2018

The Legal, Colonial, and Religious Contexts of Gay and Lesbian Mental Health in India

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Submitted in Partial Fulfillment
of the
Prerequisite for Honors
in Women's and Gender Studies
under the advisement of Nancy Marshall

April 2018

ACKNOWLEDGEMENTS

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CHAPTER 1: BACKGROUND AND METHODOLOGY

Homosexuality is considered taboo in Indian society today. A survey by Pew Research Center in 2014 found that 67% of Indians found homosexuality to be morally unacceptable. Because of this negative public perception of the homosexual community, queer[1] individuals in India have often faced mistreatment and discrimination. In fact, members of the queer community that reveal their sexual identities to the public are often ostracized by their families, shunned by society, and discriminated against in various aspects of their lives. This strongly negative perception of the queer community in India has also led to many perceiving them as criminals. For example, homosexual intercourse involving any kind of penetration is a criminal offence in India. In addition, until 65 years ago, people who were transgender were considered to be criminally inclined by the law. Due to such outlooks about the queer community in India, many queer individuals prefer to hide their sexual preferences or identities and may have heterosexual relationships and families while engaging in same-sex relationships outside of their marriages.

This harsh treatment of members of the queer community has led to poorer mental health of its members relative to other Indians, even leading to thoughts of suicide among some queer individuals (Gwalani). In a confidential, quantitative mental health interview study of 150 homosexual men, 45% reported current suicidal ideation; 15% of those reporting suicidal ideation were considered high risk according to the Mini International Neuropsychiatric Interview (MINI) guidelines (Sivasubramanian, Murugesan et al. 1).

In this thesis, I would like to understand the reasons behind this high level of mental health problems within the queer community; my focus will be on the gay and lesbian communities in

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[1] A note on terminology: When referring to the broader lesbian, gay, bisexual, and transgender (LGBT) community in India, I will use the term "queer" in this thesis. When focusing on gay or lesbian individuals or communities, I will use the more specific terms.

India. I wish to understand the various factors that could have led to the negative perception and mistreatment of the queer community in India, and the possible links of this mistreatment to the declining mental health of the community members. The main objective of this paper is to understand the religious, colonial and legal contexts that may be behind gay and lesbian mental health problems in India.

Mental Health

Mental health in India is a highly stigmatized concept, and this is a cause for concern when it comes to preventing the mental health problems of all Indians, let alone queer Indians, from escalating (Shidhaye & Kermode 1). Indian society does not differentiate among the various mental health issues, ranging from serious mental illnesses, to mild bouts of depression, to even temporary feelings of negativity; instead, all these conditions are subsumed under umbrella terms such as "crazy", "mad" and "stupid". Because of these negative attitudes, individuals are generally averse to seeking professional psychological help due to fear of societal perception and backlash (Sengar).

Moreover, mental healthcare is contingent upon the views of mental health care providers, many of whom may not be completely comfortable with sexual minorities. Narrain and Chandran, in their book *Nothing to Fix: Medicalisation of Sexual Orientation and Gender Identity,* argue that some mental healthcare professionals in India believe that homosexuality is a disease, caused by some unknown "gay gene." Some members of the scientific community in India are even trying to find this gay gene so that they may one day learn to suppress it (Chandran, "Prayer, Punishment and Therapy"). Narrain and Chandran argue that their perceptions could have been affected by earlier Western notions in the psychological world about homosexuality. For example, from 1957-1973, the American Psychology Association (APA) classified homosexuality as a mental disorder

(Narrain & Chandran 90). Also, according to the tenth revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-10) by the World Health Organization, ego dystonic homosexuality, bisexuality and heterosexuality are still classified as mental disorders (PUCL-K 2001 35). Ego dystonic homosexuality was indicated by: (1) a persistent lack of heterosexual arousal, which the patient experienced as interfering with initiation or maintenance of wanted heterosexual relationships, and (2) persistent distress from a sustained pattern of unwanted homosexual arousal (Herek).

In contrast to the West, the Indian Psychiatric Society was, until recently, quiet on the issue of homosexuality (Narrain & Chandran 91). It did not officially clarify its view that homosexuality is not a mental illness until pressured to do so by the public in 2014 (Orinam). Several mental health professionals in India, trained or otherwise, even profess that they can "cure" homosexuality (Chandran, "From Judgement To Practice"). Therefore, even when queer individuals have access to some form of therapy or counseling, it may not help, as "no counselor who believes that homosexuality is unnatural can truly be of any help to a homosexual client in distress" (Chandran, "Prayer, Punishment and Therapy"). The psychologists who are comfortable speaking with sexual minorities may still be unequipped to tackle specific issues related to the homosexual identity, as this is not something that they are trained to do. Also, even within the Indian queer community, there seems to be a gendered division in terms of the psychiatric treatment available to the various factions of the Indian queer community. Though India has a significant amount of support organizations dedicated to the MSM (Men who have Sex with Men) communities, there are very few such equivalents for the lesbian communities as "lesbians are a low risk group" (Gunasekaran) when it comes to HIV/AIDS, and therefore do not receive as much funding from human rights groups.

Methodology

In this paper, I aim to understand the reason behind the mental health issues of Indian lesbians and gay men. My hypothesis is that the mental health of queer individuals in India has been impacted by three main factors: laws, religion, and colonialism. Therefore, I will begin by giving a background on each of these three factors and their impact on the treatment of the queer community in India, on extensive literature research. Then, I will proceed to supplement my research findings with some primary data in the form of interviews.

To examine the relation of the religious, colonial and legal contexts to the mental health of lesbians and gay men, I conducted in-depth interviews with seven key informants - individuals who either worked for a LGBTQIA related organization, or as an LGBTQIA rights activist. I asked these individuals open-ended questions about their opinions on the mental health of the queer community in India, the impact of anti-LGBTQIA laws on the treatment of queer individuals in India, the impact of Hinduism on the treatment of queer individuals in India, and the overall effect of British colonialism on the perception of sexuality in India. I would like to make it clear that due to ethical reasons, I have kept the identities of my interviewees anonymous, and labelled them using the letters A-G. Also, I have avoided using the names of their organizations, instead choosing to give a description of their jobs when applicable.

Finally, in terms of terminology used, I usually refer to the gay and lesbian communities under the umbrella term "homosexual community" and have used the term queer in order to encompass all sexualities under the LGBTQ spectrum. This is because the term "LGBTQ" itself is a western export and serves to destroy indigenous sexual cultures (Kole 1). Also, while I do not primarily focus on the bisexual community in India, the concept of bisexuality itself can oftentimes be ambiguous. To elaborate, Subir Kole, in his paper *Globalizing queer? AIDS, homophobia and*

the politics of sexual identity in India states that many individuals in India may practice same-sex sexual relations, but not identify themselves as "gay" or "lesbian" (Kole 2). This is because, they might consider it equivalent to "having fun," and not want to define their identity by their actions. Also, many members of the LGBTQIA community in India are closeted due to the fear of ostracism and are thus involved in both heterosexual as well as homosexual relationships. This makes it difficult to accurately label their sexuality. In fact, Suzzanne Pennington and Careu Jean Sojka, in their essay *The Revolt Against Sexual Identity*, argue that the very notion of separate gender and sexual identities creates unnecessary divisions and inequalities as these identities serve to control people by demanding that they conform to constraining norms of masculinity and femininity (Pennington and Sojka 85-86).

CHAPTER 2: HINDUISM AND THE HOMOSEXUAL COMMUNITY IN INDIA

Throughout history, the queer community in India has had an interesting relationship with the rest of the population. Homosexuality and transgender identity have not always been the unmentionable taboos that they are today. Terms such as "homosexual" and "the third sex" themselves were invented by European sexologists in the 19th century (Vanita & Kidwai 24). However, ancient Indian literature suggests non-heterosexual relationships were an integral part of Indian society then, if not completely accepted. In this section, I will be discussing the acceptance of homosexual and transgender relationships in ancient India through the study of ancient religious texts of Hinduism, as well as of physical depictions of these relationships on ancient Indian architecture. I would like to clarify that when I say "ancient" India, I am referring to the time from the Vedic Period (c. 1750-600 BC) to the Classical Period (c. 200 BC-1200 AD).

Although not explicit, a lot of stories and myths in the Hindu religion may be alluding to same-sex relationships by emphasizing the ties of same-sex friendships, often seen as more important than even the ties of marriage. As Ruth Vanita, in the preface of her book *Same Sex Love in India: Readings from Literature and History* explains, many societies have viewed romantic attachments between men and women for the purposes of marriage and procreation. However, a person's primary emotional attachment may be to a friend of his or her own gender (Vanita & Kidwai 1). This is emphasized in the *Rig Veda Samhita*, a manuscript in one of the oldest Hindu texts, the *Rig Veda* (c. 1200 BC). In it, friendship is described as a very sacred relationship, as unlike the man-woman relation which is geared towards the reproductive, friendship is constructed as creative (Vanita & Kidwai 2). The meaning of this term, 'friendship,' seems to have transcended the platonic spheres and into something that can break stereotypical gender roles. Vanita gives the example of the ancient Indian epic, the *Mahabharata*, and how in

it, the two titular characters Krishna and Arjuna seemed to share an inseparable bond. To give

some context, in the story, Arjuna is an exiled prince, while Krishna was the human embodiment

of a major Hindu deity. This bond has led to several declarations of love between the two of them,

where they confirm that they are each the most important person to the other (Vanita & Kidwai 4).

The extract given below from *Friendship in Classical Indian Thought* by Bhikhu Parekh allows

us to better understand the extent of friendship between Krishna and Arjuna:

> *"In the Mahabharata, Krishna and Arjuna are inseparable. They have much fun together; they fight, plot, and conspire together; they adore, love, and care for each other; and they instinctively understand each other's feelings, moods, and thoughts. Krishna helps Arjuna elope with his sister Subhadra against the opposition of his family. He reluctantly tells occasional lies and even breaks his vows to protect Arjuna in difficult situations. When he fears that Arjuna might not be able to keep his pledge to kill Jayadratha before sunset the following day, he observes that he does not wish to live in a world in which Arjuna is absent, and decides to break his pledge not to engage in active combat himself. He acts as Arjuna's charioteer during the great war, a job involving not only high risk and a low status but also total and instinctive understanding of the plans, strategies, and thoughts between the warrior and his charioteer. Later on, when he realizes that the moment of his death has arrived, his last thought is for Arjuna, and his final wish is to see him and relieve his likely distress. Krishna summons him in a telepathic encounter, bids him a most affectionate farewell, and consoles him with the thought that once a man's purpose in life is realized, he must not only accept but welcome and even invite death.*
>
> *(Parekh 158-159)*

In the above excerpt, Parekh argues that it is apparent that Krishna valued Arjuna more than any

other person in the world. While Krishna is said to have had thousands of wives, it is Arjuna that

he always accompanied, and Arjuna whom he even thought of in death. This tells us that their

friendship transcended even romantic relationships, as well as familial bonds, as Krishna helps

Arjuna elope with his own sister (Parekh 158-159).

Homosexuality itself has been mentioned in a non-judgmental manner in several Hindu

religious texts, such as the *Arthashastra*, the *Kamasutra*, the *Kathasaritsagara*, the *Puranas*, and

the *Ramayana*. In the *Arthashastra*, an ancient Indian treatise on statecraft, homosexual practices

are treated as minor offences. While homosexual sex is unlawful, it is punished by the lowest of fines (Vanita & Kidwai 24-25). The *Kamasutra*, an ancient Indian text that catalogs sexual practices, uses the word "third sex" to refer to men who desire other men (Vanita & Kidwai 24). Also, the tone in which the *Kamasutra* talks about homoerotic relationships does not seem to be pejorative (Vanita & Kidwai 48). Next, the *Kathasaritsagara*, an 11th century collection of Indian legends, tells the story of how the two wives of a king fall in love with each other, making the fact that they are sharing a husband bearable (Vanita & Kidwai 66). This book stresses the importance of same-sex female relationships, some that dissolve after a heterosexual romance, and some that continue. Finally, the *Ramayana*, one of the two ancient Indian epics written by the sage Valmiki, mentions how Hanuman, a titular character, witnessed female embracing each other in a sexual manner. Though these women may be given certain sexual liberties because they are demons, not all demons portrayed in this story are shown as "evil," and Hanuman feels guilty about having invaded their privacy (Vanita & Kidwai 27). These are just some of the premier examples of depictions of homoerotic relationships in ancient Indian texts. There are countless others.

Vanita also notes that not all mentions of homosexual relationships in ancient Indian texts have been positive. For example, in the *Narada Purana,* which is part of a set of literary texts written between the 2nd century B.C. to 7th century A.D., the punishment for non-vaginal relations is that you will be sent to a particular hell, where one must subsist on semen. Also, in the *Skanda Purana*, another of the *Puranas* texts, there are warnings that declare that those who have homosexual intercourse shall become impotent (Vanita & Kidwai 26). This tells us that not all texts that mentioned homosexuality spoke about it in a positive light. There were clearly some negative sentiments about same sex relationships among the people living in ancient India.

Same-sex relationships have also been depicted on the walls of several religious structures in India. The great eastern and southern pagodas of *Puri* and *Tanjore*, which were constructed between the 6th and the 14th century AD, are examples of such religious structures. Their walls showcase the images of several mythical beings, including Gods, Goddesses, and other mythical creatures. You can also find erotic images that may involve either heterosexual relations, scenes of love between two women, voyeurism among men pertaining to their genitalia, orgies, and even bestiality. The connotation behind these images on the temple walls is debatable, with some scholars believing that devotees were being encouraged to leave their sexual desires aside before entering, while others believing these images to depict occult rites or fertility rituals (Pattanaik).

Transgender people were viewed with a slightly different lens than homosexuals in ancient India. The transgender community had a spiritual link to the religion of Hinduism, which made the lives of transgender people serve a purpose in ancient India. To elaborate, in the Indian epic *Ramayana*, which begins with the banishment of Lord Rama for a 14-year exile, he instructs that no man or woman among his followers should go with him into exile. However, the "hijras," which is the term for a community of female transgender, intersex, and male cross-dressing individuals, decided to follow him on as they did not identify with either the male or female gender, and thus were exempt from his directive. Impressed with their loyalty, Lord Rama sanctioned them the power to confer blessings on people on auspicious occasions such as child birth and marriage, and at inaugural functions where these hijras could sing, dance, and confer blessings (Michelraj 17). Also, the *Puranas* mention several tales that showcase the transiency of gender (Vanita & Kidwai 57). These texts include stories where a man turns into a woman or vice versa. The most prominent of these instances is when Lord Vishnu metamorphoses into Mohini, his female incarnation, to "trick demons and tempt sages" (Michelraj 17-18). The fact that this gender transiency is spoken

about so casually in these texts, as well as direct evidence about the respectability of the hijra community in ancient India, tells us that transgender individuals, at least the ones born male, were respected, and even revered in ancient India. The custom of hijras going to Hindu religious ceremonies to give their blessings continues even today, and these actions have given this community a divine purpose, which seems to have helped with their acceptability.

From the many mentions of homosexuality in ancient Hindu scriptures, I would argue that homosexuality was at least somewhat accepted in ancient India. As Hinduism was the primary religion in ancient India, it can be surmised that homosexuality was not completely shunned in the public sphere. Instead, its acceptance may have depended on which set of religious texts people decided to follow. Even though some of the discussed Hindu scriptures clearly show homosexuality in a negative light, the fact that they are acknowledging homosexuality is reason to believe that it was part of normative Indian culture. Also, transgender people were clearly accepted, as the transgender, or hijra, community in India served a religious purpose, which made them exempt from the constraints of heteronormativity.

CHAPTER 3: BRITISH COLONIALISM AND THE HOMOSEXUAL COMMUNITY IN INDIA

Before Britain's colonization (pre-1858), India was a divided regime. It was split into semi-autonomous regional states, and each of these states had a host of smaller kingdoms that operated within and owed allegiance to them. These kingdoms had different origins and related in different ways to the organization of power and production in the countryside. Finally, above all of these states existed the Mughal empire, the dominant authority at the time, and the empire with which a lot of the other states were in conflict. (Bayly 23).

The British Crown first began its dealings with India in the 17th century A.D., under the domain of the East India Company, which was essentially a trading company whose stock was owned by several people. It was only in the 18th century that the East India Company started to focus less on trade and more on the procurement of land. They did so by making deals fueling the aggressions between different warring states, thus establishing their right to rule in the complicated political environment that was once India. By the end of the 18th century, the East India Company controlled almost the whole the Indian subcontinent, either directly, or through the establishment of puppet rulers within the Indian population (Dalrymple)

Once the British Raj had firmly established its foothold in India, it began a protracted campaign not only to colonize the land, but also to colonize the minds of the people native to it. Many scholars believe that this colonizing of minds was based upon a structure of heteropatriarchy that was adopted by colonizers when conquering new lands. Anne McClintock, in her book *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest,* compares the process of colonization to the idea of a man conquering a woman. The man in this scenario would be a collective for the hyper-masculine, white, male conquerors, while the women or effeminate

individuals would be the people of the land being conquered (McClintock 30-31). In the context of the Indian colonization, two scholars, Mrinalini Sinha and Indira Chowdhury, suggested that the hyper masculinity or "manliness" of the British colonialists was seemingly contingent on the "effeminacy" and contemptible weakness of the colonized Indian men (qtd. in Reddy 29). This served not only to create a rigid gender binary due to the militarized nature of such conquests, but also stressed the notion that men were superior to women.

Not only did the British Raj establish its dominance by "emasculating" the native population, but also by propagating a racial hierarchy that placed the white British as superior to the racialized Indian population. This racial hierarchy was gendered. According to McClintock, colonized women were treated almost as if they were barbarians, and it was the colonizers' responsibility to ensure that they be "civilized" (McClintock 31). This created a culture of obedience to the British Raj within the Indian populace and helped bolster the heteropaternalism at play.

This situation is comparable to the case of settler colonialism in the United States. As Maile Arvin, Eve Tuck and Angie Morrill note in their article *Decolonizing Feminism: Challenging connections between Settler Colonialism and Heteropatriarchy*, native feminist theorists argue that a key aspect of the relentlessness of settler colonialism in the United States is the consistency and thus naturalization of heteropatriarchy. The heteropaternal organization of citizens into nuclear families, each expressing a "proper modern sexuality," has been essential to produce a supportive citizenry. Thus, the colonial powers sought the disappearance of the indigenous people's complex structures of government and kinship and the management of their gender roles and sexuality as a way to subdue the indigenous population (Arvin, Maile & Tuck, Eve & Morrill, Angie 15). While the situation in India was not an example of settler colonialism, the same process of

heteropaternalism can be seen. Because of an expressed gender and racial superiority, the British colonialists sought to destroy the traditional Indian way of living, and transform it based on Western standards.

This homogenization also is a result of difference in cultures, as well the meaning of "culture." As M. Jaqui Alexander in her book *Pedagogies of Crossing* puts it, at the time, not only did the First and Third Worlds have different cultures, but for the Third World, culture stood for rooted values and traditions, while in the First World, it operated as a proxy for class, wealth, and intelligence. This led to the assumption that "traditional patriarchy," which was present in non-colonized worlds and that led to the subjugation of minority groups, could be circumvented by the application of Western Modernity (Alexander 188). Also, morally, the British colonizers believed that they were superior to the Indian natives, especially because of this difference in culture and the idea of modernity.

To understand how British colonialism impacted the perception and treatment of the queer communities in India, it is first important to understand the colonial stance regarding queer relationships. In 1897, Havelock Ellis and John Addington Symonds published *Sexual Inversion*, the first medical textbook on the topic of homosexuality (Crozier 1). This term, "sexual inversion," was an umbrella term used at that time to classify men who were believed to have subverted their normative gender roles to have sex with other men and sometimes to cross-dress (Crozier 10). During the Late Victorian and Edwardian eras- from the 1850s to the first World War - British society provided tacit acceptance of sex between men, as long as this behavior was kept out of public discourse. However, if a homosexual relationship was exposed to the public, it would create a scandal of epic proportions that would be publicized in news media and other institutions of

authority as an "unnatural crime". These scandals were seen as exceptional, isolated incidents, and criminal convictions resulting from them were extremely difficult to accomplish (Brady 2).

In Victorian England especially, sexual morality and the concept of "respectability" played an important role in society. This was a time of rigid gender roles, with the "passionless female" wife and the responsible, masculine "patriarch" (Crozier 3). If a person did not fit into these gender roles, then they were considered an outsider. Women who defied gender norms were cast as the mistress or the whore; while in the case of men, as the queer. In this simmering pot of moral values, religiosity was an essential ingredient with the rise of evangelism within the working classes. Christianity, the primary religion in England at the time, was used to sanction repressive attitudes towards sexual conduct as a way of maintaining social differences (Crozier 4). Therefore, a stringent, religious upbringing would have been a strong reason for the British view of homosexuality as immoral.

What does this mean for queer, non-heteronormative sexualities in the Indian colony? Concepts such as homosexuality (then known as sodomy) and sexual ambiguity went against British morality and their belief in the gender binary. Homosexuality and sexual ambiguity were considered old, traditional, and even savage, as compared to the modern, Western way of life. Also homosexuality, or any sorts of non-heteronormative identities, were considered incompatible with the military way of life, as soldiers that engaged in homosexual sexual pleasures were seen as reducing the morality of their cause (Alexander 201-202).

CHAPTER 4: LAWS AND THE HOMOSEXUAL COMMUNITY IN INDIA

In this chapter, I provide background on two major Indian laws that affect the queer community,

Section 377 and the Criminal Tribes Act, as well as a fundamental right, the Right to Privacy.

Section 377

Section 377 of the Indian Penal code states:

"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 10 years and shall also be liable to fine.

Explanation. -Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

(Indian Penal Code, Chapter XVI, Section 377)

Section 377 was introduced into the Indian Penal Code in 1860 by Lord Thomas Macaulay of Great Britain, who was tasked with consolidating and rationalizing the splintered legal systems prevailing in the Indian Subcontinent. Lord Macaulay himself seemed to abhor the idea of homosexuality, as he was quoted in an Introductory Report as referring to homosexuality as a "heinous crime," an "odious class of offences" and a "revolting subject." In the same report, he went on to mention that he did not even want the public discussing the subject of homosexuality, as by doing so, the injury done to community morals would be far greater than any benefits derived from such a discussion (Gupta 4815).

According to Alok Gupta, in his paper "Section 377 and the Dignity of Indian Homosexuals", the objective behind introducing Section 377 has remained unclear and unsubstantiated (4816). Historians have speculated that there were concerns that the soldiers of the British Imperial Army, in the absence of wives, would become replicas of 'Sodom and Gomorrah,' or pick up 'special Oriental vices' (Bhaskaran 16). The law comes under the section of the IPC

titled 'Offences Affecting the Human Body' and follows the section on the offence of rape. It is unclear exactly what offence "against" the human body this law is looking at. The jurisprudential basis of this law is rather the conceptualization of a specific morality of gender and sexual conformity and the need to enforce such a morality on the Indian subjects (PUCL-K 2003 46).

The law also remains ambiguous in its framing. To begin with, it does not define what is "carnal intercourse against the order of nature." Available case law makes frequent references to bestiality, buggery, and biblical notions of sodomy. However, the meaning of sodomy has varied across centuries, continents, and cultures. Also, in the explanation section, the word "penetration" has been used to qualify the crime. However, there is no mention of *what* is to penetrate *what* (Baudh 60). Several past case laws around Section 377 surmised that carnal intercourse against the order of nature included oral sex, anal sex and even thigh sex. Basically, it included any form of sex which that did not result in procreation (PUCL-K 2003 47). However, the implication of the ambiguity in this law could mean that the acts of penetration, anal or otherwise, even between consensual, heterosexual couples could be termed as "criminal."

Also, due to the reference in this law about penetrative intercourse, it bears no direct relation to the intercourse had by lesbian or queer women (Ghosh 166). This erasure of queer women's experiences says a lot about the position of Indian queer women in the larger queer movement. Due to the absence of a phallus in queer female intercourse, some view the love shared between two queer women as a homoerotic act with the idea that intercourse between two women is impossible (Ghosh 166). In addition, heterosexual men tend to eroticize lesbian women, thereby making their acts less of a concern than that of gay men (Worthen 709). While these factors may help lesbian women avoid much of the legal and moral furor faced by gay men, yet, they serve to trivialize the lesbian identity by diminishing the importance of same-sex female relationships.

Section 377 has on occasion been used to prosecute the perpetrators of marital rape or the rape of minors when the victims are boys. This is because no separate laws exist to punish the perpetrators of these ordeals (PUCL-K 2003 47-48). Due to this fact, the repealing of Section 377 has come into direct conflict with the agenda of children's rights groups. The deletion of Section 377 would leave behind a void in the realm of protecting male children against adult sexual abuse (Agnes 846). This has been a popular argument for politicians to make when giving reasons for not getting rid of Section 377.

Foundations such as the *NAZ Foundation* and a group of LGBT activists known as *Voices Against 377* started legal proceedings to repeal Section 377 in 2001. They filed a Public Interest Litigation challenging the constitutional validity of Section 377, arguing that it severely hampered HIV/AIDS public health efforts and thus the right to health of the MSM community (Narrain, "The Right that Dares to Speak its Name" 10). After years of drawn out courtroom struggles, a historical ruling was made in the year 2009, when the Delhi High Court accepted an amendment to the law stating that "homosexual intercourse between consenting adults would not be considered a criminal act". The Court held that the criminalization of consensual sex between adults in private violated the Indian Constitution's guarantees of dignity, equality, and freedom from discrimination based on sexual orientation (Narrain, "The Right that Dares to Speak its Name" 12).

In coming to this conclusion, the Court referred to Articles 21, 14 and 15 of the Indian constitution, which guaranteed the dignity, equality, and freedom as rights to all Indian citizens. It also settled a debate on the question of whether it was the responsibility of the State to protect public morality. The Court came to the decision that protecting said morality was not a compelling enough reason to infringe upon people's constitutional rights (Narrain, "The Right that Dares to Speak its Name" 19). Then, the court referred to academic publications, such as a study by

Professor Ryan Goodman of Harvard Law School, which concluded that sodomy laws do not put a stop to citizens from engaging in sodomy, as they are rarely enforced. However, what these laws do achieve through their condemning nature, is to shape an individual's identity and self-esteem (Goodman 690). Professor Goodman's research went on to clarify that individuals ultimately do not try to conform to the directives set out by such laws, but the disapproval communicated through these laws nevertheless substantively affects their sense civic identity and their relationship to the civic realm (Goodman 732). Finally, the Court also reviewed several pieces of medical literature including the Diagnostic and Statistical Manual of Mental Disorders (DSM), which removed homosexuality from its list of mental health disorders in 1973 after reviewing evidence to support this stance (Narrain, "The Right that Dares to Speak its Name" 24).

However, in 2013, a two-judge panel of the Supreme Court of India overturned the 2009 Delhi High Court ruling and recriminalized homosexuality. The reasons they gave for doing so were that only a miniscule percentage of Indians were homosexual and therefore they were dismissing the "so-called rights of LGBT persons." The court also noted that fewer than 200 people had been prosecuted under Section 377 in the 150 years since the law was put in place, and therefore there was no sound basis to call the law unconstitutional (Trivedi 22). In taking this view, the Supreme Court overlooked the research referred to by the Delhi High Court when making their 2009 judgement. As mentioned earlier, according to Professor Goodman's research, while it is true that sodomy laws in several countries are rarely enforced, this does not minimize their impact. In fact, it is important to take into consideration the material consequences of these laws, such as stigma and the homosexual closet (Halley 1729). This decision was much criticized, and many in the legal community called out the two judges for letting their personal biases affect their fair

judgement. Nonetheless, the fact remained that homosexuality was once again seen as criminal in India.

Criminal Tribes Act

Another major law that has been used to harass the queer community is the Criminal Tribes Act (Act XXVII of 1871). This contentious legislation was enacted in 1871 by the British government to suppress what they considered groups of hereditary criminals. The Act was originally directed at a combination of itinerant communities who, in their travels, were thought also to dabble in various sorts of petty crime, as well as certain settled communities that, on the other hand, frequently decamped on what were believed to be thieving expeditions (Brown 191). Those designated criminal tribes tended to belong either to marginal social orders on the fringes of sedentary Indian society for whom petty crime was a matter of subsistence (194). As an article in The Economist puts it, to fix these vagabonds, the Raj introduced the 1871 Criminal Tribes Act, under which members of around 150 tribes were forced to register with the police, forbidden to move around freely and, in many cases, herded into barbed-wire camps (The Economist, "If they were crooks, wouldn't they be richer?"). J.F. Stephen, who introduced the Criminal Tribes Bill, justified it by saying, "People from time immemorial have been pursuing the caste system defined job-positions: weaving, carpentry and such hereditary jobs. So there must have been hereditary criminals who pursued their forefathers' profession" (qtd. in Narrain, "Crystallising Queer Politics" 458).

In 1897, the British passed an amendment to the Criminal Tribes Act of 1871 that specifically targeted the eunuch population of India, otherwise known as the hijra community[2]. The Amendment defined eunuchs as:

> *"[A]ll persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent. Local governments were required to keep a register of the names and residences of all eunuchs who were "reasonably suspected of kidnapping or castrating children, or of committing offenses under Section 377 of the IPC, or of abetting crimes under these provisions."*

(qtd. in "Crystallising Queer Politics" 458)

In the above definition, eunuchs were all persons who on "medical inspection clearly appeared to be impotent." Such medical inspections were not just a threat, but a reality during the upcoming years of the law. These were not just a violation of personal space, but also it worked to form a structure of panoptic surveillance where law enforcement officials and people alike surveilled the community for individuals with these so called "queer" traits.

Registered eunuchs were prohibited from being guardians to any minors, making a gift or will, or from adopting any sons. Also, eunuchs could not oversee boys less than 16 years of age. Violations of these provisions could lead to up to two years of imprisonment for them. Finally, eunuchs were also prohibited from appearing "dressed or ornamented like a woman" in a public street or place, and they could not dance, play music, or sing in any public exhibition ("Crystallising Queer Politics" 458). These traits were the very indicators of the hijra cultural identity. As described in the previous section on the religious context, the hijras had a deep religious purpose in the Hindu community, which was to dance, sing and bless people at Hindu

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[2] A note on terminology: The definitions of eunuchs and hijras are not the same, though eunuchs could be considered a part of the larger hijra community. However, in this paper, I refer to eunuchs and hijras interchangeably as colonial era laws in India saw them as the same.

religious events. Preventing them from doing so would lead to a loss of income, as well as a societal justification for the hijra identity.

The Criminal Tribes Act took effect through the Indian central government legislation. However, strangely, the Act gave local governments jurisdiction to determine whether the Act should be applicable to their territories, or if should be amended to reflect local needs and conditions (Brown 195). Thus, by the late 1930s, there was growing discontent that the act did not fit in with the liberal freedoms that Indians, albeit still colonial subjects, should enjoy. Moreover, on the local level, several states such as Madras, Mumbai, and the former Rajputana principalities had passed legislation to repeal and replace the Act by 1950. Several other states such as Uttar Pradesh and West Bengal had active Enquiry Committees around the same time to assess whether the Act was still relevant in post-colonial India. "Wherever we went," the Committee reported, "we heard one single cry from all the criminal tribes that whereas India obtained freedom, they continued to be in bondage and their demand for setting them free by repealing the Act was insistent" (Criminal Tribes Act Enquiry Committee, 1951: 81; hereafter, Enquiry Committee) (qtd. in Brown 195). Thus, after years of struggle and arguments, the Criminal Tribes Act was finally repealed on a national level in 1952.

It is important to note that the Criminal Tribes was repealed and replaced with the Habitual Offenders Act of 1952, which like the Criminal Tribes Act, sought to define, follow, restrict, and correct habitual offenders. While the definition of habitual offenders differed state to state, an example of this definition according to the Uttar Pradesh Habitual Offenders' Restrictions Act was:

"Habitual offender" means a person who, before or after the commencement of this Act, has been sentenced to substantive term of imprisonment, such sentence not having been set aside in appeal or revision, on not less than three different occasions for one or another of the offences set forth in the schedule."

(Uttar Pradesh Habitual Offenders' Restrictions Act)

This act served to restigmatize the tribes categorized by the Criminal Tribes Act, as instead of removing these categorizations, it instead sought to form new categories that were invariably composed of people from the original "criminal tribes."

I would argue that the Criminal Tribes Act has been far more damaging than Section 377 to the queer Indian community. While pre-colonially, mixed opinions existed about homosexuality in a religious context, most opinions about the transgender community were positive. As mentioned earlier, hijras had a religious purpose, as well as a religious authority to bestow blessings. However today, many hijras earn their living through means of begging, prostitution, or both. Their reputation and conditions have become so reduced that they live on the fringes of society and are unemployable in the mainstream job market. The way in which the impact of the Criminal Tribes Act differs from Section 377 is that the latter criminalizes an action (intercourse), while the former criminalizes an entire being. Though the Act was repealed after India gained its independence from the British Empire, its legacy continues today (Michelraj 18).

Right to Privacy

On August 24th, 2017, in a historic ruling with a nine-member bench, the Supreme Court of India declared that privacy is a fundamental right for each of its 1.3 billion citizens under the country's constitution. The 547-page judgement, which overturned previous cases and was unanimously approved, stated that "Privacy is the constitutional core of human dignity." In giving their judgement, the Court addressed the issue of sexual orientation, calling it "an essential attribute to privacy." It also condemned the 2013 Supreme Court ruling that upheld the

criminalization of homosexuality on the grounds that the LGBT community was "a minuscule fraction of the country's population." The Court said that that was no basis on which "to deny the right to privacy." It added: "The purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities" (McCarthy).

Because of this judgement, the Supreme Court of India has decided to revisit its 2013 verdict on Section 377 sometime this year. This happened after a petition was signed by five members of the queer community that Section 377 was unconstitutional and that it directly impacted them.

CHAPTER 5: PERSPECTIVES: LESBIAN AND GAY MENTAL HEALTH IN INDIA

In this chapter, I discuss the perspectives of the seven key informants whom I interviewed for this paper. As stated earlier in the methodology, I interviewed people who either worked for NGOs related to queer rights, or who were involved in queer activism. I interviewed people from five different queer rights organizations focused on queer rights, queer health, or queer community building. However, some of the organizations that the interviewees worked for had stringent confidentiality policies, and therefore, I will not be mentioning the names of those organizations in my paper. Also, the interviewees that came from these organizations made it clear that the views and opinions that they expressed in the interviews were their own and did not necessarily reflect those of their respective organizations. I also interviewed two queer rights activists to provide a perspective outside of the NGOs.

The first interviewee, hereafter referred to as "Interviewee A," came from one of the largest queer rights NGOs in India. This was one of the first organizations in India to advocate for the rights of Men-who-have-Sex-with-Men (MSM) and now covers a range of queer issues such as health, advocacy, capacity building and research. Interviewee A works as a research interventionist in a study that works with MSM to "improve their self-esteem and reduce their risky sexual behavior." Interviewee A also has a background in psychology and counselling and serves as a counsellor to several clients.

My second interviewee, hereafter known as "Interviewee B," formerly worked for another large organization in the field of queer rights. This organization was comparable in size and history to the organization where Interviewee A worked and began with a focus on marginalized communities impacted by HIV/AIDS, such as the queer community. This organization was also pivotal in the legal movement to repeal or amend Section 377. Currently, Interviewee B works as

the "India Program Manager" for another smaller organization, also based in New Delhi that advocates for queer rights and is involved with the queer community to fight HIV/AIDS. Interviewee B is involved in two projects, one that helps and counsels people suffering from HIV, and one that provides a sense of community to queer individuals through technological means. While the first project may or may not include queer individuals, the second project is expressly for queer individuals. Interviewee B did not have a background in psychology or counselling and worked mainly on addressing HIV/AIDS.

My third interviewee, hereafter known as "Interviewee C," had by far the least formal qualifications in the field of queer rights out of all the interviewees. Interviewee C was a leading member of a queer collective operating on the campus of the Indian Institute of Technology, Bombay. This collective does not qualify as an NGO, since it is mainly a space for students of that campus to meet and interact. However, it is an organization that supports queer rights, and Interviewee C had an important leadership role within the organization. In terms of educational qualifications, Interviewee C was studying engineering, and had nothing to do with queer rights from an academic standpoint. Therefore, I would qualify Interviewee C as a queer rights activist.

My fourth interviewee, hereafter referred to as "Interviewee D," is a queer rights activist who is very involved with the queer community in Guwahati, Assam. Interviewee D does not like to label themselves as an "activist," because they have not been involved in any legal battles related to LGBTQIA activism. However, Interviewee D was referred to me by someone who considers them an activist, and after hearing stories about their level of personal involvement in the queer community, I felt comfortable with using the label of "activist." Interviewee D has no formal background in psychology, however, they have been involved in providing informal counselling and peer advising to members of the queer community who reached out to them.

My fifth interviewee, hereafter referred to as "Interviewee E," is an employee of an organization that works for queer rights. However, in this interview, they clearly indicated that they were in no way representing their organization during this interview. Instead, they spoke to me from the standpoint of a member of an "LGBTQIA collective" based in Guwahati, Assam. It was a little difficult to classify Interviewee E into either category of queer affiliated NGO employee or queer rights activist, because they were, by admission, both. However, Interviewee E chose to see themselves as an activist for this interview. Since we did not discuss Interviewee E's professional role in detail due to limitations imposed by the confidentiality policies of their workplace, I am not sure whether they play any role in counselling within their organization. However, when questioned what they would do if confronted by a queer individual seeking mental health help, they responded that they would direct them to anyone from a list of mental health professionals collected by their collective. This led me to believe that Interviewee E themselves did not counsel any members of the queer community.

My sixth interviewee, hereafter referred to as "Interviewee F," is an employee of the same organization as Interviewee E, and as such is constrained by the same measures of confidentiality as the other. Interviewee F is also therefore not representing their organization in this interview and is instead expressing their own opinions as someone knowledgeable of the queer community. Both Interviewees E and F are occupationally based in the city of Kolkatta. Interviewee F does not have any educational background in psychology or counselling, though they did have a background in public health. To quote them on this, "I am also focused on health because I did my post-graduation on public health… social work, public health."

My seventh and final interviewee, hereafter referred to as "Interviewee G," is an employee of an NGO advocating for LGBTQIA rights, especially health. This NGO is a one of the smaller

queer related organizations in India, and it works towards achieving public health outcomes for the socially marginalized and the poor. This was the one organization that gave its permission for Interviewee G to discuss its affairs with me. Interviewee G is a Program Manager of a program called Gen Y, as well as deeply involved with the work of the Sexual, Reproductive, Health and Rights (SRHR) department at their workplace. They also play a role in the Communications Team as an intraorganizational communications representation. This is because their organization is one of six sister organizations that often collaborate. Gen Y, the program that Interviewee G heads, provides counselling to queer youth. Interviewee G does have a counselling background, as they have stated that due to the small size of the organization, they themselves have gotten involved in the counselling aspect of the program.

Views on the Mental Health of the Indian Queer Community

I asked all the interviewees about their views on this suicide among lesbians and gay men in India. I purposely kept the question vague and open-ended to let the interviewees decide what they wanted to speak about here. Then, depending on the answers I got, I could ask follow-up questions specific to each interviewee.

Looking back at the answers that the interviewees gave for this question, all of them shared a common stream of thought. All the interviewees agreed that gay and lesbian individuals in India committed suicide on an annual basis for reasons such as lack of acceptability by society, pressure from their families, or lack of acceptability towards themselves. In fact, Interviewee F gave a very detailed analysis of the phases of familial rejection, that they drew from stories they had heard from individuals in the LGBTQIA community.

> *"The moment your family - we are all born in a family, right? We don't give up our family right from birth. Somebody who belongs from the LGBTQIA community somehow realizes that from their very adolescence period, or even before, that they somehow don't fit into the heteronormative boxes. They understand that, they do*

not conform to the social norms and ideas and all that. See that is the moment their families start rejecting them, trying to make them straight in a way, and that happens to a lot of...can be even violent, and if that individual comes out to his or her family...his or her and their family, that 'I identify as a gay or a lesbian, bisexual, transgender, whatever', first of all their families are mostly unaware of all this terminology. They're unaware of these identities. Their first reaction is often confusion. 'What are you telling son, daughter? What are you telling me, I don't understand this.' Their next reaction is, 'It's just a phase. It happens during the individual's childhood adolescence, so it's just a phase.' The try to deny. They're in denial. Later on, when they see that, 'Okay my child is not conforming,' they think the next reaction. They are forced to accept, and the worst of experiences is throwing that individual from the house."

<div align="right">

-Interviewee F

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Interviewee F went on to further say that this rejection from one's family, as well as one's friends in a lot of cases, leads to a lack of a support system for the queer individual. Interviewee F stated that this rejection could be very traumatizing for an individual and could lead to instability in that individual's mental health.

Besides familial rejection, another angle that was explored by the interviewees was a lack of self-acceptance that could lead to issues with a queer individual's mental health. Interviewee A, who works as a counsellor at their organization spoke about how this was one of the more common problems people would come and speak to them about.

"I think the major issue when it comes to someone being LGBTQ in India, would be their levels of accepting themselves because of having Section 377, and maybe a lot of reasons, such as society not accepting. So, accepting themselves is a common issue that has always come to me, where people would be coming out to me with a lot of fear, because they have not really come out to people in the past and they would fear judgement."

<div align="right">

-Interviewee A

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Interview A suggested that these feelings of rejection of sense of self and identity could cause feelings of depression in a queer individual, thus negatively impacting that individual's mental health.

Response to Queer Person in Need of Psychological Help

I was interested in the mental health services available to lesbian and gay men, given the homophobia and discrimination among some therapists reported in Chapter 1. I was also interested in the perspectives of my interviewees on the appropriate response to give to an individual contemplating suicide or asking for help. I tried to see if the answers of the interviewees matched their educational qualifications and experience in the field of counselling. In terms of qualifications, only one of the interviewees had an educational background in psychology which allowed them to professionally counsel people. Another interviewee had received on-the-job training from their organization to provide counsel to queer individuals that approached their organization. While this was not a degree from a scholastic institution, it could still be counted a formal training. I wanted to know if this experience in counselling members of the queer community, whether formally or informally, impacted the various responses that I got for this answer.

First, I want to look at Interviewee A, who is professionally certified to provide psychological treatment and counselling. Interviewee A has an educational background in psychology and provides counselling to several clients as part of the study that they are conducting. In their[3] own words, they "started off as being only a counsellor" at their organization, but then were given more roles. Their response to a queer individual seeking mental health help would be to direct them to one of the in-house counsellors at their organization, which include themselves. They stated that these counselling services were available to anyone in the queer community, as well as heterosexual individuals if they wished to seek them.

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[3] A note on terminology: When referring to the interviewees, I will be using the pronouns they/them/their for referring to a single interviewee in order to keep the genders of the interviewees confidential.

Interviewee G did not have any academic qualifications for providing mental health care. However, Interviewee G stated that they had been provided with on-the-job training in counselling members of the queer community. To elaborate, they stated that they worked within a small team composed of about 5 individuals, and that all the team members were trained to address the possible needs of people approaching their program for counselling. To quote Interviewee G, "All of the team members have gone through… including myself, have gone through capacity building training, where we're trained to address individuals, and address the unique vulnerabilities that LGBT youth come up and talk to us with. So yes, I am directly involved with counseling as well." Their response to a queer individual in need of counselling, whether they were approached through their work or personally, would be to try and help that individual by themselves. The reason Interviewee G gave for doing so is that most of the individuals who approached them seeking mental healthcare were in the same age group as them, and therefore it became easier for these individuals to reach out and speak to them. Thus, Interviewee G did not seem as rigid about suggesting a professional psychologist or psychiatrist to people that required immediate mental health attention. They believed that their services would provide adequate psychological support to a person in need.

Looking at the above responses given to me by the interviewees with some sort of qualification in counselling, I noticed both Interviewee A and Interviewee G felt no difficulties in recommending themselves as counsellors to people that approached them seeking help for their mental health problems. This is most probably because these two individuals feel themselves capable enough to offer assistance to queer individuals with mental health problems.

On the other hand, the remaining six interviewees did not have any formal qualifications in the field of psychological counselling, although Interviewee D, who was an activist, had

participated in some peer counselling. Therefore, I was interested to know if their lack of educational qualifications in the field of human psychology would impact their response to a person in need of mental health assistance. However, after tallying up the responses, I realized that these remaining five interviewees had given a mixed range of responses.

Three of the interviewees – B, C and E – immediately responded that they would direct any queer individuals seeking mental health treatment to a mental health professional. Also, they were not vague about which mental health professional the person should be directed to, suggesting that they had either experienced, or were prepared for such scenarios. The most detailed of these responses was given by Interviewee E, who is a member of an LGBTQI collective in North-East India. They stated that they would direct them to a mental health professional from a list given to them by their organization. This list was the product of a survey conducted by their collective to locate LGBTQI-friendly mental health professionals. They said, "You never know which mental health professional will be positive towards your issue, and who will not be." In saying this, Interviewee E referenced the strong distrust that the Indian queer community as a whole felt towards mental health professionals. This is because, as Interviewee E, as well as all the other interviewees revealed, India was a country that was not always friendly to the queer community in the medical sphere. In a lot of cases, when queer individuals went to seek counselling from mental health professionals for ailments such as depression, or suicidal thoughts, instead of addressing the main mental health issues, these "professionals" would attempt to cure their patients of their homosexuality.

Meanwhile, two of the interviewees, who were not qualified experts in the field of counselling – D and F – answered the question on how they would address a queer individual requiring mental health assistance somewhat differently. Both interviewees stated that they would

first try to counsel these queer individuals themselves before even suggesting professional mental health assistance. In Interviewee D's case, they stated that this was because of their experience with peer counselling. Interviewee D had on occasion been approached on various social media forums such as Facebook by queer individuals seeking someone to listen to their problems. Interviewee D would respond to them willingly, though they clearly stated that whatever advice they gave during these instances was from the perspective of a friend, and not a mental health professional. The reason that Interviewee D was so willing to offer peer counselling to these individuals was since most of these individuals approached them anonymously. This meant that a lot of these individuals were still "closeted" about their sexual identities. Therefore, many of these individuals could not seek out mental health professionals due to the risk of revealing their sexual identities. Interviewee D did state however that if they were asked for help by any of these individuals in seeking a mental health professional, they would not hesitate to provide them with assistance.

As for Interviewee F, they stated that they were a little hesitant to send queer individuals requiring mental health assistance to a professional counselor due to a lack of trust on part of the individuals. They stated that if they were approached by queer individuals seeking mental health care, then it was probably because these individuals would be more comfortable talking to Interviewee F than to a mental health professional. Therefore, Interviewee F would attempt to counsel them before trying to direct these individuals to any mental health professionals.

Legal Context of Queer Community in India

One of the most important questions that I asked all the interviewees was for their perspectives on the legal context of the queer community in India, and whether it might have impacted gay and lesbian suicides in India. This is an important question because it goes towards

answering the ultimate question of my paper, which is to understand the impact of the legal, religious, and colonial context on gay and lesbian suicides in India.

In terms of the legal context, one of the main laws that every interviewee mentioned in their interviews was Section 377. This famous piece of legislature that makes homosexual acts illegal in India has been publicized extensively in the media, and everyone has an opinion on whether it should exist, not exist, or be amended. It helps the backers of this law that it is also used to prosecute other sex crimes such as marital rape and rape of the male child. However, these are offences that can be prosecuted using this law only at a judge's discretion and are not expressly called out for being criminal offenses within the wording of the law. As such, neither is homosexuality. However, as mentioned previously, this law criminalizes "unnatural penetration," and most in the Indian justice system would constitute homosexual relations as unnatural.

The fact that Section 377 criminalizes sexual acts makes this an invasive law by nature. Seeking proof to prosecute queer people using this law has led to some unfortunate instances of violation of basic privacy, such as people setting up cameras in their homes to catch suspected homosexual spouses in the act. Interviewee D, who is an activist, feels strongly about the invasive nature of this law.

> *"Being in a democratic country, we have the equality, rights in our constitution,*
> *but at the same time because of the gender issues on our sexuality or sexual profile,*
> *if some law which was made in British era now criminalizing us. It … the concept*
> *of 'my bedroom is my bedroom.' So, they don't need to look at my bedroom."*
> *-Interviewee D*

While Interview D feels strongly about the invasive nature of Section 377, almost all the interviewees agree that Section 377 has had little tangible impact on the Indian queer community in that the number of queer people who have been sentenced using this law, since its formulation in the 19th century, are in the low hundreds. As Interviewee B puts it, "377 for LGBT community

is more for harassment, for extortion of money." This statement not only brings up the ineffectiveness of this law to penalize homosexual relations, but also alludes to the fact that this law has been used improperly by corrupt elements in the Indian Justice system to extort, sexually assault, blackmail, harass, and perpetuate violence against the queer community (Trembley, Paternotte and Johnson 91). In a report by the People's Union for Civil Liberties-Karnataka (PUCL-K 2003) published in 2003, there are several testimonies by people of the queer community detailing exactly how the Indian justice system, especially members of the Indian police force, have misused the law to wrongfully arrest and rape them. The below passage from the report speaks about the testimony of a hijra woman.

> *"Hijras reported that the police not only regularly raid the hamams to collect their hafta (bribes), but abuse their official authority by having non-consensual sex with them. They related an incident when two constables and one inspector raided the hamam late at night on the suspicion that the hamam was employing female prostitutes. They were stripped and made to stand naked in a line to show that they were not female. Finally, the policemen insisted on having sex with them individually, while the others were made to wait outside."*
>
> *-PUCL-K 2003 30*

In the above passage, *hamam* is a communal bath house that often employs members of the hijra community. Though the hijra/transgender communities are not the subjects of this paper, the above passage provides a good example of the ways in which Section 377 can be used to exploit gay and lesbian individuals by the Indian justice system.

There were some other laws mentioned by the interviewees that could possibly have an impact on the homosexual population of India. Interviewee B spoke about two such laws. It was their contention that Section 377 was used more as a threat than as an actual law to penalize the queer community. However, most of the arrests of the Indian queer population were a result of minor laws, such as the Obscenity Act. As Interviewee B puts it, "There are also other laws, such as Obscenity Act, Public Nuisance Act, which are also used along with 377 to prosecute the

community." Interviewee B states that these minor laws are used at the discretion of the arresting officers, and that if they find something indecent, it is their prerogative to make an arrest. For example, historically, several gay men holding hands in parks were arrested and booked under Section 377 (Vanita, "Free to Be Gay" 324). However, when the time for sentencing came, Section 377 would not apply as these men were not engaging in any sort of sexual penetration. Therefore, laws such as the Obscenity Act would be much more applicable to arrest and harass these gay men. I would like to mention that I found no secondary sources in my research to show that these minor laws impacted the queer community in India, most probably because the scale and impact of these laws was too small for people to extensively talk about. Therefore, these sorts of laws put in use would only be noticed by people working at the grassroots level with the Indian LGBTQIA community.

Another law, or rather proposed law, that was mentioned by Interviewee E was the "Transgender Persons Rights Protection Bill 2016." This was a bill introduced in the Indian Parliament in 2016 and was a revision of a previous bill proposed to improve the conditions of transgender people living in India. While this bill was meant to empower the hijra communities in India, it turned out to be very problematic. Interviewee E stated that, "The whole bill is very problematic as it says that the hijra people cannot go around begging. It also gives more importance to the native family." The first problem about hijras not being able to beg while may seem like a "protection of rights," was a major issue. As mentioned in previous sections, most hijras in India are involved in the trades of either begging, prostitution, or a combination of both. Being involved in these activities is not in any way a real choice made by members of the hijra community. They beg and traffic sex to earn a basic income, as no employers will hire them. Thus, by denying hijras the right to beg, this bill would be cutting off one of the main sources of income for the hijra

community. The second problem that Interviewee E refers to in that more importance is given to the hijras' native families refers to the fact that in a lot of cases, transgender individuals are evicted or disowned by their own families. Therefore, these large groups of disowned individuals live in community-based settings and form new families, with their own intricate hierarchies and structures. Often, the hijras who join these community-based living arrangements are often minors, who have been thrown out of their families. However, if these minors are caught, then the Indian justice system returns them to the families that threw them out in the first place, or places them in "rehabilitation centers," thereby overlooking the families that they hijras make for themselves. Also, there is no legal way for hijras to register their new families, thereby making this situation unchangeable. These were some of the problems that people took issue with in the Transgender Bill of 2016. However, the Right to Privacy Act enacted by the Supreme Court in 2017 will help ensure that this bill is never passed into law.

Religious and Colonial Context of the Indian Queer Community

I have combined the final two factors of Hinduism and Colonialism, as the replies that I received in both of these areas were connected to each other. Most of the replies that I received from all the interviewees were the same for this section. The questions that I asked regarding these two topics were first regarding the mentions of homosexuality in ancient Indian scripture. I then asked about the impacts of both Hinduism and British colonialism on the mental health of homosexual persons living in contemporary India.

All of the interviewees started off by acknowledging that homosexual representations were present in ancient Hindu scripture in India. Interviewee D puts this as:

> *"See uh, there has been a lot of instances in the holy scriptures if you go to see, about homosexuality, (unintelligible) in the Mahabharata you will find Arjun who's you know, during the exile, he had turned into a woman, okay, in the last year."*
> *-Interviewee D*

Also, Interviewee F gave their opinion on what the pre-colonial Indian community would have felt about the hijra community.

> *"Hindu mythology picks a lot… gives a lot of instances and examples of homosexuality, of transgender identities, or transsexual identities. It does. Definitely does. And what Hindus saw pre-colonial…in pre-colonial time was, 'Okay, if you are a transgender, that means you're a God-being. You know, if you go and ask a layman on the streets of India, anywhere, that what do you think of transgenders, they will, instant, they will equate it to the identity of a hijra, or cultural identity like Yogappa, Jogwati, Shivashakti, and all that, hijras, okay."*
>
> *-Interviewee F*

In this quote, Interviewee D was referring to ancient Hindu deities that have transgender or gender ambiguous identities when they mentioned "Yogappa, Jogwati, Shivashakti". All of the interviewees gave comments similar to these that showed at least some knowledge about homosexuality in ancient Hindu scriptures and stories. All of the details given to me by the interviewees regarding homosexuality in Hinduism matched with the background research that I had already done in this area.

However, when the interviewees were asked if Hinduism has an effect on the metal health of queer individuals living in contemporary India, the answers that I got back were a resounding "No." And the reason for this 'no' was linked to colonialism. Regarding this, Interviewee D stated:

> *"Ironically right now, it has become a Western culture in India, like homosexuality has become a Western culture. So that shift… that shift has come like, not recen…not like recently, but gradually that shift has come. Ever since, you know uhh… (unintelligible) especially after colonization of India."*
>
> *-Interviewee D*

Then, Interviewee D went on to say that Indians today have put religion "on the margins" when they consider homosexuality, and this is due to Western culture. Therefore, Interviewee D stated, "Right now? No, I really don't think so. I don't think so that religion plays any role here," with regards to the effect of religion on the Indian queer community today.

Interviewee B and C also agreed that in contemporary times, they had not seen any evidence that religion impacted the homosexual communities in any way. As interviewee C put it:

> *"In Assam, I never found any example given by other people or talking about people in rural area also like, "No no no, this is not in our dharma (translated religion)" or something like that."*
>
> *-Interviewee C*

Finally, all of the interviewees stated unequivocally that colonialism did have an impact on homosexual mental health in India today, and that this was due to the anti-homosexual and anti-transgender laws that were first enacted by British colonizers. On this matter, Interviewee D stated:

> *"When the British came, they..they...they were already, uhh, not against, but uhh… religiously they did not think homosexuality to be 'right', quote unquote. Okay, so when they came and they saw that the Indian culture actually had uh… the notion of homosexuality or something, they brought in the Buggery Act, and they got Section 377, and from there, it started, and it still...it still exists even now."*
>
> *-Interviewee D*

Then, Interviewee F answered the question on whether British colonialism impacted queer mental health in India today by saying:

> *"Ya definitely, because the moment… If you know… I'm not sure if you are aware of this, hijras, or the trans women communities in India have a secret language. They speak…communicate in their own secret language, and that was because of this Act of Criminal Tribes Act, 377. Because of this Act, they started to go underground, and even if they went underground, they suddenly became criminals."*
>
> *-Interviewee F*

Then Interviewee F went on to say that having your identity declared criminal would "definitely" impact a person's mental health.

Therefore, the overall impression that I gathered from all the interviewees collectively was that Hinduism may or may not have accepted homosexuality, but depictions of homosexuality were present in ancient Hindu scripture. However, it was British colonialism and the laws that it brought with it that slowly started to change the mindset of Indians with regards to homosexuality.

British colonialism changed attitudes towards the homosexual and transgender communities from being at most taboo, to being criminal, and that has had a large impact on the mental health of the queer community at large in India.

CHAPTER 6: CONCLUSION

The goal of this paper was to understand how selective factors impacted gay and lesbian mental health in India. These selective factors were:

1. LGBTQIA related laws in India

2. The religion of Hinduism

3. British colonialism

To understand the impact of these factors, not only did I collect extensive secondary research and study past literature, I also had primary data from interviews with key informants working in NGOs or queer rights activists. From all my research, I was able to come to several conclusions about gay and lesbian mental health in India.

One of the first conclusions that I drew from the interviews was that Indian laws related to the LGBTQIA community had a large impact regarding the perception of the LGBTQIA community. This included laws, such as Section 377, which was used to target "unnatural penetration" or homosexual intercourse, and the Criminal Tribes Act, which though abolished, left a lasting stain on the perception of the transgender community in the eyes of society. All these laws together made the members of the LGBTQIA groups in India become targets of the public, as their behaviors and sexual identities were made to be deviant and immoral. In the interviews, all the interviewees agreed that the aforementioned laws that targeted members of the queer community played a role in the decline of the mental health status of queer individuals. Laws such as Section 377 seemed not only unfair, but also had a highly invasive nature in that they revealed to the public a matter that required the utmost privacy: sexual intercourse. Therefore, it is highly likely that the even though these laws may not have directly impacted several members of the homosexual community, their propensity to criminalize queer people and their actions could have

very well led to feelings of paranoia, mistrust, and eventually depression within their targets. However, some interviewees also mentioned that at least on the legal front, there is some hope to be had, with the Supreme Court planning to make another judgement on Section 377, this time with added benefit of the Right to Privacy ruling of 2017.

My second conclusion had to do with the factor of religion. Although, at first, I thought that the religion of Hinduism in India may have a somewhat positive impact on the perception of homosexual people in India, the responses that I got in the interviews made me rethink this view. The literature research that I performed on the impact of Hinduism on the LGBTQIA community seemed to suggest that Hinduism was once tolerant, if not wholly accepting on the matter of same-sex and homo-erotic relationships. This was proven by the various accounts and stories in ancient Hindu mythology that made references of such behaviors in a manner that normalized them. However, the interviewees seemed to suggest that none of this somewhat positive perception still exists in the mentality of a majority Hindu Indian population today. Many interviewees credited this to colonialism, suggesting that British colonialism somehow overcame the impact of Hinduism on the perception of the LGBTQIA community. Therefore, as a result, most of the interviewees agreed that the religion of Hinduism had no impact on the mental health status of the homosexual community today.

Next, I came to understand that colonialism played a highly important role in the perception of gender, sexuality, and the queer community in India today. Several interviewees even suggested that this factor of colonialism was one and the same as the legal spectrum when it came to the LGBTQIA community in India. This is because the India Penal Code was in fact written by British colonialists and based on British law during the Victorian era. To elaborate, British law in the Victorian era was very firm when it came to non-tolerance for homosexuality, and laws such as

Section 377 were inspired by their British counterparts. Moreover, according to some interviewees, colonialism played an important role in making homosexuality, something that largely went unnoticed in India pre-colonial times, become a taboo subject. This happened because colonialism imposed British hierarchical standards upon Indian culture, thus leaving the queer community at the bottom of the totem pole. In fact, the impact of colonialism was so important that it maybe even overpowered the impact of the Hindu religion on homosexuality. Thus, all the interviewees agreed that colonialism had a large hand in the declining mental health of the average queer individual living in India today.

Finally, besides these three factors and their impact on gay and lesbian mental health in contemporary India, the interviewees also spoke about the general state of mental healthcare in India. A majority of the interviewees seemed to agree that mental health was highly inaccessible in India. In fact, all the interviewees agreed that it was something that was largely inaccessible in rural areas and that even if it was accessible to people, certain mental health care providers may not be equipped to handle the mental health issues of LGBTQIA individuals. This has led to several scenarios where mental health care professionals will try to impose their own personal values while treating their patients, thus resulting in them trying to "cure" the homosexuality out of their patients. While several interviewees gave ideas on how to avoid such mental health care providers when it comes to making recommendations to queer individuals, the fact remains that such providers exist, and that thus mental health care is something difficult to access for queer individuals of all strata. This does not even consider the fact that mental health care itself is a highly volatile issue in India due to the lack of awareness of the general public when it comes to perceiving mental health problems.

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APPENDIX A: INTERVIEW QUESTIONS

Background

1. Which organization do you work for? Tell me a bit more about your organization.

2. What role do you hold in this organization?

3. What are your responsibilities/job description?

4. Have you directly come into contact with gay/lesbian persons through your organization?

5. What would be your response if a homosexual individual came to you in search of mental health treatment?

6. Would your response differ based on whether the individual was male or female?

7. Are you qualified to provide mental health counselling to any LGBTQ people who may approach you and ask for it?

Mental Health

8. What are your views on the current status of LGBTQ mental health in India?

9. In your opinion, what are the main causes of gay//lesbian suicide in India?

10. I am researching gay and lesbian suicides in India in the last few decades. Which do you think is a bigger problem?

11. Do you think that there are enough available mental health resources for homosexual persons?

12. Are these mental health resources useful for the homosexual individuals (May provide example of how a lot of therapists refuse to acknowledge homosexuality)?

13. Do the use of these mental health resources differ if you are male or female?

Laws

14. In your opinion, what sort of laws affect the day to day lives of homosexual individuals?

15. What does Section 377 mean to you?

16. What has been the main impact of Section 377?

17. Have you seen Section 377 impact anyone around you? Please do not provide any names or give any specific details if yes.

18. Do you think that the law of Section 377 could have had a hand in impacting the mental health of homosexual persons in general? Could it have led to homosexual persons committing suicide?

19. (If the answer is yes to the question above) then is the impact the same for both gay and lesbian cases?

Hinduism

20. Did you know that a lot of holy scriptures in Hinduism, being homosexual was permitted (Give examples of cave paintings, etc.)? What is your opinion on this fact?

21. Do you think religion, specifically Hinduism, plays a role, when it comes to societal acceptance of homosexuality?

22. Do you think Hinduism and its practices could have had a direct or indirect impact on gay or lesbian suicide? If yes, then is the impact the same for both gay and lesbian cases?

Colonial History

23. Do you know anything about the impact of British colonialism on the homosexual community in India (If no, then provide some background)?

24. Do you think that if British colonialism had not happened, then the homosexual community in India may have been treated differently?

25. Could British colonialism have had a direct or indirect impact on gay or lesbian suicide? If yes, then is the impact the same for both gay and lesbian cases?