Sexual States

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States’ preoccupations with sexuality are everywhere in evidence. In the United States the military has lifted the ban against lesbian and gay soldiers, the Supreme Court has mandated the recognition of gay marriage at the federal level, the Food and Drug Administration has approved the over-the-counter sale of the “morning after” pill, and numerous regional states have introduced legislation against sex trafficking. In the United Kingdom, the Office of National Statistics has started to track lesbian, gay, and bisexual members of the population. In Russia lawmakers have passed legislation against “homosexual propaganda,” and Nigeria has expanded and intensified the criminalization of homosexuality. Instances of sexualized forms of governance—legislation, policy shifts, decriminalization or intensified proscriptions—are numerous. Coming to grips with them illuminates how they help produce the state as an elemental, normal, if not natural, feature of social life and as ever more important to ensuring social stability.

The usefulness of tracing governance’s recourse to sexuality became amply evident in what started off as an innocuous quest for statistics related to the antisodomy law, Section 377. Seeking insight into the Naz Foundation–led struggle, I wondered how numbers would inform the efforts to undo Section 377. Would they be low, thereby confirming the established wisdom that police routinely harass and extort but do not formally charge same-sex sexual subjects under Section 377, or would they be high, asking for a different account? While exploring policing and criminal prosecutions was important to understanding the context
in which Section 377 came to be the lightning rod of state injustice, numbers promised rough and ready insight into the law’s landscape.

Helpful police constables recommended that I visit the National Crime Records Bureau (NCRB), which serves as a clearinghouse for crime statistics. But gathering the data related to Section 377 turned out to be no straightforward task, and the process of gaining access to the information was also complicated. My first foray into NCRB might well have ended abortively, with a frustrating side note in field logs on impossible bureaucratic hoops and a footnote in this book explaining the absence of numbers. As it happened, the initial lack of available data, a series of encounters with state representatives, and paths from cubicles to larger and larger offices winding through a series of administrative sections gave me insight into the complexities of sexuality and governance practices at a seemingly dry, bureaucratic, number-crunching state agency.

The visits to NCRB highlighted inconsistencies in the processing of data, for while numbers for Section 377 are omitted, (hetero)sexual crime against women is processed into statistics and elevated to the status of a social problem. Further, these irregularities foregrounded the significance of the agency’s iterative practices, such as tracking numbers for crime, processing statistics, and generating reports, thereby surfacing the banal and unremarkable and, as such, more impactful aspects of governance.¹ This dovetailed with the added insight, that considerations of sexuality affect biopolitical forms, measuring and indexing crime in order to govern and ensure the well-being of the population as a whole—a point that has been routinely neglected by a long line of scholars, including Giorgio Agamben, Henry Giroux, Michael Hardt and Antonio Negri, Achille Mbembe, Aihwa Ong, and more recently Akhil Gupta.² And not least, what became repeatedly apparent are the implicit and explicit ways sexuality impacts not just the functions of crunching numbers and producing reports but also NCRB’s spaces, structures, and procedures for handling the interpersonal.

Providing a nitty-gritty glimpse of a typical bureaucracy, the quest for numbers lays the groundwork for coming to grips with sexuality’s effects on state agencies such as the NCRB. Especially since the agency (or “the state”) is not a monolithic thing or a presumptive reality but a cultural and material assemblage and effect, delving into the elements, functions, and procedures that make it work is a means of unearthing
how sexual ideologies help sustain its idea and importance. And insofar as NCRB is not a constituent part of “the state” (for that would mean seeing the state as overarching and everlasting), NCRB’s discursive practices and spaces are windows onto the idea and inevitability of the state itself.³

This chapter begins by dwelling on my first field visit to NCRB, for the interactions and observations look beyond the question of numbers or reports to the subtleties of sexuality’s effects. As such, it sits squarely within a rich tradition of anthropological and sociological ethnographies of the state that use the minutiae of fieldwork to critical ends.⁴ Dwelling on the deferrals and obstacles in dealing with this bureaucracy, this approach teases out their sexual inflections in ways that are relevant not only to NCRB but to research trips to government offices, state-run libraries, and archives, to name a few. As such, it presses against the tendency to see such field-based encounters as a backdrop to data gathering and not the data themselves. At the same time, heeding Gupta’s cautions about fieldwork’s unassailable claim—“I was there”—this chapter takes the position, following Jacqueline Stevens, that our experience of the state is embedded in its discourses.⁵

The second section revolves around the difficulty that numbers for crime under Section 377 are not easily accessible even as crime against women is more fully processed and reported. Analyzing the differences between numbers and statistics, I explore how, in contrast to crime related to the antisodomy law, crime against women is constructed as a social problem in ways that help reproduce state institutions such as NCRB and legitimize their purpose. While such disparities may be consigned to heteronormative ideologies, I argue instead for the need to look more deeply into the biopolitical practices and techniques of governance producing the disparities and neglect. Coming more fully to grips with them, the last section argues that crime related to Section 377 is being actively written out of measures aimed at assessing and ensuring the welfare of the population. The analysis also leads to the insight that the antisodomy law is not the only site through which same-sex sexualities are likely to be regulated, thereby clearing the way for a more complex understanding of how Section 377 is used and the implications thereof.
New Delhi, scene one:

I arrive one July afternoon at the NCRB in New Delhi. Stating my business at the check-in window as a researcher who is looking for statistical data, I am sent up to the next floor to Kavita Paul's cabin [cubicle], joint assistant director in the Systems Development division.6 Partially transparent partitions carve up the large room into individual work areas, with several desks in the center. Stacks of files, bound copies of reports are crammed everywhere in cabins, by the desks outside, against the wall.

Kavita Paul greets me graciously from behind her desk in her corner cabin. Our meeting is short, lasting but a few minutes. The information on Section 377 does not exist since the data are reported by offenses, not the penal code, she says. Paul offers me data on crimes against women instead; that is no problem, she says. Stacks of files, paper, records everywhere, but no information related to Section 377?

I persist, and Paul asks to see my authorization letter. Then, somewhat sympathetically, she says, “Come with me,” and takes me to N. K. Agarwal, joint additional director in Systems Maintenance. His is also a cabin, but partitioned from floor to ceiling. He and his assistant confirm that this information can be derived from the system. After expressing doubt over my letter of approval since it doesn’t say anything specifically about NCRB or Section 377, he waves me on to get permission from Mr. Nair in the Operations division.

On the ground floor, past the odor of the women’s and men’s bathrooms, past the double doors into a common space lined with cabins on the left and a couple of work rooms on the right, is Mr. Nair’s cabin. Blue plastic lines all of the windows and the glass panels on the doors, which, coupled with florescent light, radiates a moon-like glow. Protecting the computers and the records, not ambiance, is the likely purpose. My first task is again to explain my interest in data on Section 377 and furnish my letter of approval. He says that I should state my interest in a letter so that my request can be approved by Deputy Director of Computer and Systems Satish Dubey. It seems wise to use institutional letterhead instead of the blank paper he offers, and the letter, Nair’s assistant and my escort, Sanjay, and I are sent on to Mr. Dubey.
Dubey’s is a small but full-fledged office on the second floor. He is amenable to my request, indeed affable and interested in my research. However, I have to get permission from the director, he says. He cannot be serious!

To encounter the NCRB is to encounter the material histories and imaginations of the state. In 1986 several state agencies that kept track of crime data, including the Central Fingerprint Bureau and the data section of the Central Bureau of Investigation, were amalgamated to establish the NCRB, based on the 1979 National Police Commission recommendation to establish a “nodal agency” to standardize crime records and to create sharable databases across police stations. Its charge is to provide police with information necessary for law enforcement by serving as a clearinghouse for crime statistics and to improve public service through the web, for example, by providing information on stolen vehicles and authenticating secondhand vehicles to be purchased. Located in R. K. Puram, a suburb of the capital city, NCRB is housed in a low-level, unassuming building. What is it about the state that makes one expect resplendent structures, especially where national crime statistics are managed? The signboard is unimpressive: basic black and white lettering on metal, typical of Indian postcolonial state institutions. Then again, cultural and historical discourses of the state constantly filter every encounter with its buildings, spaces, documents, agents, and discourses.

But a culturalist reading of the NCRB needs elaboration in light of C. J. Fuller and John Harriss’s strong claim that scholarship on the modern Indian state shortchanges it as an idea or does not embrace it in the idiom of the state-idea (after Philip Abrams). The same is true, they suggest, of ordinary people’s understanding; sarkar (Hindi, encompassing state, government, and state officials) has etched itself as a material reality in the minds of ordinary Indians. To insist on a culturalist approach, then, is either to be at odds with scholarship and popular discourses on the state in India or to claim a more radical contribution on this point than is warranted. Fuller and Harriss are right to suggest that scholarly attention remains on analytical narratives of the trajectory, successes, and travails of the modern Indian state, but Partha Chatterjee’s history of the postcolonial Indian state is as much a political as a cultural narrative of the changing idea of the state. Similarly Sudipta Kaviraj’s and Ashis
Nandy’s analyses are each premised on the subjective imaginations of the state, and Gupta’s analysis of the discourses of corruption in rural northern India points even more clearly to how people construct the state symbolically.11

As a state agency dedicated to processing and managing crime statistics, NCRB embodies notions of the neutral, rational state, compared to, say, impassioned perceptions of political corruption, making it that much harder to reconcile it with the subjective understanding of the state that I introduced in chapter 1. If anything, the NCRB seems to conform to the impersonal and rational characterizations that derive from Weber’s combined view of the state as a compulsory organization, with a monopoly on the use of force and binding authority over a defined territory, and a bureaucracy, characterized by division of labor and jurisdictions, hierarchy of authority, abstract laws or administrative regulations, and general rules of functioning.12 But such foundational assessments of rationally minded, bureaucratically driven states have been faulted, and by none more cogently than Ann Laura Stoler’s concept of affective states: “Such a focus opens up another possible premise: that the role of the state is not only as Antonio Gramsci defined it, in the business of ‘educating consent.’ More basically, such consent is made possible, not through some abstract process of ‘internalization,’ but by shaping appropriate and reasoned affect, by directing affective judgments, by severing some affective bonds and establishing others, by adjudicating what constituted moral sentiments—in short, by educating the proper distribution of sentiments and desires.”13 Still, to rethink NCRB as subjective means extending Stoler’s arguments by noting that the challenge lies not only in tracing states’ use of affective strategies but also in recognizing that rational techniques are not asubjective. Said another way, rationality is not opposed to affect but is in fact another form of it, thereby raising the stakes to showing that irrationality can be constitutive of something so seemingly impersonal as number crunching and report making. Stoler’s gesture toward affective states also needs to be extended by accounting more directly for sexuality, for despite her careful attention to it in terms of colonial governance, sexuality is visibly absent in these reflections on the state.

In contrast, Begoña Aretxaga’s analysis provides a more thorough-going critique of the state as a site of libidinal passions and sexual fantasies. In the accounts of strip searches of Irish Republican Army women
prisoners by prison guards in March 1992, Aretxaga sees chilling eruptions of state fantasy, a phantasmatic heterosexual mass rape of the prisoners conducted by male and female prison guards. In the process, Aretxaga notes astutely, “state power lost the neutral, rational mantle that legitimizes it to reveal a thoroughly sexualized, symptomatic body politic.” But unlike the episodic and violent displays of state sexual fantasies and passions brilliantly analyzed by Aretxaga, my encounter with NCRB is humdrum, if not routine. Gathering numbers for police crimes recorded under Section 377 may not be a daily occurrence, but its site is qualitatively different; there is no event putting the state in a state, as Aretxaga describes the torrent of violent sexual fantasies unleashed by the state.14

NCRB is saturated with matters of sexuality in ways that are routine, unremarkable, and minute, perhaps harder to identify but more powerful as a result. Contrary to the notion of the impersonal state, especially in a number-crunching agency, gendered and sexual bodies are everywhere. Indeed the metaphorical similarities of states and bodies have been noted.15 Bathrooms and bodily odors that are hard to escape in government buildings in India are constant reminders of the inextricability of stateliness, embodiment, and sexualities. What greater prompt of the sexual state than how sexual respectability must be routinely managed on site. As a normatively presenting woman researcher, in no case did I meet with a male state agent by myself behind a closed door. Glass partitions and open doorways sifted encounters and contained the threat of sexuality. In other cases, when office doors were shut to reflect status, give privacy, or maintain the efficiency of air-conditioning, at least one additional person was always present to maintain decorum—of sexual respectability and, of course, status.

THE DATA TRAIL: GRIDS OF SPACE AND STATUS
To obtain the necessary information, I traverse the ground and first floor of NCRB, the hierarchy of cabins and offices, as well as three divisions that manage information and the technology used to produce it. Should I have cut to the chase and gone directly to the director of NCRB? Perhaps. But the role of the representative at the receiving window is to direct me to the right official, precipitating appropriate rituals and procedures. Curiously neither N. K. Agarwal nor Mr. Nair anticipates that such
a request would need the director’s approval; rather they simply send me on to their superior in the chain of command. The state, after all, is an exercise in authenticity to be practiced routinely and minutely.

The lateral and vertical grids of NCRB enact the state structurally and functionally. Henri Lefebvre’s point that the primary role of the modern state is to prevent the collapse of a political, economic, and social edifice through a system of hierarchical places, functions, and institutions explains how tasks are distributed. The management of crime records is organized into three units: Systems Development, Systems Maintenance, Systems Operations. At issue is not so much efficiency (or lack thereof) of work and its distribution (on which I cannot comment adequately) but the practices guiding the data trail through the three divisions, up and down the building, in and out of the cubicles and offices of joint assistant directors, joint additional directors, and eventually the director, even though the task finally comes to rest in the hands of a couple of relatively junior state employees.

Further, some functions are appropriate to cubicles, some belong in offices, and others occur in common workspaces that, as Foucault suggests, are governed by seeing and surveillance. Paul is in a cabin that allows mutual looking between her and her neighbor, while remaining partially shielded from the common work area immediately outside. Agarwal’s cabin is sturdier, fabricated partly out of glass and protected by a door. Nair’s cabin also has a door, with a view of the common work area of the ground floor, the network of computers, assistants, and working bodies. He is partially shielded from and has partial visual access to the work area. As I observed from my vantage point in the common area on a number of occasions, glass doors to the row of cubicles can be covered with blinds. Cabins, offices, common work areas, glass, and gazing create homogeneous and fractured spaces and states.

Visitors like me are an oddity at the agency. On the one hand, NCRB facilitates the work of other state agencies and institutions, for it is not intended to interact directly with the public. Any wonder, then, that the pursuit of data is confusing, a matter of negotiating opaque and uneven lateral and vertical grids? It feels like a game of snakes and ladders; at any moment of encounter, one might well hear the dreaded words, “It is not possible to give you these data,” which once uttered would be difficult to take back. On the other hand, as a visitor I am instrumental
to the procedures of governance and, in effect, stateliness. Paul asks to see my letter of authorization before we can proceed further, before she can inquire about the availability of Section 377 data not to be found in published reports. It is as much to verify my access to data as it is to re legitimize state authority. The letter of authorization does not convince Agarwal initially since it does not mention data on Section 377, but then he abruptly shrugs off his ambivalence and leads me to the next step.

At a subsequent moment, however, the paradox of governance practices assumes fuller proportions as I become further implicated in the process that sustains state authority at the behest of Nair, who asks me to put in writing my request for data on Section 377. A blank piece of paper will do, and it is furnished. The purpose? First, it is to freight state records with the power of the written word in ways insightfully captured by Emma Tarlo’s concept of “paper truths.” Second, the authority invested in the position of the deputy director is performed in response to the written request, for he has something on which to imprint a seal of the state and his signature. Third, the purpose of putting down my request in writing is to leave a paper trail, especially if my request is granted and Nair’s is the unit charged with providing me the data. It is his insurance, for, as Tarlo explains, paper truths leave trails of bureaucratic workings (that in some instances also make them vulnerable). But I offer letterhead from where I work in place of the blank paper, to counter state authority with the power of an institution of higher education in the United States and the priorities of research more generally. It works, but at the cost of becoming a willing, even enthusiastic instrument for securing the nexus of stateliness, U.S. imperialism, and Western institutions of higher education. One dances to the tune of the state, but hopefully while deliberately messing up the steps.

Statistical Technologies and Gendered Social Problems

Had I been willing to settle for data on crimes against women, my encounter with NCRB would have been limited to a few minutes with Paul and a pile of reports and documents. But my request for Section 377’s numbers triggered a series of interactions, foregrounding the partialities of enumerative practices of governance and, in effect, NCRB. To begin with, these interactions indicate that the data on crime against women are abundant, which, as it turns out, has to do with the subjec-
tive differences between numbers and statistics. This is to say that while state agencies and units might enumerate all kinds of things, only some things are endowed with the gravity of statistics (thereby giving the notion of statistical significance different and expanded meanings).

NCRB performs its function as a clearinghouse for crime data by collating numbers from police stations around the country, which are then transformed into statistics and statistical representations, such as tables. Tables provide a snapshot of crime statistics in various categories, and, to make it more visual, maps of India demarcated into states and overlaid with each set of crime statistics have been added. The visual representations are processed into annual hard copy and electronic reports on crime statistics for major cognizable crimes and local and special laws. The reports are organized into various chapters based on vulnerable populations, such as “Crime against Women” and “Crime against Children,” or types of crime—juvenile crime, violent crime—and so on.

In the chapter “Crime against Women,” only those crimes that target women qua women are included and organized into categories related to sections of the penal code: rape; kidnapping and abduction for different purposes; homicide for dowry deaths or their attempts; torture, both mental and physical; molestation; sexual harassment; importation of girls (up to age twenty-one). A second overall classification covers crimes committed under (somewhat) gender-specific laws, including the Immoral Traffic (Prevention) Act (1956),\textsuperscript{20} the Dowry Prohibition Act (1961), the Child Marriage Restraint (Amendment) Act (1979), the Indecent Representation of Women (Prohibition) Act (1986), and the Commission of Sati (Prevention) Act (1987). Tables, graphs, maps, and brief interpretations keep prose to a minimum so that statistics appear to speak sufficiently; for example, crimes classified by penal code, that is, cruelty by husbands and relatives, molestation, kidnapping and abduction, rape, and the like, account for 95.8 percent of the crimes, and those related to special or local law provisions 4.2 percent, according to NCRB’s 2011 report.\textsuperscript{21}

Statistics and statistical accounts on crimes against women are based on the assumption that aggregates, totals, and trends yield important information as a whole, despite the loss of specifics related to each case or the relevance of social class, ethnicity, religion, and region to crime.\textsuperscript{22} Classifications such as crime against women and its various subcategories that are especially attentive to sexual crime (rape, kidnapping, mo-
lestation, child marriage, the Immoral Traffic [Prevention] Act, indecent representation of women) sustain the need for new rounds of numbers, fresh statistical analysis, and, in effect, practices of governance. It is also true that governmental statistics—and this is particularly true about crimes against women—can be variously interpreted and used to expand governance. Even though nongovernmental organizations (NGOs) and semiprivate institutions share the massive burden of counting and classifying the population in India, agencies such as NCRB still carry the appearance of legitimacy, if not the weight of authority. NCRB’s statistics are regularly used by numerous constituencies—women’s groups, NGOs, police, newspaper editorials, websites—to demand state accountability and to argue for more resources, better enforcement of law and crime prevention, more policewomen, improved systems of redress, and a more sensitive judicial process—all of this most visibly related to matters of sexual crime.23

The question, then, is when and how did attention to crime against women come to occupy such a central place in practices of governance? The answer lies generally in the colonial histories of crime and statistics and the specifics of defining women as social problems in the Indian context.

COLONIAL HISTORIES
Describing the explosion of statistics as a technique of governance between 1820 and 1840 in Western Europe, Ian Hacking suggests that this period of the “avalanche of printed numbers” led to an unprecedented growth of state bureaucracies and typologies of enumeration: census, surveys, maps, among others.24 As Nikolas Rose argues, statistics was a means of rendering territories into pulsating objects of knowledge, which was nowhere more relevant than in the seemingly impenetrable colonies.25 Placing the rising significance of numbers, statistical techniques, genres of officially sanctioned histories, reports, and the like also around 1840, Richard Saumarez Smith suggests that they were aimed at apprehending and administering colonial India, while also centralizing the role of the colonial state.26 Thus the use of statistics in the colonies was, according to Arjun Appadurai, about the ability to domesticate the clutter of narrative prose “into the abstract, precise, complete, and cool idiom of number” and a way of constituting rather than reflecting reality.27

But the function of statistical techniques in colonial India was no
mirror image of the metropole, as Appadurai and others are quick to underscore. Although in Western Europe statistics emerged as a “moral science,” as Hacking details, that is, the study of immoral behavior and criminal behavior, Appadurai argues that in the colonies a focus on crime and deviance encompassed the entire population. Numbers were used by states before they were used in the colonies, but it was their deployment as statistical measures, imbued with the appearance of scientific rigor and aimed at the governance of the population, that set them apart in colonial India. Focusing on the Criminal Tribes Act of 1871 that institutionalized notions of hereditary criminals, for example, Sanjay Nigam sees the legislation as a commentary on Indian society as well as on a subsection of the population whose deviance was traceable to Indian culture. Appadurai further argues that statistics served justificatory and disciplinary functions in the colonies by marshaling support for arguments, debates, and rhetoric on committees and boards, enabling comparisons among groups, and providing narratives for otherwise incommensurable aspects of the social and human landscape. Most important, statistics became alibis for colonial interventions into cultural practices especially to do with girls and women, such as sati.

A second point to be underscored is that the conjunctions of statistics and the “woman question” were framed by perceptions of social problems plaguing the colonies. But, as critical sociologists usefully explain, social problems are not objective conditions; rather they are subjective judgments about what constitutes harm or requires problem solving. That is, numbers, statistics, and reports did not represent colonial India as much as they helped constitute it as a collation of social problems that required scientific modes of apprehension and degrees of intervention—to which the debates on women’s illiteracy, sati, and child marriage as social problems requiring intervention and reform attest. Backed by the authority of science, objectivity, and universality, statistical technologies, methods of sampling, and probabilities were used to define and assess sociological priorities. Scholars of colonial India, such as U. Kalpagam and Gyan Prakash, tend to imply rather than analyze the construction of social problems in the colonial context, but their work amply illustrates the processes through which administrators selectively defined, intervened in, and socially engineered parts of colonial society. If statistics and the contested terrain of women’s social life was one angle of the gendering of social problems in colonial India, then crime

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against women is its postcolonial avatar. The point, though, is not to offer a presentist reading of history or constrain present-day complexities into an increasingly distant past but to call attention to technologies of governance with institutional histories.

ENGENDERING SOCIAL PROBLEMS IN POSTCOLONIAL INDIA

I spoke with representatives of the Delhi Police to understand how Section 377 is perceived and enforced. Although the police commissioner dismissed me after but a few minutes, he sent me on to another senior police official, N. N. Khanna, who dealt with legal writs that named the Delhi Police as a respondent, including the one filed by Naz Foundation challenging the scope of Section 377. Unaware of the Naz Foundation writ at the time, Khanna nonetheless sought to deflect my interest in Section 377, saying, “This is a peripheral aspect. Because of the total volume of crime, very little attention is paid to Section 377 by the police. . . . The social attitudes to women's issues and gay criminal activity cannot be compared. You should be studying Section 375 [rape law], not 377. There is more social impact of 375. If you want to make a contribution, you should study crime against women.” On several other occasions as well police and other state officials instructed or encouraged me to focus on crimes against women, especially sexual crimes. Some, including a senior-ranking policewoman, a joint commissioner of police who was in charge of the crime against women police cell, were puzzled: Why would I want to focus on Section 377?

Framing the apposition between sexual assault on women and the antisodomy law are the perceptions that sexual crime against women is an egregious social problem because of its scale and seriousness, and Section 377, covering crimes related to unnatural sex, does not warrant attention. As a result Khanna suggested that Section 376 ought to be of greater interest to me as a (woman) researcher, echoing Paul's offer of statistics related to crimes against women in place of Section 377 and the puzzlement of the policewoman heading the crime against women cell. Their apprehension about heterosexual violence against women is not unimportant; however, it is used to diminish attention to Section 377 and imply that rape may be a social problem but not an unnatural one. Pressed on this issue by Khanna, I could not help but respond, “Yes, you are right about violence against women. We do not even protect women
from their husbands when there is marital rape.” He, who was to become
the next police commissioner of Delhi, simply ignored my interjection.

Rendering crime, especially sexual crime, against women as a social
problem of national prominence derives from the collusions of modern
forms of governance, which, as James Scott notes, are characteristically
focused on making the social easily legible through statistical and other
techniques and national and transnational women’s activism.36 Feminist
agitation has been crucial to rendering violence against women a press-
ing social problem in India through what Malcolm Spector and John I.
Kitsuse would describe as an interactional and interpretative process
that involves claims making and responding activities.37 The result is that
dowry-related deaths, custodial rape, battering, homicide, and torture
became issues of social concern and sites for state intervention and at-
tention, as reflected in the NCRB reports, the creation of special police
cells in cities like Delhi, and more recently the expanded definitions of
and punishments for sexual assault.

Trailing colonial histories of the “woman question,” transnational
gendered discourses of human rights have placed the burden on post-
colonial states like India for defining and addressing the problems of vi-
olence against women. As Inderpal Grewal writes, the formula “women’s
rights as human rights” re-creates “new forms of governmentality that
reshape the relations between the West and non-West, and between pop-
ulations and states.”38 The need to protect women and endow them with
rights, Grewal suggests, was supported by international and national de-
velopment agencies speaking the language of women in development.39
Even as a large number of developmental organizations and state insti-
tutions started to keep statistical information on women, police in cities
such as Delhi and the judiciary began receiving training in human rights
and the problems of violence against women, lending added significance
to tracking crime data.

But critical feminists have also distanced themselves from such insti-
tutional attention to sexual violence, for it has served above all to expand
the scope of governance rather than bring relief to women. Focusing
on the sexual violence agenda and the inescapability of feminist orga-
nizations having to comply with state regulations to become eligible for
resources in the United States, Kristin Bumiller notes that even as the
resources available for women decreased, the state’s reach was expanded
as sexual violence was defined as a social, medical, and legal problem.40
In India the Protection of Women from Domestic Violence Act (PWDVA) of 2006 was a hard-won victory after protracted negotiations with state institutions, but it was also a source of more intimate governance, for it extends the reach of governance through protection officers and a series of protective legal measures to stop violence, including offering monetary relief, restoration to the household, and custody of children. Looking to state intervention to solve the problem of sexual violence ignores the ways the Armed Forces (Special Powers) Act, the Unlawful Activities (Prevention) Act, and other laws that are ostensibly aimed at securing parts of India in fact exhort state violence, especially toward women, as Navsharan Singh and Urvashi Butalia assert.

The imperatives of historically, nationally, and transnationally engendered social problems address why crime against women is discursively produced, but the question of why the numbers for Section 377 are unavailable is still unclear. Crime against women is reported through a combination of offense and sections of the penal code, which only confuses why crime under Section 377 is not enumerated and interpreted. That the numbers are too few, have not been tabulated, or are not statistically significant may all be true, but wouldn’t statistical analyses be the only way to determine that for sure? If their statistical insignificance had indeed been determined, why was it not registered with asterisks or other signs, which is standard procedure? The imperative, then, is to delve further into what the omission of Section 377 tells us about the complexities of unnatural sex and the exigencies of governance. Put differently, the point is to consider Simone Abram, Jonathan Murdoch, and Terry Marsden’s caution: a fate worse than being captured by numbers is being neglected by them.

**Sexualizing Biopolitical Governance**

An obvious difference between being registered and being erased by statistical measures has to do with their heteronormative underpinnings. Heteronormativity has been useful in coming to grips with statistical technologies of governance, exemplified by Michael P. Brown and Paul Boyle’s study of how census surveys and reports in Britain and the United States continue to closet gays and lesbians. Using the metaphor of the national closet, the authors call attention to the quotidian and complex interweavings of governance, sexuality, and the census that result in
such erasures of sexual identities. The explanation, they suggest, lies not only in the issues of privacy, tyrannies of categories, and statistical rigor but also in societal and governmental heteronormativity.

But the degree to which heteronormativity explains the biases in NCRB’s reports is debatable, for its history does not travel well to the Indian context. The idiom of the closet does not adequately resonate in a setting characterized as much by partially obscured histories of same-sex eroticism as by the hypervisibility of queer subjects (not least hijras, Kinnars, Aravanis) and practices that, as scholars of colonialism and sexuality have repeatedly found, were only partially erased in attempts to make the colonies comply with bourgeois ideals of sexual normalcy and propriety.45 Heteronormativity is also incongruous with the language of Section 377, which emphasizes “unnatural carnal intercourse,” or same-sex as well as cross-sexual practices outside the putative realm of nature and normality. This explains why a subset of the case law under Section 377 has to do with women petitioning for divorce on the grounds of unnatural sex imposed on them by their husbands.46 Finally, by mapping the differences between crime against women and Section 377 in terms of presence and erasure, heteronormativity does not facilitate grappling with sexuality’s effects on governance practices when they do not align neatly along axes of heterosexuality and homosexuality.

The gap between what is available and what is untabulated in the data trail at NCRB cuts to the crux of biopolitical governance and its imbrications with sexuality. Crime records are an essential part of biopolitical modalities that seek to interpret, predict, and intervene in social relationships and events. NCRB’s defining purpose, assessing crime statistics, producing reports year after year, serves to regularize life and mortality, to manage violence with statistical techniques, analyses, and policies. Perhaps crime and violence cannot be completely erased, but they must be managed to ensure a relative equilibrium between crime and the economy (especially given their complex interconnections) for the collective well-being. Corporations, NGOs, and the media are among other constituencies that gather statistics and data about populations and groups, but what is distinctive about NCRB and other state institutions, following Foucault, is that biopolitical techniques are aimed at improving the life and quality of the population, controlling the random and the accidental through calculation and forecast, while justifying regulation in the interests of the population or its regularization.47
Foucault’s thinking on biopolitics has spurred scholarship along two dimensions: the terrain of biology, medicine, and science through which matters of life, health, genetics, and disease are addressed, and the formation and fault lines of political community, wrought by defining states of exceptions. The concept of the biopolitical can be extended in these disparate ways precisely because it engages the deeper questions of what counts as life, death, and the collective, and it opens up connections between the use of surveys and statistics and discourses of nation and territory, between genocide and census data, between the individual and the planet. Indeed the thread common in Foucault’s discussions on the biopolitical and subsequent engagements by Agamben, Mbembe, and, more recently, Gupta, is the production and regulation of the collective, alternatively known as population and political community.

Missing from most engagements with biopolitics, of which Agamben’s is the most often cited, are the domain of sexuality and the structures of racism. Few engage race at the intersection of life and politics, despite Foucault’s attention to the ways race differentiates between “what must live and what must die.” Sexuality, Foucault argues, takes effect not just in terms of constituting subjects; it “exists at the point where body and population meet,” a point that ironically is missed by Agamben, who questions Foucault’s inability to connect the exercise of power at the level of the subject and the collective or the body politic. Mbembe offers a thought-provoking revision of Foucault’s reflections on the biopolitical with the concept of necropolitics, to argue that contemporary life is subjugated to the power of death. Using historical and contemporary examples drawn from Nazi death camps, slave plantations, the occupation of Palestine, and the sustained violence and genocide in Africa, Mbembe, like Agamben, neglects a reading of power and sovereignty deepened by attention to the ways the domain of sexuality serves as a pathway of power; for example, HIV/AIDS is significantly absent as a crucible of the biopolitical and the necropolitical in Mbembe’s analysis.

Sexuality is foundational as much at the level of the subject as it is to the forging and governance of political and social collectives, whether as population, national body, or community. Calibrating fertility rates or the ratio of births to deaths, tracking sexed and gendered bodies across the life span, estimating rates of sexual activity or the composition of households, in fact what might be summarized as reproductive and non-reproductive sexuality, is central to regulating the population and the
rhetoric of collective interest. What possible interest does the state have in restricting and recording marriages—not just the lineages of property and prohibiting miscegenation but also regulating reproductive and nonreproductive sexuality? At the level of the social body, sexuality stages our anxieties about morality and beliefs about the natural dimorphism of humans, and the gendered essence of humans. Notwithstanding medical reproductive technologies and beliefs in divine intervention, sexuality is seen as the ontology of human existence. In this framework the appropriate and adequate management of sexuality ensures a healthy population and a state of equilibrium to prevent sexual repression, sexual chaos, too many children or too few, population explosion, hunger, disease, HIV/AIDS, and the list goes on.

Remaining attentive to sexuality’s foundational relevance to biopolitical governance helps reframe the subjective differences produced by statistical discourses. While violence against women is elevated to a social problem and a matter of biopolitical governance, the omissions from Section 377 point toward the fault lines of biopolitical practices through which populations, or the collective that matters, are forged. In his reflections on statistical enumeration and biopolitical regulation, Gupta notes that even those who must be ignored (or sacrificed) must be known, codified, enumerated, and (this is the point that he stresses) separated from the rest of the population. In contrast, tracking numbers for Section 377 and governance practices at NCRB indicates that biopolitical practices are riddled with sexual anxieties that affect who gets counted and who counts.

As a criminal code, Section 377 is typically deployed when there is a complaint about nonconsensual sex involving adults of the same sex, differently sexed adults, or assaults on children. While I develop this point at greater length in chapter 3, it is worth underscoring here that the vast majority of charges related to Section 377 have to do with sexual assaults on children. Until the 2012 Protection of Children from Sexual Offences Act introduced legislation for children, the antisodomy law was used to charge and prosecute sexual assault against boys and aggravated rape or sexual assault against girls. Much of the crime reported under Section 377 is not organized along heterosexual or homosexual axes, and until recently, because of narrowly defined rape laws, egregious male sexual assault against women was arraigned under it. Despite the substantial numbers of child sexual assault cases being charged under Section 377
and a section devoted to crime against children in NCRB reports, the data are not reported. The letter K under the heading “Crimes Committed against Children Which Are Punishable under the Penal Code” mentions “Unnatural Offenses, Section 377,” but no other description or numbers are presented, suggestive of the kinds of sexual anxieties that are driving omissions in statistical reports and discourses.

The numbers for Section 377 are also going unreported under crimes by penal code, perhaps because sexual activity is mostly consensual and therefore not registering statistically or because police stations around the country are not funneling numbers related to Section 377 to NCRB due to lack of enforcement. But anecdotal and research reports indicate that legal and extralegal policing of same-sex sexual practices is widespread and socioeconomically marginal same-sex sexualities are especially at risk, thereby raising two possibilities. The first is that policing does not result primarily in formal charges filed under Section 377, which is quite likely, for that is no easy task. A medical examination to prove offense is the bar that must be met before charges against offending parties can be filed by police, which frequently opens the door to extralegal abuse. Thus, instead of charging homosexual men under the antisodomy law, police usually solicit either sexual favors or money.53

This foregrounds the second likelihood, that while same-sex sexual and gender minorities, especially those without the protection of social class, may be vulnerable to Section 377, it is not the only law through which police harassment and violence can occur. Indeed an ensemble of vagrancy laws, allegations of theft and disturbing the peace, and the Immoral Traffic Prevention Act (amended most recently in 2006) variously place same-sex sexualities at risk.54 For example, Section 268 is the law against public nuisance that capaciously includes any act of commission and omission “which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right,” making it a more likely candidate to harass and charge same-sex sexualities or gender minorities. Priyadarshini Thangarajah and Ponni Arasu point out that despite the perils of Section 377, queer women are at greater risk from the laws on kidnapping, abduction, compelling a woman to marry, and wrongful concealment or confinement of an already kidnapped person.55 Paradoxically, honing in on crime data for
Section 377 points away from Section 377 and toward a complex network of laws, policies, practices, and modalities of governance that regulate same-sex sexualities.

One way to develop a critique of the sexual state is to unravel the histories and practices of a regional state that seeks to regulate dance bars through a variety of mechanisms that have outlasted the judicial ruling to reopen them. Another way is to look at state agencies up close, through fieldwork, to reveal sexuality’s effects on routine practices and mandates of these agencies and, by extension, the state. My search for statistics related to the antisodomy law paved the way for a series of interactions with and deferrals by state officials at NCRB that, in turn, exposed how bodies and sexual propriety are monitored through the ordering of workspaces. Across numerous field visits to many state buildings throughout the research process, it is difficult to identify a unit that is not attentive to the management of gendered bodies and the possibility of desire, and NCRB is no different in this respect. Indeed the lived, embodied aspects of state institutions and agencies are a crucial part of what defines and sustains them, even though as researchers we have not given them their analytical due.

Being attentive to sexuality also sheds light on why some issues defined as social problems, such as crimes against women, are measured, quantified, processed, and reported in ways that justify the rationale for NCRB and even the expansion of governance practices—harsher laws and punishments, for example. The reason same-sex issues are not similarly represented, however, is not predicated on heteronormativity, for that would be to deny the point that Section 377 is used to prosecute heterosexual violence against girls and women. Accounting for the discursive differences between violence against women and the antisodomy law through a focus on biopolitical governance draws attention to a broader view of sexual anxieties that do not align along the heterosexual and homosexual divide. Such a focus on biopolitical practices aimed at the welfare of the population suggests that the neglect of numbers for Section 377 in NCRB’s tabulations and reports is deliberate and that the omissions gesture toward a complex web of juridical measures and provisions, of which Section 377 is only a part, governing same-sex sexual subjects.
Sexuality’s significance to biopolitics extends beyond statistical discourses and deliberate silences on sexual crime, for it has everything to do with the biased ways populations are understood, measured, and calibrated and is implicit in matters of demography, assessments of health and disease, marriage and inheritance. The inconsistent attention to crime featured in this chapter is an entry point into the broader conjunctions of sexuality and biopolitics and an invitation to rethink theories of biopolitics (and necropolitics) that systematically neglect sexuality. Gupta’s book *Red Tape* addresses the puzzle of why poverty is still widely persistent in India, despite numerous state-based initiatives. Using detailed ethnographic insights, Gupta juxtaposes the embodied aspects of governance and their biopolitical dimensions to explain how well-intentioned programs can nonetheless reproduce violence structurally, but without attending to the relevance of sexuality to the inconsistent, messy, and fragmented state. For a program such as the Integrated Child Development Services considered by Gupta, which is energized by population control and enlivened by state officials, staff workers, villagers, and the ethnographic researcher, sexuality remains an unresolved piece of the puzzle.

Coda

New Delhi, July 2005, final scene:

A little later I find myself in the spacious, second-floor office of Mr. Vishnu Dev, the ninth director of NCRB. Dressed in a beige safari suit, Dev, a man in his sixties, listens without much reaction, befitting a director with a background in the Indian Police Service. The information is already available, he says, and calls in a Mr. Nath to confirm. Nath seems nervous, ill at ease at being called into the office unexpectedly and having to confirm the bad news, what Kavita Paul and Satish Dubey have already established, that information on Section 377 is not already in the records and tables.

The subsequent deliberations are nerve-wracking, hard to read across the massive desk that separates the director from the rest of us. Would he say yes? Would he approve the conversion of numbers into data, of figures into statistics? Dev wonders aloud whether the infor-
mation even exists, for he believes that there are hardly any cases and Section 377 is hardly used. Even that is information that needs to be confirmed, I insist valiantly. Dev confirms that the information can be culled, and, then, in the tone of those used to granting or denying requests, in the tone of those who occupy large offices and sit behind enormous desks, says succinctly, “It’s approved.” I thank him and return approximately six times to gather the numbers.