of imperial rule’ (Harrison 1994: 2). We will see how in the military sphere especially, medicine was a very effective ‘tool of empire’. ‘Medicine was only one- albeit a

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particularly critical - example of a colonising process’ (Arnold op cit: 8).\footnote{David Arnold, \textit{op cit.}, 8.} Medicine hence, was a very important part of the expansive aims of the empire. The body literally became a site for the construction of the empire’s own authority, control and legitimacy.

The following paper is in the context of a minor exploration of policies around venereal diseases and its control in the light of public health. We here cannot overlook the excessive attention paid to controlling the sexuality of the “native” woman. The ideas of racism and eugenics were working behind the regulation of “native” women, the prostitute in particular, in the garb of public health and preventive measures. This brings us to the use of medicine and public health measures as an instrument of “social control”. Health and medicalization of the body hence, as a site for the construction of the empire’s authority and control. In other terms, the work will be based on the relationship of knowledge, power and sexuality and on sexuality as surveillance. Surveillance and control over the body constructed the “ideal social behaviour”. Law-taboo-censorship in tandem became mechanisms of control to examine the sexuality of individuals. Control of women, in particular prostitutes will be the focus of research. The feminine body during the colonial era came to be analysed, qualified and disqualified as being thoroughly saturated with sexuality. The feminine body was integrated into the sphere of medical practices. Foucault terms it as the “hysterization” of women’s bodies. This medicalization of feminine sexuality meant her being kept under close watch.

Review of literature suggests racism, eugenics and women’s sexuality dominated the discourses of colonialists and nationalists as well. The women’s body in India during the colonial regime became a site for debates. We gather that it was venereal diseases’ association with immorality, control of women and the need to maintain inter-racial divides (particularly after the rebellion of 1857 in the Indian context). The nineteenth
century was a period where sex became a police matter. Sexual control was desirable for a variety of reasons. This was a period marked by talks of eugenics, racism, production of a healthy race, a healthy progeny and an ideal family. It is interesting how eventually juridical and medical control became the most effective means to execute control over sex and sexuality. There was a certain idealization of the family.

The Contagious Diseases Act enacted in 1868 was one such law. The most obvious targets were women. The law along with limiting its scope to the health of the troops alone, also came to regulate “native” women’s sexuality. An entire process of hysterization of women’s bodies took place. The feminine body was integrated into the sphere of medical practices. This medicalization of feminine sexuality meant her being kept under close watch. The nurturing mother versus the negative image of the “nervous/mad” woman (which can be read as the fallen or the more sexually explicit woman) became the most visible form of this hysterization. In the Indian context, the Indian prostitute came to be controlled. According to Judy Whitehead, the sanitary legislations implemented as public health measures, the Contagious Diseases Act, in particular, were means of introducing disciplinary forms of Victorian respectability to Indian jurisprudence by means of the colonial state (Whitehead: 1995)\(^6\) – ‘the ideal Victorian woman was one whose upbringing had enabled her to completely sublimate sexual and aggressive impulses... ... unlike middle class Victorian ideology however, women in North India were not thought to be passive, repressed beings, either creatively or sexually’ (Whitehead 1996: 32).\(^7\) She became the contradictory site of desire and disease, of sexual danger and pleasure. She emerges in the nineteenth century

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\(^6\) Judy Whitehead, Bodies clean and unclean: prostitution, sanitary legislation and respectable feminity in colonial north India (Gender and History 1995, 7.1), 41-63.

\(^7\) -----. Bodies of evidence, bodies of rule: The Ilbert Bill, revivalism, and Age of Consent in Colonial India (Sociological Bulletin: Vol 45, No. 1, March 1996), 32.
as the counter-point of the docile, familial, virtuous woman of the home. The social reformers of the nineteenth century too came to identify her as “the victim, the fallen”. In contrast to the *bhadramahila* she stood as the “sexually perverse woman”.

Indigenous women were being projected as a terror of military men; their sexuality was seen as having a de-masculinising effect on the soldier. Official attempts were made to control sexual relations between the ruling race and Indian women. The cantonments had regimental bazaars (*lal bazaars*) where the soldiers could satisfy themselves (Ballhatchet *op cit*). The idea was to control the movement of soldiers beyond the controlled environment of the cantonment which made them more susceptible to contracting diseases. Lock Hospitals were opened where suspected women were examined and infected women were admitted by force, if necessary, for treatment. The medical examinations, as it involved the genital area, were embarrassing and came to be resented. There was also the fear of both chaste as well as unchaste women being treated as prostitutes on the basis of mere suspicion. The objective here was not the health of the woman; the purpose was to provide safe pleasure for the soldiers.

The Act both in England as well as in the colonies (particularly India) sparked a political battle. Their objections were that the compulsory examination system increased the power and the interference of the state, that it gave powers of arrest to a “moral police” who inspected only prostitutes and not their clients. ‘Compulsory and painful examination by vaginal speculum was held to constitute ‘instrumental rape by a steel penis’, and the campaign harped upon medical lust in handling and dominating

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8 Kenneth Ballhatchet, *op cit*.

9 Ronald Hyam, *Empire and Sexuality: The British Experience* (Manchester and New York: Manchester University Press, 1991). Ronald Hyam in this text mentions the existence of innumerable instances of masturbation, homosexuality and paedophilia as the forms of sexuality, which later in the Victorian era came to be dreaded. The provision of safe pleasure (prostitutes in cantonments) was a solution to this.
degrading women’ (Hyam 1991: 64). The most abhorred element of the Contagious Diseases Act was the element of compulsory periodical medical inspection. The Act, by this element of supervision, was considered demeaning and violative of the basic liberties of women. The Contagious Diseases Act was also discriminatory in the sense that it did not affect the entire population as a whole; the language of the Act very clearly blamed women’s bodies and not men.

The laws which began with prostitutes, regulating their sexual relations and medically monitoring them came to engage military officials, missionaries as well as nationalist social reformers in India. Racism, eugenics and women’s sexuality, hence dominated the discourses of colonialists and the nationalists as well. The women’s body during the colonial regime became a site for debates, however the question of women’s health never came up. Despite talks of eugenics and the need to produce healthy progeny, reproductive health was completely omitted.

I delve deeper into the issues around sexualities and body politics taking into consideration alternate sexualities. In order to do so, I have made an attempt to look beyond archival resources for they provide limited information around this theme. Ronald Hyam and Anjali Arondekar have termed it as “the politics of the archives” for there has been a deliberate omission and an invisibility of alternate sexualities (for it disturbed the image of colonial heterosexual masculinity). In that case, in the absence of official records I have used the unofficial cultures of sexuality, i.e., the fictions of the British raj as well as “footpath” magazines as my supplementary sources. The complex encodings of fears, fascinations and anxieties in the British raj fiction reflect gender as well as colonial masculinity and masculine desire as a constitutive category of

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colonialism along with race, class and caste. Masculinity in the British official, British fiction as well as nationalist writings represented colonialism, anti-colonialism and nationalism.

In the nationalistic ideologies too in Colonial India, masculinity seemed to be indispensable for the formation of the virile nation. According to Mrinalini Sinha - sexual, social, moral and cultural components find amalgamation and the body is constructed as the sign and metaphor of the embryonic country striving to set a resistance to the oriental stereotype of – the effeminate male (Sinha, 1995) propounded by the colonial projects of domination, power and subordination. So, anxieties about male sexuality and manhood were a part of this process, whereby it became crucial to control women through the notions of obscenity, immorality and the “other” (Gupta, 2001). There was a need to build stronger masculine bodies – an attempt on the part of the colonists as well as the nationalists. During the early part of the twentieth century sexuality was also brought together with swarajya (self-rule) and eugenics. For instance, N.S. Phadke in his book *Sex Problem in India: Being a plea for a eugenic movement in India and a study of all theoretical and practical questions pertaining to eugenics* (1927) points out that his discussion was concerned with the issue of how to maintain the vigour of a ‘declining race’, for ‘who could deny that physical strength and military power will be for us an indispensable instrument to keep swarajya after it is won?’

Edward Said’s *Orientalism* suggested that the sexual subjection of Oriental women to Western men ‘fairly stands for the pattern of relative strength between East and West and the discourse about the Orient that it enabled’.11 In Said’s work gender is not examined as a constitutive category of colonialism, sexuality here appears as a metaphor for more important dynamics that are exclusively male. Feminization of Otherness

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therefore emerges in Said’s work as an unchanging rhetorical phenomenon that is integral to the masculine imperial venture. During the early years of British rule in India, when the rulers came primarily from a feudal rather than a middle-class background, the notion of colonial rule as a “manly” or “husbandly” prerogative was very much present in the colonial culture. It became stronger in the early decades of the nineteenth century, when the middle-class evangelical spirit took hold and the British rulers began to draw an equation between sexual, political and moral hegemony. What followed was the feminization of colonized culture which aimed to constitute indigenous men as sites of contradiction: superior sex but inferior race. Said’s interpretation of colonial erotics assumes that feminization of colonized territory established male ownership over a female body. However, this is often more about emasculating a male than about possessing a female. The ultimate goal of authorizing a European claim to ownership through a feminization of India was to establish the dominance of white men not over brown women but over brown men. In other words, the goal was effeminization – a process in which colonizing men use womanhood to disempower colonized men.

Hence, the cult of masculinity was a historical product determined by intersecting ideologies which were metropolitan as well as colonial. From the eighteenth century itself, English masculinity grounded itself in a paternal code of hygiene and was expressed in terms of energy (sexual, economic and political).

However, the narratives of late nineteenth century British imperialism fail to reproduce this omnipotent image of imperial masculinity. A reading of Rudyard Kipling demonstrates that the white man was emerging as a divided figure whose authority was constantly being undermined by a sense of futility. These tales of transgressions and breakdowns display the colonial body as revolting against the rigid imperial technologies of discipline and surveillance through behavioural excesses which were seen as unmanly
hysteria and unacceptable sexuality. The resistant and inassimilable modes of desire in Kipling’s narratives deconstruct the above-mentioned colonial opposition between English manliness and Indian effeminacy. *Kim* is perhaps one of the richest cartographies of colonial male homosociality. In this predominantly male space it is safe for men to explore the terrain of masculine desire.

Public discussions on sexuality became directly linked to the individuals, the society and the nation as a whole. These themes were common in journals of sex-education as well as ‘advice’ and ‘discussion’ publications, the most widely circulated of which were *Nar-Naaree* and *Hum Dono*. *Nara-Naree* (Man-Woman) is a “footpath” journal on health, hygiene and sex. An entire range of experts (doctors, psychiatrists, and teachers) and so on turned their attention to the family and advised against the dangers of “bad” sexuality and ensuring its “good health”. *Nara Naree* presents the inherent paradox in the paradigms of gender, health and sexuality in colonial India by registering the debate on “Indian” and “western” discourses on body, as articulated by the elite medical circles and emergent middle class. A new level of public discussion formed part of the dialogue with political, social and epistemological challenges posed by the colonial rule. As Sudipta Kaviraj (2002) argued, nineteenth century witnessed an ‘extraordinary proliferation of associations’ amongst elite, educated circles in India, and especially Bengal. There arose a ‘new spirit [and] access to the means to try out new ways of living’ (p. 117). The political culture of public health in the late colonial period witnessed a move towards recognizing the importance of public health, and of the deep inequalities that characterized Indians’ access to the conditions of health on the one hand, and entrenched public neglect of health on the other. Dyspeptic “effeminate” male, lack of awareness about hygiene and sexual knowledge form the main corpus of criticism which digs at the youth culture emphatically stressing on declined health and distorted vision of sexuality. The Hindu elite began to ridicule themselves for their weaknesses and
inability to defend their motherland by resorting to self-reproach which entailed the projection of a scientific and progressive image of the post-colonial modern India. Body came at the centre of a wider social system and was brought into the public sphere in a powerful- explicit way. Nara Naree too hence, focuses on the creation of such ideal Indian male and female bodies. However, there are snippets here and there in the letter pages of Nar Naaree as well as Hum Dono regarding pre-marital sexual relationships between young men and men and boys. Despite not necessarily amounting to the affirmation of gay identities- Male homoeroticism had not been a particularly secret or unknown activity.

Premender Mitra in the 1940 issue of Nar-Naaree under the title Pratikir Bhul which translates as nature’s error sees cloth as defining nature and identity: the third gender. With instances of men taking up roles as women and vice versa in the stage shows, Premender Mitra (1940: 183) blurs the boundary between sexes and interrogates the parameter for defining inversion or aberration and normalcy. In this regard he relates the story of Gretna whose gender identity was concealed under long hair and women’s vesture and doctors discovered “her” identity as a man only after an accident. On the other hand, there were cases of women in army barracks camouflaged in men’s clothes and veiled under military uniform. Many men (especially acrobats) cannot meet the expectations of female characters during theatre performances while others who swapped roles cannot be alienated from the “real” and the “reel” identity.

The official and unofficial sexual cultures were getting translated into heterosexual and homosexual cultures. Mary John and Janaki Nair have pointed out that questions of male sexuality have rarely been a focus of scholarly analysis, except for celebrated instances of celibacy (John and Nair, 1998:15). In the colonial era too, while the heterosexual family was serving as a model for colonial authorities, non-heterosexuality
was proving to be a subversive force. Despite the deliberate omission in the archives, traces of homosexuality have not gone unnoticed. The use of “boys” in the army, male nautches and government brothels in Karachi during colonial times has found some documentation in the literary archive available. What is important in a work is what it does not say. Thus, the daunting task is to measure these silences, whether acknowledged or unacknowledged. The fictions of the Raj are such works where an elaboration of the utterance is carried out, in a sort of journey to silence.

The production of heterosexuality/homosexuality in nineteenth century psychological, medical and anthropological discourses intersects with the colonial explanation of Indian effeminacy. The first British writer to explicitly identify the East as a homosexual terrain was Sir Richard Burton. In his essay *Thousand Nights and a Night* (1885-88), Burton talked of the existence of a “Sotadic Zone” running through the tropics and semitropics, representing the regions of the world where “pederasty” is as common as heterosexuality. In the Judeo-Christian tradition sexuality between men had been infamous among those who knew about it at all precisely for having no name. What allowed Burton to speak the unspeakable then was the historical opportunity made available to him by the empire. Homosexuality could be named more safely in an anthropological discourse about the colonized “Other”. An elaborate private report that he had written on the “eunuchs of Karachi” erroneously arrived before the Bombay government. The report has gone missing now. An important aspect of Burton’s theory of Oriental homosexuality is its emphasis on ecology. Burton insists that the influence of the Sotadic zone on the “vice” is “geographical and climatic, not racial.”

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13 Ibid, 206-207.
taint of climate, of moral ethos that, while most readily described in racial terms, is actually seen as contagious.

The influence of Burton’s ideas is evident in *The Underworld of India* (1932), an account by Sir George MacMunn, a veteran of the Indian army. In a passage referring to the aborted eroticism between Fielding and Aziz in *A passage to India*, MacMunn writes:

‘While in the west homosexuality or pederasty is the sign of the degenerate or mentally unstable, and accompanies the disappearance of manliness and self-respect, in Asia, it is often the vice of the most resolute characters...’

In Europe, homosexuality almost always included effeminacy. India, on the other hand, presented a paradox, for homosexual practices were most commonly attributed not so much to the effeminate Bengali but, rather, to the more virile and “martial” races. Indian masculinity hence, injected a fearful indeterminacy into the economy of colonial desire (homosexual yet manly, heterosexual yet effeminate).

Burton and MacMunn were drawn to the Indian male courtesan, who, rather than the female prostitute, emerges as the most threatening source of cultural contagion. The female prostitute’s threat to white purity was controlled through the importation of English women to the colony. On the other hand, the sexualized racial male body that functioned as a viable medium for economic as well as erotic exchange remained unassimilated in the gendered configurations of the empire also it came to provide a disturbing allegory for disguised homoeroticism in British fiction.

This homosexuality of the Orient presented the colonizing male imagination with dangers such as male rape. Reflecting on the dangers of the Sotadic zone for western travellers Burton writes ‘A favourite punishment for strangers caught in the harem or Gynaeceum is to strip and throw them and expose them to the embraces of the grooms.
and negro-slaves’. The culmination of this motif of interracial male rape, as Eve Kosofsky Sedgwick points out, is, unfortunately, an account of a real rape in T.E. Lawrence’s *Seven pillars of wisdom*. The passages in Lawrence’s book are devoted to charting the geography of male homosociality in Arab culture. Lawrence himself had moved from unfulfilling bonds with English men to bonds with Arab men that for political reasons had more space for fantasy. The rape in the account occurs at a point when Lawrence is taken as a prisoner on charges of being a possible spy, and refuses the advance of a Turkish commander, who ‘half-whispered to the corporal to take me out and teach me everything’.

The point however here is that by focussing on the rape of a white man, the account conceals a different scene of homosexual exploitation in which the subaltern Oriental male is ravished by a lustful European. Such an account of rape is available in E.M. Forster’s *The Hill of Devi* where the depiction of homosexual rape provides a more appropriate metaphor for the dynamics of homosocial colonialism founded on the economic and political exploitation of brown men by white men. Such direct representations are however rare in the British raj fictions, where the theme of white male penetration and ravishment is commonly expressed through metaphoric and disguised images of invasion, possession, regression and decline of the empire.

E.M. Forster’s *A passage to India* is an exploration of colonial relations. The text offers an entire grammar of colonial desire, a narrative that codifies an entire spectrum of intra interracial male relations, from the most outrageously homosocial to the most subtly homoerotic. Forster’s novel ridicules the racialized opposition between English

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14 Ibid, 190.

manliness and Indian effeminacy in strident terms, it also draws the the homosocial into the sphere of the homoerotic, thereby allowing us to draw a potential continuity between the homosocial and the homoerotic, between the sanctioned and the tabooed, between the speakable and the unspeakable in colonial culture.

J.R. Ackerley’s *Hindoo Holiday* written in 1932 was according to Zahid Chaudhary a text ‘rife with the pressure of power dialectics, colonialist (sexual) anxieties and orientalist authority, all three of which are independent.’ Irrespective of Ackerley’s attempts to present himself as distant from the structural matrix of colonialism due to his ‘marginal’ sexuality, Ackerley’s location, Chaudhary points out, never escaped ‘the structure of colonial dominance; in his writings, he is always on “top”, and interactions with the natives, sexual or otherwise, always take place on his terms. Chaudhary opines, sexual marginality does not ‘cancel’ imperial authority but only circulates within colonised spaces.

Kathryn Hansen the author of *Grounds for Play: The Nautanki Theatre of North India* in her work explores ‘the buried trove of theatrical transvestism that existed in western urban India in the Parsi, Gujarati and Marathi theatres between approximately 1850 and 1940.’ The urban theatre developed as a “respectable substitute” for the vulgarities and immorality of the “folk” form. Other than being a space for discourses on nationalism, upper caste politics, and the politics of “proper” gender and sexuality; the theatre also introduced the female impersonator, hence opening up new questions about homosociality. Hansen points out how there was a demand for female impersonators not simply because not enough women could be found to act on stage, rather there might have existed a preference for them who competed with female actors for roles. Hence, this exposes us to an entire terrain of homosociality which then were very much parts of the “norm”.
It is also useful to study the Urdu poetic genre known as *Rekhty*. Developed by the literary figure Sa'adat Yar Khan Rangin (1756-1834) *rekhty* differentiated itself from the mainstream *ghazal* by using a feminine narrator, even though its public audience and most of its composers were men. Scholars have pointed out the “female-to-female” content of some of the *rekhty* poetry. Scholars have pointed out that there might be another dimension to it- by unambiguously specifying the gender of the narrator and the beloved, *rekhty* questions the naturalisation of male homoeroticism at the expense of female homoeroticism.

Also as Sanjay Srivastava points out ‘*there was no dearth of the sexual stereotyping of the muslim and tribal populations during the colonial period*’. Further, there was a universality of opinion that the muslim and the tribal populations- both of whose sexual peculiarities had to be drawn out and carefully constructed- with those who were seen to be more obviously deviant. In the discussions that preceded the enactment of the Criminal Tribes and Castes Bill of 1872, not only were “criminal tribes” sought to be controlled by legislative means, but a member of the Council of the Governor-General of India ‘*moved for leave to introduce a bill for the registration of criminal tribes and eunuchs.*’ It was suggested that ‘*it is proper to compel eunuchs to register, to render them liable to punishment for possession of a minor, and to declare them unable to adopt a son or to act as guardian to a minor.*’ It then moves on to the muslims in this “unnatural” scheme of things: ‘*The provisions of the bill, if strictly carried out, would reduce a considerable number of people to destitution. It is probable that in the three towns of Farrackabad... there are not less than 1,500 persons of the hijra and zanana classes. Their condition arises from immemorial usage, and degrading as it is, their practices are... sanctioned by public opinion of all mussulmans...*’
Kenneth Ballhatchet points out how when General Sir Lionel Smith stressed the importance of a loc hospital (for “diseased women”) at Ahmadnagar, in 1830, he argued that one reason for the prevalence of VD was the presence of a large number of muslims, ‘the most debauched of any caste in this part of India’. These sentiments as pointed out by Srivastava were important echoes of colonial British opinions that had also been expressed in other contexts and at other times.

The official records of the deliberations that preceded the bill of 1872 almost present that those investigated for “unnatural acts” tended mainly to be muslims. In 1871 the Magistrate of Mathura noted that a eunuch by the name of Fyeman was reported to have been living with a twelve year old boy Moolah who had been adopted during a famine. According to police reports Moolah identified one Eliah Jan as an associate of Fyeman’s, and as the musician to whose tunes he had danced wearing “women’s clothes and anklets”. Close attention was paid to Moolah in a subsequent medical examination carried out by doctors Pain and Playfair. Another famous case is that of Queen Empress Vs Khairati, where khairati is deemed a criminal under section 377 of the Indian Penal Code. On January 3, 1884, the High Court of Allahabad called a case in which one Khairati had been previously convicted by Mr. J.L. Denniston, sessions judge of Moradabad, of an offence under section 377 of the Penal Code. The charge on which the appellant was tried was ‘that he, within four months previously to the 15th June (1883), the exact time it being impossible to state, did in the district of Moradabad abet the

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16 377. Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section.
offence of sodomy, by allowing some unknown person to commit the offence of sodomy on his person, and was at the time of the commission of the offence present, for which reason he must, under section 144 of the Indian Penal Code’. In an excerpt from the judgement of the sessions judge it is revealed that Khairati was initially arrested for ‘singing in women’s clothes among the women of a certain family’ of his village and thereafter subjected to a physical examination by the Civil Surgeon. On examination, Khairati was shown ‘to have the characteristic mark of a habitual catamite- the distortion of the orifice of the anus into a shape of a trumpet- and also to be affected with syphilis in the same region in a manner which distinctly points to unnatural intercourse within the last few months’. Denniston concluded that while none of the three circumstances individually (wearing women’s clothes, subtended anus and the presence of syphilis) were enough to provide evidence of criminality, taken together they left no ‘doubt that the accused had recently been the subject of sodomy’. Medical jurisprudence is involved in both the cases to deem an individual a criminal under section 377. Thus, with criminalization homosexuality also entered the realm of medical interrogation sans treatment.

With the contemporary focus on sexuality in South Asia which derives from the rapid and unstoppable spread of AIDS as well as the new visibility of formerly marginalised sexual and transgender communities, and the current debate over section 377 of the Indian Penal Code – inherited from British rule in 1860- that criminalises them; there has been a tendency to sanitize these new openings through a public health

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17 Queen Empress v. Khairati (Allahabad: Indian Law Reports, 1884), 204-206.
18 ibid
19 ibid
20 ibid
discourse, that is “men having sex with men” as a risk group for HIV transmission, and the persistence of cultural nationalism that essentialises both sexuality and gender.

Colonial jurists justified section 377 as a protective measure against what they described as “the Oriental disease”. The paradox is that an archaic and outmoded law of colonial origin embedded in nineteenth century Victorian norms of morality and as Arvind Narrain points out what some sexual rights activists describe as culturally alien Judaeo-Christian values is being defended by the independent Indian state and society. Criminalisation of target groups continue, as well as the characterisation of non-Hindu and “tribal” populations as particularly prone to sexual excess and being lascivious in their dealings with women of their community as well as with those of generally upper caste Hindu groups.

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