

British Policies towards Homosexuals and the *Hijras* in Colonial India: An Assessment

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Submitted: 13.02.2022.

Revised: 16.05.2022.

Accepted: 23.06.2022.

Abstract: *Homosexuality became a criminal offence in India during the colonial period. Through the introduction of Section 377 of Indian Penal Code in 1860-61 colonial authority made homosexual acts including sodomy and such other non-procreative sexual activities as criminal offence. The same colonial attitude in law of independent India had been continued for a long time. Even colonial authority was hostile towards hijras; and through the Criminal Tribes Act (1871) colonial government tried to erase the hijras from the Indian society and culture. Now question is why did the colonial authority make homosexuality a criminal offence? What was the policy of British government towards hijras and homosexuals? Emphasis has been given to find out the answers of the above questions. Apart from it, very briefly this article has tried to analyse the colonial government's policies towards homosexuals and hijras through Michel Foucault's theory of 'Biopolitic'.*

Keywords: *Homosexuality, Offence, Biopolitic, Hijras, Colonial State, Section 377 of IPC.*

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I.

It is true that homosexuality became a criminal offence in India during the colonial period. But it would be wrong to assume that before the colonial period homosexuality was celebrated or accepted by the mainstream society. During the ancient period homosexuality was not an accepted social phenomenon in India. This societal attitude can be visualised through the information from various ancient Indian texts. In this context Vanita and Kidwai in their book argue: “They (ancient texts) tend to take a somewhat derogatory view of those who are homoerotically inclined. The range of terms used for such persons suggests a groping for words rather than complete social integration and widely understood categories. Many of these terms bring from heterosexual assumptions ascribing effeminacy, impotence, or some sort of inadequacy to non-heterosexual persons.”¹ The narrow attitude of society and state towards homosexuals or the entire queer community are somehow exposed by these texts. *Arthashastra* mentions the performance of ‘ayoni’ or the non-vaginal sex performed whether with man or woman as a punishable offence.² It prescribes different levels of punishment for doing homosexual acts. It says that it is the duty of kings to punish those indulging in ‘ayoni’ sexuality and suggests that the ruler should fight against such ‘social evil.’³ In case of homosexual males, *Manusmriti* says “sexual union between men will bring the loss of caste.”⁴ It also “prescribes that a man who sheds his semen in non-human females, in a man, in a menstruating woman, in something other than a vagina, or in water has to perform a minor penance consisting of eating the five products of cow and keeping a one-night fast.”⁵ It also mentions that if two non-virgin women do sex, they have to pay a small fine. But when a mature woman (non-virgin) do sex forcefully with a virgin girl, then her head should be shaved and two of her fingers would be cut off as punishment.⁶ The *Naradapurana* provides a series of punishment for non-vaginal ‘unnatural’ sexual offences. It says any person who discharges semen in non-vaginas will fall into hell after death.⁷ However, there was no uniformed category of forbidden sex (like sodomy).⁸ Apart from it, execution or punishment of any person for doing unnatural sexual activities has not been recorded.⁹ Thus, we have no such evidence by which it can be proved that ancient Indian state or ruler made law to forbid homosexuality. It is the colonial authority that through the introduction of Section 377 of IPC criminalized the homosexuality and all its related sexual acts like sodomy, mutual masturbation etc. In the year 1861, the law was introduced by Lord Macaulay, the president of the Indian Law Commission, on behalf of colonial authority. Similar laws were introduced in most of the other colonies of Britain including United States. The section 377 of IPC reads as follows: “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 a term, which may extend to ten years and shall be liable to fine...Penetration is sufficient to constitute the carnal intercourse to the offence described in this section.”¹⁰ Initially when the law (Section 377 of IPC) was introduced in 1860-61, it was not explicitly defined about which sexual acts were to be considered as ‘carnal intercourse against the order of nature.’

However, in the intervening years through various judgements of Indian judiciary anal sex, oral sex and few other non-procreative sexual acts, such as sodomy or anal sex, oral sex, had been included in the category of 'carnal intercourse' of Section 377 of IPC.¹¹

II.

From the 18th century onwards a new kind of morality and culture in the sphere of sexuality emerged in the West. Along with the extraordinary attention of medical science towards sexuality, few concepts of 'normality' and 'abnormality' originated in the field of human sexuality in Europe. This process has been termed by Michel Foucault as '*scientia sexualis*.'¹² According to Foucault, it was late 18th and early 19th centuries, and before that sexuality was not much confined: "At the beginning of the seventeenth century a certain frankness was still common, it would seem. Sexual practices had little need of secrecy; words were said without undue reticence, and things were done without too much concealment.... Codes regulating the coarse, the obscene, and the indecent were quite lax compared to those of nineteenth century... But twilight soon fell upon this bright day, followed by the monotonous nights of the Victorian bourgeoisie. Sexuality was carefully confined."¹³ In the Victorian era sexuality had been considered as the subject of obscenity. The anti-sex attitude of Victorian morality used to portray sexuality in such a way that it seemed to be very bad and dangerous subject. In other words, Victorians believed that sexuality was necessary only for creating next generation, otherwise sex was dirty and obscene.¹⁴ In the field of sexual morality they uphold two beliefs. First, except the sexual intercourse between male and female genitals, all other sexual acts (like sodomy, mutual masturbation etc.) were considered as 'unnatural'. Secondly, the need of sexuality was just to produce child, not for the enjoyment. In the words of Foucault, "Sexuality was carefully codified; it moved into the home. The conjugal family took custody of it and absorbed it into the serious function of reproduction...A single locus of sexuality was acknowledged in social space as well as at the heart of every household, but it was a utilitarian and fertile one: the parents' bedroom"¹⁵

Along with that, Victorian morality considered the sexual minorities including homosexuals as deviants. It was a new kind of discourse on sexuality where sexuality too became the central issue of one's identity, and accordingly the concept of division of people on the basis of sexual orientations or the sexuality based identity categories came into existence. Somehow this system of sexuality-based identity was the first step to identify the deviants whose sexual inclinations did not fit into the category of so called 'normal' sexuality. Apart from it, the features of the 'ideal' male and female bodies were made clear. And people against this hegemonic features, were to be identified as 'abnormal'. This new discourse on sexuality generated by the Victorian morality is very vital for our study as British colonial policy towards sexuality in the colonies like India was based on it. That is why Suparna Bhaskaran has rightly argued that the Victorian morality or 'Victorian fanatic campaign' played an important role in the policy of colonial government in case of

homosexuality.¹⁶

For giving the justification to their rule in India, Britishers used to say that they (British race) were 'superior' and Indians were 'inferior'. And the superior race had the right to rule over the inferior races. Since Indians (or the people of Orient) were uncivilized, colonial authority had taken the project to civilise the Orient. In other words, colonial authority tried to prove that it was the 'white man's burden' to civilise the East and accordingly the task was taken by them.¹⁷ British authority tried to project various institutions and customs of Orient as 'Oriental Vice'. Homosexuality was also projected by the colonial authority as an 'Oriental Vice'. That is why it can be argued that the marginalisation of queer sexualities and genders in colonial India was a political agenda of colonial authority, which sought to position queer sexuality as a 'special Oriental vice'.¹⁸

The projection of homosexuality as 'Oriental Vice' by the colonial authority was just the explanation of Indian 'effeminacy'. Britishers were proud of their own legacy of so called masculinity and thought that homosexuality was responsible for the Indians' effeminacy. They claimed, therefore, that the muscular power had the right to rule over the effeminate ones. Sir Richard Burton, a British official of 19th century India, clearly identified the Orient 'as homosexual terrain' and in his book, *The Thousand and One Nights*, and later on in *Terminal Essay*¹⁹ Burton discussed about the existence of 'Sotadic Zone' (a region where sodomy is common as heterosexuality): "Within the *Sotadic Zone* the vice is popular and endemic, held at the worst to be a mere peccadillo, whilst the races to the North and South of the limits here defined practice it only sporadically amid the opprobrium of their fellows who, as a rule, are physically incapable of performing the operation and took upon it with the liveliest disgust."²⁰ Burton identified geography and hot climate for the existence of homosexuality and sodomy in Orient.²¹ Sir Geroge MacMunn, a veteran of the British Indian army, wrote in his book titled, *The Underworld of India* (1932)²² that while in the West homosexuality or pederasty was the sign of degeneration or mentally illness, in Asia, it was often considered as normal as heterosexuality.²³ Through the writings of J.R Ackerley and G.L Dickinson homosexual activities of an Indian Maharaja of Chhatarpur came in public. Dickinson wrote about the Maharaja: "It soon turned out that he was homosexual, in a curious (or not curious) way which combined what would be called perverted sexuality with philosophic and religious curiosity and yearning."²⁴ Even Lord Curzon during his tenure as Governor-General undertook a survey on the homosexual activities of Indian princes, and he "drew up a list of princes with homosexual tests."²⁵ It indicates that there were many homosexual princes in colonial India.

Robert Aldrich has shown that the "Colonial islands included most of Africa and South East Asia and the islands of the Pacific, Indian Ocean and the Caribbean, provided a heaven for many Europeans whose sexual inclinations did not fit merely into the constrains of European society."²⁶ Aldrich has also explained that as in Europe the restriction against homosexuality was much more high than the Orient, European males were quite free to engage in homosexual acts in the colonies. And the colonies provided the ideal environment

for the many possibilities of homoeroticism, homosociality and homosexuality. In his words: “some European men found sexual partners whether for casual encounters or longer-term relationships, among fellow Europeans or indigenous men. Others enjoyed the homosociality of predominantly male expeditions, military barracks, trading outposts and missionary stations. The gendered nature of expansion, in which men monopolised many imperial activities and where manly virtues were championed, created situations congenial to intimate male bonding.”²⁷ It made colonial government apprehensive that British colonies including India would have turned into the centre of queer activities where British citizens might be indulged in homosexual acts. As Aldrich says that in the colonies “the imbalance in the sex ratio between European men and women, and the limited range of sexual partners in some outposts, encouraged ‘situational’ homosexuality....Furthermore, boundaries between homosexuality, intimate friendship, male bonding.....were extremely porous, and mateship could and did veer off into sexual intimacy.”²⁸ However, the British authority thought that if their people got engaged in queer/homosexual acts, their claim as the superior, muscular race would be lost. Therefore, it became necessary for the colonial government to introduce laws like Section 377 in different colonies including India to check the sexual freedom of Orient. For that reason it can be argued that the British colonialism is largely responsible for the criminalisation of homosexuality around the world. Still now the countries where the homosexuality is still illegal, most of them have the British colonial legacy.

Colonial state was also very apprehensive about the influence of homosexuality on the colonial army. They thought that due to the long distance from their wives/ female partners British white army personnel posted in India might have been indulged in the homosexual acts, more specifically sodomy. Therefore, there was a probable need to declare homosexuality as criminal offence officially. Interesting thing is that government allowed prostitution in the cantonment cities which was completely against the notion of Victorian morality. Here the hypocrisy of colonial authority reveals. By the second half of the 19th century debates took place at the British parliament on the matter of the sexual relation between the white elites and native women (specially the prostitutes). British authority was also aware about the effect of venereal diseases and prostitutions on the health of white army. But as Ballhatchet says, “the prospect of homosexuality was revealed in guarded terms by the authorities whenever there was a talk of excluding prostitutes from the cantonment.”²⁹ Therefore, the idea of excluding prostitutes from the cantonments came under the review. The government started to think the alternative and best way to deal with that problem. By passing the *Contagious Diseases Act* (1868)³⁰ colonial authority tried to regulate the prostitutes. In each cantonment a separate ‘lal bazar’ (regimental red-light area) established where the soldiers could satisfy their sexual needs easily.³¹ In each cantonment city Lock Hospital was established “where suspected women were examined and infected women were admitted by force, if necessary, for treatment.”³² In these Lock Hospitals, under the law (CDA), suspected women were to be examined forcefully by

the doctors. Even the genital areas were examined which was very embarrassing indeed. The whole idea was implemented just “to control the movement of soldiers beyond the controlled environment of the cantonment which made them more susceptible to (infectious) diseases.”³³ Therefore, it can be argued that the central purpose was to provide safe pleasure to the soldiers and British residents in India and save them from the ‘danger’ of sodomy (and homosexuality as well).³⁴

III.

The phobia of colonial authority towards homosexuality and sodomy can be found too in their policy towards the *hijra* community. *Hijras* are basically the male-born transgender castrated or by birth eunuch (or rarely intersexed) people those who use to wear feminine dresses, adopt feminine names and have few feminine mannerisms. However ‘*hijras* have a socio-cultural role as performers’ at the houses where new babies born.³⁵ The British colonial government in India wanted “to erase the *hijras* as a visible social category and gender identity from public space through the prohibition of performance and transvestism.”³⁶ Now question comes why the colonial government wanted to do so? Answer lies in the colonial phobia about sodomy and homosexuality. *Hijras* are neither male nor female and they never consider themselves as males. In this sense, *hijras* somehow challenge the binary division of gender: male and female. *Hijra*-gender identity was considered by the colonial authority as the direct threat to the colonial concept of gender. Colonial officials labelled *hijras* as ‘male’ and according to Hinchy, this “use of masculine pronounce was, in fact, a linguistic strategy to erase *hijras* as a distinct gender category and restore the binary division of gender that *hijras* challenged.”³⁷

The performances (dancing along with singing) of the *hijras* with transvestism was viewed as a threat to moral contagion. The transvestism of the *hijras* was considered as the violation of gender norms. Point to be noted that in the 19th century Indian theatre and popular culture different forms of female impersonation were popular. Because at that time acting or participations of women in theatre were very rare, and for that most of the times male actors used to costume the female dresses and act as women. With these forms of female impersonations colonial authority had not much problem, even these forms of female impersonation and transvestism were considered as ‘innocent’.³⁸ Now question generally comes then why did the *hijras*’ transvestism characterise as ‘obscene’? Actually colonial authority perceived that there was a link between performances with transvestism of *hijras* and homosexual male prostitution. Officials of the colonial government often argued that the public performances of the *hijras* were to be stopped “because the dancing in public of eunuchs in female cloths or costume afterwards leads to sodomy.”³⁹ It was also considered that ‘the singing and dancing of eunuchs’ generally ‘as an explicit form of advertising for sexual services, rather than as a performance with social and religious significance.’⁴⁰ That is why during the mid 19th century an Inspector-General of the North Western Provinces(NWP) wrote to his higher authority that “so long these creatures (*hijras*)

are allowed to go about singing and dancing in women's cloths (sodomy) will not be put a stop to."⁴¹ The British authority "claimed the public presence of hijras directly endangered sexual activity between *hijras* and Indian males due to the immorality, sexual deviance and unmanly character of Indian male audiences."⁴² Therefore, in the eyes of British, "*hijras* were professional sodomites who kidnapped, castrated and exploited male children and polluted public space with their obscene performances and transvestism."⁴³ The colonial government was not only apprehensive about the sexual relation between the *hijras* and the Indian males, but also the possible sexual relation between the *hijras* and the English elite. During 1845 Sir Richard Burton, a government officer of the Sindh province, wrote a secret report on brothels and eunuchs of Karachi where the relation between a section of colonial officials and the *hijras* was revealed, but that report was destroyed by the colonial authority to hide the scandals.⁴⁴ However, after the above discussion it can be understood that the major complaint against the *hijras* was that they were the habitual sodomites, and infected the social/ public space, leading to the moral and physical diseases.

In 1871 colonial government introduced the *Criminal Tribes Act* (CTA).⁴⁵ The part two of CTA provided the direction of the registration of *hijras*. Under the CTA eunuchs were defined "as all persons of male sex who admit themselves or on medical inspection clearly appear, to be impotent."⁴⁶ The law provided that the 'suspected' eunuchs were to be registered. The local police authority had to keep the records or the biological details of the each suspected individuals (*hijras*) in the register. In the register individual *hijra's* name, father's name, time of castration, place of residence, livelihood etc. were recorded. Hinchy has shown that "registered eunuchs were prohibited from performing in public or in a 'public house,' for hire, rendering their primary occupation illicit and forcing many into poverty....(they) were denied several civil rights, including to write a will and be the guardian of a child while police monitored eunuchs' movements."⁴⁷ The law also said that wearing of female cloths and performing in public would be considered as the key markers of *hijra* identity and in that case they would be came under the 'suspicious' category and consequently they had to be registered. The British authority had three main aims for introducing this law (CTA) as said by Hinchy: "First, the prevention of sodomy through the suppression of this 'institution' of 'professional sodomites'; second, the erasure of eunuchs' bodily difference and visibility as a socio-cultural category through the prohibition of performance and transvestism; and third, the gradual extermination of eunuchs, particularly *hijras*, through the prevention of castration, which was represented as the ultimate aim of the CTA."⁴⁸ Though the law (i.e., CTA) was only implemented in the states of NWP, Oudh and Punjab, yet it has exposed the overall mentality of colonial authority towards the *hijras*.

IV.

The policy of colonial state towards alternative sexualities including homosexuality can be understood through Michel Foucault's concept of 'Biopolitic'. *Biopolitic* is basically the

way or mechanism of state power to control over both the physical and political bodies of a population. Foucault considered 'Biopolitic' as 'a new technology of power' that 'exists at a different level.....at a different bearing area, and makes use of very different instruments.'⁴⁹ He has shown this new technology of power (i.e., 'Biopolitic') was emerged in the 17th and 18th centuries and it was 'essentially centered on the body, on the individual body.'⁵⁰ In case of the public health, medicalization of body and criminalisation of homosexuality, state's concern was to establish hegemonic control over native bodies rather than real improvement of health. That is why David Arnold says that the "western medicine is also sometimes seen as one of the most powerful and penetrative parts of the entire colonizing process."⁵¹ Therefore, "health and medicalization of the body...became as the site for the construction of empire's authority and control."⁵² Here the idea of relationship between power and knowledge, as given by Foucault, reveals to some extent. Medicalization is knowledge and police, judiciary etc. by which state implements the knowledge, are the sources of power of state.

To sum up Foucault's theory it can be argued that modern society and state are based on the amalgamation of power and knowledge which often organise a unique kind of surveillance on every aspects of humans' life. And the main areas of this surveillance are the individuals' body, sexuality, sexual practice, sexual relation, sexual morality etc. In Europe by the 17th-18th centuries, with the emergence of capitalism, a new kind of structural format of power and knowledge was developed. Modern state system started to develop on the basis of this new format of power and knowledge. Modern state was not only confined itself in collecting the taxes, giving security to its citizens, but also started to penetrate into every sphere of citizens' life. Citizens' bodies, their sexualities, desires - everything came under the surveillance and regulations of state. This kind of relation between power and knowledge exists also in modern state systems. In the modern bourgeoisie democratic society and state, a unique kind of power structure works where by keeping its invisibility (and sometimes with visibility) power enters into the every aspects of citizens' private life. Foucault in a chapter (known as 'Panopticism') of his famous book, *Discipline and Punish: The Birth of Prison*, has argued that the citizens of modern states always live under the invisible structure and surveillance of power. In the modern state, power and knowledge together organise few institutions (*panopticon*) like prison, asylums, hospitals etc. for its surveillance. And in this environment each citizen tries to maintain himself/herself so called 'normal' and healthy, because any deviation or fall from that 'normalcy' (which is defined by state or power) would be identified as 'abnormal' or 'unnatural' and law-breaker. To explain the characteristics of this power, Foucault has argued: "Hence the major effect of *panopticon*: to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So, to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its action; that the perfection of power should tend to render its actual exercise unnecessary; that this architectural apparatus should be a machine for creating and sustaining a power relation independent

of the person who exercises it; in short, that the inmates should be caught up in a power situation of which they are themselves the bearers...It is an important mechanism, for it automatizes and disindividualizes power.”⁵³

V.

To conclude it can be argued that Victorian morality, newly sexual culture and other considerations made the colonial government to take such kind of harsh policies towards the homosexuals and the *hijras* in colonial India. Concepts of ‘ideal’ sexuality and gender were established on strong faith, and any gender or sexuality that could challenge the notions of that ideal gender-sexual norms were considered as deviant and ‘unnatural’. Phobia was so intense that state created laws to erase these gender-sexual minorities from Indian culture. Colonial regime got ended in India by 1947, but the same homophobic tradition of state has been still continuing. From 2001 queer activists started legal battle for establishing queer rights and making the Section 377 unconstitutional in case of consensual sexual acts between the adults of same-sex, and most of the cases in the court state tried to ignore the rights of the homosexuals (queers) the way the colonial government did during the colonial era. Though homosexuality has been decriminalized recently in India, still now homosexuals are deprived from different rights. Therefore, for understanding the roots of state-sponsored homophobia in India, we have to look back to the colonial era.

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