Sexual States

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Published by Duke University Press


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Little is of greater concern in state regulation of sexuality than the policing of sexual and gender minorities. In their report on lesbian women in India, Bina Fernandez and N. B. Gomathy indict police coercion and threats of public exposure as the principal form of state violence. Police intimidation also makes gay men vulnerable, according to GayBombay, a community group in Mumbai, to extortion of money and sex. A report by the well-regarded People’s Union for Civil Liberties, Karnataka, “Human Rights Violations against the Transgender Community,” documents the vulnerability of hijras to, among other institutions, everyday police harassment, abuse, and sexual violence, further intensifying the need to understand policing.

As Foucault notes in “Omnes et Singulatim,” the police as a collective institution is an institution of the state as well as an overall strategy of governance, which accounts for why activist and scholars’ concerns have been directed at “police states” (for example, Arendt in Origins of Totalitarianism), with an eye to the institution as a site of violence—excessive, ongoing, exhibitionist, spectral, and routine. Feminist social scientists and scholars of race, ethnicity, religion, and nationalism continue to grapple with police violence that targets ethnic and racial minorities, migrants and refugees, the urban poor, women sex workers, and tribal communities, among others, but what is frequently missing are systemic analyses of the institution and its histories.

The police is among the most opaque state institutions in India, and though several studies have taken to task its colonial histories and post-colonial legacies, contemporary ethnographic accounts are still uncom-
mon, leaving journalistic impressions to fill the void. Indeed the Delhi Police have a research cell that monitors aspects of the institution but disseminates its findings only internally. Turning to fieldwork, then, becomes a way of creating an archive of the state, a task made all the more imperative due to the impenetrability of the police. Delving into two discussion groups in Delhi, one with twenty-five constables at a Delhi Police station and another with some forty-five station heads, inspectors, and others from the middle rungs, this chapter brings representatives from a range of police stations in the Delhi area into the fold of research. Supplementing this analysis are my numerous visits to police stations and conversations with constables that offer glimpses into the institutional discourses and practices governing sexuality, with the proviso that their perspectives are neither representative of police in India nor exhaustive portrayals of the Delhi Police.

Complementing the discussion in chapter 3 on the legal archives of the antisodomy law, this chapter analyzes the subjective, sexualized aspects of law enforcement. In an added twist, I argue that policing related to Section 377 likely imperils those communities that are seen as inherently hypersexual and criminal, especially Muslims and hijras. Although gay men, men who have sex with men, and lesbians are not immune to the brute impact of legal and extralegal policing, the Delhi Police point toward the ways in which law is subjectively administered or, put differently, how the antisodomy code is routinely flexed to imperil entire groups regardless of their sexual practices. Coming to grips with these passions and prejudices, this chapter substantiates the argument that Section 377 serves to enhance law enforcement’s reach and justification, providing another view of how sexualized governance practices and discourses help secure institutions that constitute the state. In the process it expands the focus on gender as normative womanhood to include hijras and adds awareness of racialized religious-cultural minorities to this analytical mix.

However, invoking racialization in India’s present to understand police narratives linking crime committed under Section 377 and religious-cultural minorities requires reconsidering existing analytical apparatuses. Although pejorative representations of Muslims by mostly Hindu police in Delhi would typically be explained as communalist biases—that they are the result of mutual sectarian prejudices and hostilities—the inference of reciprocity makes communalism analytically inadequate in
a context where some communities are at grave risk of prejudice, discrimination, and violent exclusion. Instead race and racialization—defined here as processes through which social inequality is rationalized as natural, inheritable, and enduring—help explain why and how police malign particular communities (not all religious groups are racialized or represented in similar ways) in relation to the antisodomy law. Building on Ania Loomba’s argument that religion is neither a preracial form of difference nor racism’s latest iteration but has been central to the development of its modern formations across the globe, this approach shifts attention to sexuality and race thinking (after Arendt) in postcolonial India.

While hijras may also be seen as a religious-cultural community, they are not typically placed alongside Hindus, Muslims, and other religious groups, and their genealogy is more directly framed in terms of criminality—as characteristically transgressive and predisposed to crime—which echoes in the discussion groups among Delhi Police. Mindful that hijras have long been interpellated by the antisodomy statute, this chapter seeks to explore the logics of policing that name disparate communities—Muslims, hijras, and even Sikhs—in the same breath and to analyze the play of culture and nature through which the antisodomy law facilitates the reach of policing well beyond its scope.

Internal Sovereignty and Legacies of Violence

Nothing identifies the state with coercion and violence more overtly than the police and the military. The distinctions between them are not always easily drawn, but my particular interest in this chapter is the institution of the civilian police located within a larger strategy of state-based governance and charged with maintaining “internal sovereignty.” Defining sovereignty as the ability and the will to employ overwhelming violence and to decide on life and death, Thomas Blom Hansen and Finn Stepputat argue for the need to understand sovereignty as a cultural construction and emphasize its internal aspects, secured through the exercise of violence over bodies and populations. As I see it, civilian police, charged with the maintenance of law and order, are crucial to the safeguarding of internal sovereignty, which explains why they are also among the most flawed and reviled of state institutions in India.

In postcolonial India antipathy to the police occurs not only among
the vulnerable but also among the middle and upper classes, and the view that police abuse the law—through corruption, bribery, lack of responsiveness to public grievances—is commonly shared and supported by documentation. A study by People’s Watch across nine states and forty-eight districts in India estimates that 1.8 million people are tortured by the police each year. Ordinary citizens and members of marginalized communities—the indigent, Dalits, scheduled castes, and hijras, among others—frequently do not report crimes committed against them for fear of police retribution. A Human Rights Watch report underscores the following areas of concern: police failure to investigate crimes, arrest on false charges and illegal detention, torture and ill treatment, and extrajudicial killings. Widespread aversion to the police also breeds contempt for the institution, and they are routinely characterized as ineffectual and incompetent, as is often the case in Hindi films (Bollywood). In a particularly ironic moment during fieldwork, a Hindi film was playing on a TV in the lobby of an office where I was waiting to meet a state official, and security personnel and I watched the stock scene of a group of policemen unuccesfully chasing the hero, further signifying the lack of complex understandings.

INSTITUTIONAL HISTORIES
Tracing historical and cultural legacies of the police in India, Kirpal Dhillon describes an institution that remains a product of colonial policies and practices and antiquated juridical systems. Forged by the Indian Police Act of 1861 and the Indian Evidence Act of 1872, the police, David Arnold suggests, was the outcome of techniques of control developed in order to strengthen the colonial state’s control over the indigenous society and mirrored the structures of another British colonial force, the royal Irish constabulary. He further notes that institutional hierarchy was distinctively racial as relatively few European officers occupied the highest positions out of an entrenched distrust of Indians and a low opinion of their abilities and character. At the same time, recruitment policies disaggregated people into convenient stereotypes of “martial races,” or “Brahmans,” giving preference to some groups over others and recruiting from the “low castes” only when others were unavailable for recruitment. Drawn from subaltern groups, the rank and file of the police were paid little and had poor working conditions and no prospects of upward mobility compared to the Europeans or the inspectorate.
drawn from the Indian middle classes. The failure of adequate supervision, petty corruption, illegal extraction, and predatory acts became institutionalized and further alienated the constabulary from subaltern communities. From its start, the role of the police was to impose and maintain law and order, not to provide service and security to their communities, and they were accountable to the masters and not to the communities, patterns that endure to date.

Although police reforms have occurred in postcolonial India, they have been incremental, not sweeping, leaving intact colonial structural flaws relating to accountability, autonomy, and inequity. The lasting colonial legacy has ensured that the police protect and defend the establishment, the wealthy and the powerful, the locally influential, while typically remaining indifferent and frequently oppressive to the communities they watch (over). Systemic alienation of the police from the communities where they enforce the law and maintain order remains essentially unchanged, and, if anything, people’s mistrust of the police may have deepened. Furthermore civilian police still do not operate as an autonomous unit answerable to the community, despite efforts at fostering police and community ties in cities like Mumbai; rather the police are subject to the state-level political executive. While the police also exist at the national level (such as the Central Reserve Police Force, the Border Security Force, the Intelligence Bureau, the National Security Guards), the civilian police fall under the authority and purview of state governance, creating a two-tier system of policing. The chain of hierarchy and accountability of the civilian police ends with the state executive branch via a civilian district magistrate and the state police chief, thereby making police at the local or district level responsible to the political wing of government rather than the law or communities they serve. The Delhi Police motto—“With you, For you, Always”—aims at bridging these divides, inviting the trust of the public and fostering a community-oriented police force, but without structural reforms addressing autonomy from political leadership, accountability to communities, and inequities within the institution, this motto falls significantly short of its promise.

The bulk of the police force, its constables and head constables, continue to live at the edge of poverty, working long hours in arduous conditions not unlike their predecessors in colonial times. In Delhi police constables perform twelve-hour beats daily, make between Rs 3,200
and 4,000 ($72–110) per month, are statutorily required to be available twenty-four hours a day, have no fixed days off, and often return home to their families no more than three days a week, sleeping at the station instead. Ventures into the restricted areas of Delhi Police stations during fieldwork revealed large rooms with a row of simple beds and personal items stowed beside them. Human Rights Watch reports even more dire working conditions in other cases. In 2008 there were an estimated 79,000 Delhi police, of which 7 percent were women. Most officers are from the Hindu ethnic community of Jats from the neighboring state of Haryana. The institution is controlled by the Union Ministry of Home Affairs and is headed by the police commissioner. In Delhi there are three special commissioners of police, seventeen joint commissioners, seven additional commissioners, seventy-four deputy commissioners, and 272 assistant commissioners of police. All senior police officers are graduates of the elite Indian Police Service and have no experience with hands-on policing. They take highly competitive entrance exams with a selection rate of less than half a percent and start their careers by heading a police district. The Delhi Police are divided into eleven districts and 177 individual police stations, known as thanas in Hindi. Thanas are headed by inspectors, who are university graduates, whereas constables are recruited locally and given training that ill prepares them to respond to the needs of the communities they police.

Colonial and postcolonial contexts are marked by continuities as well as differences, and it is important not to exaggerate either. The end of colonialism and a dynamic postcolonial context notwithstanding, the rank and file of the police still stand at the threshold of state and society and embody the paradox of being both state agents and subalterns, while practicing the enforcement of law in flawed ways. And, although Hansen and Stepputat argue that colonial forms of sovereignty are more spectral, fragmented, and racial, their traces are still discernible in the responses by members of the Delhi Police to my discussion questions.

The “Nature” of Unnatural Sex

On June 10, 2005, I accompany Manjeet, an outreach worker for Naz Foundation, the NGO that filed the challenge to Section 377 in the Delhi High Court in 2001, to a police station in South Delhi. Similar to programs aimed at creating awareness among police on sexuality-related
issues in nations such as Kenya, Nepal, and the United States, Manjeet conducts HIV/AIDS informational and sensitization programs at police stations in Delhi. After going through the basics of HIV and AIDS, what causes HIV infection, and how to prevent it, Manjeet turns the group over to me for a discussion that lasts over an hour. I step to the front of the room to face twenty-five police constables, introduce myself as a teacher and researcher in the area of sexuality, and say that I am interested in what they know about Section 377 of the Indian Penal Code and how they enforce it.

“It’s to do with unnatural sex,” “Any kind of unnatural sex involving animals, dead bodies,” chime a few constables. “In the case of an old man trying to have sex with a young girl.” They speak about Section 377 easily and participate in the ensuing discussion on the criminal law.

I ask the twenty-five constables for cases that they have encountered related to Section 377. The examples pour fast and freely. An old man raped a young boy and he came to the police; a Muslim couple, where the wife did not want anal sex and filed a complaint against the husband. “It happens more among Mohammedans,” one constable asserts informatively, casually in Hindi. Manjeet, a turban-wearing Sikh, reproves the constable immediately, saying firmly but kindly that such remarks shouldn’t be made about any community (“Kisi community ke bare main aisa nahin kehna chahiye”). Without missing a beat, the constable responds, “Your community is the second one where it happens the most” (“Uske baad apki community main sabse zyada hota hai”). Laughter explodes among the constables; none of them challenges either statement. The constable adds in English, “Don’t mind, please,” and then in Hindi, “I say what I have seen.”

The twenty-five constables in the room are seated in neat rows on either side of a center aisle, and Manjeet and I take turns standing in front of the desk at the head of the room. The spacious though not large room is comfortably filled. A cooler, a machine that works on a combination of air and water, brings relief from Delhi’s dry heat while creating a background din, and the drawn window curtains shield the room from the midday heat. A few posters are tacked to the walls: one in English on
sexual harassment, one in Hindi advocating against dowry, and in the back of the room a fading image of a once-resplendent Madonna and the baby Jesus. The dull cream color of the walls, the sun-bleached curtains, and the posters give the room a drab, worn appearance. In contrast, the constables are neatly attired in their khaki uniforms. All male, their years of service in the police range from six to thirty-two. These policemen have served and continue to serve the beats—in the streets, the parks, the neighborhoods. Our discussion is primarily in Hindi, liberally peppered with words, phrases, and sentences in English.

The constable’s assertion that “unnatural sex” happens more among Muslims and Sikhs is a stunning displacement of sexuality and criminality onto religious-cultural groups. It is preceded by examples of what constitutes unnatural sex: nonnormative and unnatural sexual practices. The point that such practices occur primarily among Muslims and Sikhs suggests powerful sentiments among the police that are not simply about homophobia but about the fear and (pleasure of) hatred of particular minority religious-cultural communities. Missing from these initial examples is any mention of same-sex sexual activity among adult women or men, making the glib association between unnatural sex and Muslims that was reinforced time and time again in conversations with police constables in Delhi all the more disturbing. The use of the term Mohammedans rather than Muslims deepens the distance between the constable and those to whom he refers, for Mohammedans was a term used by the British to describe the followers of Islam and is still commonplace in Delhi, along with Muslims (in English and Hindi) and Musselman (in Hindi). The scathing connotations of the constable’s statement are exacerbated by the laughter of his colleagues.

Manjeet’s timely intervention is rebuffed immediately by the constable. The term community that echoes in their exchange, as in the Hindi-English phrase apki community (your community), is partially derived from the term communal in the Indian context. Had Manjeet and the constables spoken entirely in Hindi, they would have likely used the term quam (translated as community or nation). The Oxford English Dictionary notes the particular association of community and the communal within the South Asian context, wherein community is shaped by religious and ethnic difference and intercommunal strife.28 Sudipta Kaviraj draws a distinction between fuzzy and enumerated communities, the ones that are not territorially based—caste, religion—and the ones that
are both about numerical strength and territory, such as nations.29 The exchanges on community between Manjeet and the constable are condensed narratives of the history of the postcolonial Indian nation within which religious communities became enumerated, consolidated despite their “fuzzy boundaries,” and grist for the discourse of communalism. Muslim and Sikh communities in India have indistinct boundaries and are characterized by internal religious, linguistic, caste, geographic, gender, and class differences, much like Hindus—right-wing attempts at homogenizing Hinduism notwithstanding.30 Still, dominant and minority religious-cultural communities are seen as the basis for struggles around political, economic, and cultural resources.

That these ideologies and sentiments are not limited to constables became clear in the group discussion with those higher up the chain of command, the middle rung of the police, where more than forty-five heads of police stations and police inspectors gathered for a training session on gender sensitization and gender justice on July 13, 2005, at the lecture hall Teen Murti Traffic Lines in New Delhi. The program was managed by the joint commissioner of police, women’s crime cell, who invited me to conduct a segment of the training session in an administrative building of the Delhi Police.

As I enter the nondescript room, painted in a fading grayish white, some forty-five members of the police including two women are seated at tables. It is set up like a classroom, and I face them from a platform at the front of the room with a blackboard behind me. Unlike the constables, most of the men and women are dressed in civilian clothes and hold at least a bachelor’s-level degree; like the previous group discussion, we speak in a mix of Hindi and English. To highlight the role of culture and history in constructing gender as unequal difference, I lead a discussion on the meaning of the normative categories of woman and man. The discussion is lively and the issues of how gender categories exercise constraints on personhood, conduct, roles, occupations, and so on are thoughtfully received, although punctuated with emphatic beliefs about women’s responsibility in monitoring our bodies and selves.

As the discussion turns to same-sex sexualities and Section 377, many of the male police repeatedly and emphatically insist that most crimes are committed by Muslims. As a group they are resolute in their belief
that most crimes under Section 377 and indeed most crimes in general are committed by Muslims. Some are quiet, but others assert, “Most unnatural sex crimes are committed by the Muslim community”; “I have seen that this happens more among Muslim people”; “Most complaints on 377 are about these people.” No one disagrees. One of the two women openly concurs in Hindi, “Madam, I too have seen this.” Non-Hindu-identified officers listen quietly to these vehement charges against a minority group, perhaps cognizant of its explosiveness (one Sikh man wears a turban). I present the counterargument that Muslims do not and could not account for the bulk of crimes in a country that is more than 84 percent Hindu. Some remain quiet; others disagree. Eventually the discussion tapers off inconclusively and unsatisfactorily, some officers obviously restless as the allotted time comes to an end.

The question is how to account for this insistent displacement of unnatural sex or sexual crimes committed under Section 377 onto Muslims in particular, and to a lesser extent onto Sikhs, by the Delhi Police. How to explain the consistent association between what are seen as abnormal sexual practices and religious-cultural groups?

RACIALIZED COMMUNALISMS
In the Indian context, these remarks by the Delhi Police are likely to be ascribed to communalism; that is to say, the mostly male Hindu police are prejudiced against Muslim and Sikh communities. Rooted in British colonial administrative politics and coming into usage by the 1920s, the term communalism continues to be widely used in India to represent religion-based sectarian differences as well as mutual prejudices and hostilities and symbolizes loyalty to one’s community over nation and an impediment to patriotism. The primary challenge facing Indian nationalism, it is believed, are communalism’s various iterations: intercommunal strife, competition for resources, politicization of religion, violence, perceived Muslim and Sikh loyalty to faith over nation, disdence in Kashmir, and (Muslim) terrorism. But what is crucial and relevant to the discussion here is that communalism is seen as both cause and effect of historically and socially entrenched attitudes of prejudice and discrimination between religious communities. Since the majority of Delhi Police are ethnically and religiously distinct Hindu Jats from the
neighboring state of Haryana, their prejudicial associations of (homo) sexual crimes with Muslims and Sikhs could be seen as communalist.

Its history and continued significance notwithstanding, the discourse of communalism is increasingly inadequate to account for such responses by state agents or citizens who are members of a majoritarian religious community and an ethnic community with the political clout to be heavily recruited into the Delhi Police. Gyanendra Pandey notes that the term communalism persists despite its declining relevance in the Indian context because it serves as a shared language for discussion but also because of intellectual inertia. It must be why terms such as riot, communal riot, and communal violence are repeatedly put in scare quotes, for typically Muslims, Christians, Sikhs, and Dalits are the ones who are grievously hurt by majoritarian Hindu groups with the implicit and explicit collusion of state institutions and agents. In the past few decades riots and mutual conflict and hostility have expanded to genocide, pogroms, forcible conversions to Hinduism, and torching and looting of the property of minority religious communities (alongside intercaste, interethnic, and gender-based violence).

Neither does the term communalism help explain the institutionalization of socioeconomic inequalities and discrimination that are captured, for example, by the Sachar Committee report, “Social, Economic and Educational Status of the Muslim Community in India.” Documenting the widespread and disproportionate gaps in educational attainment, income, bank credit, and high-level government jobs across thirteen Indian states, the report also identifies widespread perceptions among Muslim communities of prejudice and discrimination toward them. Increasingly, in lieu of communalism, the politics of religion and religious hierarchies is represented in the lexicon of majorities and minorities, and riots have come to be partially replaced by the lexicon of pogroms and genocide. As Rustom Bharucha writes, it is difficult to seek academic solace in communalism while the exclusion of Muslims escalates from a racism of domination to a racism of extermination.

Needed here is a theory of racialization in India’s present to locate the insistence by members of the Delhi Police that unnatural sex crimes are mostly committed by Muslims and, to a lesser extent, Sikhs. The problem, though, is that race and racialization as categories and processes are typically reserved for the colonial context in India. Despite Indrani Chatterjee’s critical examination of racial hierarchies in precolonial In-
dia and Loomba’s useful theorizing of religious and caste differences as racialized processes in India’s present, the accepted approach, if not articulated belief, is that race ought to be reserved for the colonial context and that it does not belong analytically within the contemporary Indian context, for racial difference has been primarily conceptualized as colonial difference between Europeans and Indians, between whites and browns.35

Stated simply, the reluctance to use the analytics of racialization in India’s present is because Hindus and religious minority groups are not phenotypically different. Curiously, select groups self-characterize as racially distinct—for example, some Hindu fundamentalists and some Sikh political leaders—but in general race and racialization appear to have no analytical purchase in a phenotypically mixed national context.36 This, despite the intertwined genealogies of race and communalism in the Indian context, for as Pandey reasons, race was part of the same colonial and naturalized taxonomies out of which came communalism.37 It was not unusual to identify “martial races,” the British colonial belief that some groups were naturally, inherently more effective for combat, which resulted in the recruitment of Sikhs for positions in the military and the police in the northern part of the territory and Muslims in the southern part.38 The lexicon of race, then, inflected not only the transactions of the rulers and the ruled but also the distinctions among religious-cultural communities that were in the process of being consolidated.

If communalism is distinctively or exceptionally South Asian, then race has a Euro-American provenance. The conceptual genealogy of race is drawn largely from the Atlantic slave trade and early colonial encounters in the Americas. Even though there are multiple trajectories of race, racial classifications, and racial discourses, race in its Euro-American genealogy has come to be about somatic differences; as Paul Gilroy argues, it has been about the discourses and practices of color, face, hair, skin, and more.39 In her critical intervention, however, Loomba questions these conflations of race with body that amplify Euro-American histories into universal definitions of race.40 Further, to see racialized difference as written on the body is to engage a particular genealogy of race thinking and racisms and lose sight of the collective insistence of critical scholars that race is not grounded in apparently somatic differences but in cultural discourses that produce the body as the site of unequal difference. Constituting race and racisms across a variety of cultural settings are dis-
courses of unequal and naturally occurring differences that are seen as “natural” and “transmissible”; put differently, race and racializations are wrought from cultural and historical regimes of classification that rationalize forms of inequalities on the basis of natural, extracultural difference. Needed, then, are multiple genealogies of race and racializations, and the trajectory that I am considering here is not intelligible through what Gilroy calls a politics of the chromatic and optical, but through cultural discourses of blood, psyche, and sinew.41

RACIALIZATIONS OF BLOOD, PSYCHE, AND SINEW

Responses by members of the Delhi Police may seem to be about cultural difference, but they are in fact about discourses of nature and naturalized disparities—putatively inherent in communities and reproducible from one generation to another—that are widely pervasive in Hindu majoritarian discourses. Muslims are consistently cast as both alien outsiders, the descendants of Mughal invaders who proselytized Islam, as well as internal outsiders, the marginalized caste Hindus who converted to Islam. As the largest religious-cultural minority (approximately 13 percent of the population), Muslims are widely (mis)represented through a complex web of discourses of “blood” (read: nature or biology), “psyche” or religious-emotional essence, and “sinew” or physicality and prowess. Sustained by notions of fanaticism as a natural extension of the faith, differences in hygiene and diet (especially meat eating), and hypersexuality (polygamy, high population growth rates, and excessive sexual appetites, especially for Hindu women), Muslims are seen as innately physically and psychically different. It is not unusual to hear Hindu sentiments in places like Delhi that capture this troubling mix of culture and nature, community and inheritability in phrases such as Unki to Quam hi aise hai (This is the nature of their community).42

Discourses of sexuality give greater potency to such racialized projections of communal difference, for if the myth of the “over-sexed Muslim man and his over-fertile Muslim wife/wives” or falsehoods about the Muslim growth rate echo among majoritarian Hindus and other minority groups,43 the circumcised penis circulates as the embodiment of a community and its otherness. Analogically invoking Frantz Fanon’s critique of how black male bodies are reduced to the penis, Bharucha notes that in the hate literature on Muslims in India, the circumcised penis is equated with an unclean body, polygamy, and lasciviousness.44 Paola
Bacchetta extends this argument to suggest that Hindu nationalists assign queer gender and sexuality to all who are “others” of the Hindu nation, but especially Indian Muslims, who are cast as hypermasculine and hypersexual, sexually violent as well as sexually deviant. However, these racialized projections of “queer” sexuality, nonnormative and excessive, are not limited to the political core of Hindu nationalism but resonate more widely in the majoritarian populace.

That constables and their seniors would share and echo some of these commonplace associations between Indian Muslims and sexual deviance may not be unexpected but is nonetheless disturbing. The concern that those who are duty bound to protect all equally hold such deep-seated racialized prejudices is further exacerbated by the low numbers of Muslims across all ranks of police in much of the nation as well as Delhi. For example, Omar Khalidi observes that after many Muslim rank-and-file police opted to migrate to Pakistan in 1947, depleting the Delhi force, no effort was made to recruit Muslims for decades thereafter. As a result by 1991 the Delhi Police were a mere 2.3 percent Muslim. In her compelling writing on the role of the police in the violence in Gujarat, Teesta Setalvad asserts that the small number of Muslim police officers and those from the lower ranks are systematically denied positions that entail directly managing law and order, especially heading police stations and districts. The combination of flawed structures of accountability and forms of racism internalized within its ranks has driven police complicity with Hindu majoritarian groups during pogroms and genocide against Muslim communities. Indeed the evidence for repeated police failure to protect Muslim and Sikh groups under threat, either by inaction or active participation in violence, is overwhelming. Although Khalidi’s study is an important reminder that police can be led to prevent and stall violence against minorities, the constables reveal entrenched racialized beliefs about the sexual nature and conduct of religious minorities.

The racialized attitudes and beliefs about criminality and unnatural sex conveyed by the constable and implicitly endorsed by his colleagues in the first discussion, and more broadly endorsed in the second discussion, are not simply factors of group dynamics but appear to be more pervasive. During my trip to another police station to gather FIRs on Section 377, a constable followed me into the Records Room, dusty and cramped with a couple of tables, several chairs, and metal shelves stacked with files and ledgers. I sat across from another constable at an
adjoining table, the first constable politely asked what I was doing. When I explained my interest in seeing the FIRs on Section 377, he said without solicitation or hesitation that it’s a crime mostly committed by Muslims. Unable to let it pass, I used the authority of evidence to say that the data do not support this claim and cited the twelve FIRs I had already gathered, which seemed to primarily incriminate Hindus; nine out of the twelve were Hindu names, while only two names appeared to be Muslim and one was likely Sikh. Joined sporadically by the constable at the adjoining table, what followed was an argument about those who commit crimes under Section 377 that tapered off when neither of us was able to alter the other’s views. Perhaps most ironic, while I, a feminist scholar, clung to evidence, the first constable insisted that his belief was rooted in his experience of policing! This highlights two interrelated points: first, that the group discussions are not anomalies in terms of the racialization of crimes under Section 377; second, that although Muslims were slandered across instances of fieldwork, the group discussion with the constables was the only time in which Sikhs were maligned. The racialization of Sikhs in India’s past and present is qualitatively and historically different compared to Muslims, and even though it reverberates at the national level, it is also peculiarly a product of Delhi as the site of bloody, calculated vengeance.

SIKHS: RACIALIZED FLUCTUATIONS FROM “ULTRANATIONALIST TO ANTINATIONALIST”

The 1984 pogrom against Sikhs in Delhi was a turning point in dominant representations of Sikhs from ultranationalist to antinationalist in ways that resonate among the Delhi Police. In their introduction to The Delhi Riots: Three Days in the Life of a Nation, Uma Chakravarti and Nandita Haskar suggest that the pogrom produced a new minority, but its creation had been under way long before 1984. In contrast to the web of colonial and postcolonial histories constructing differences and hierarchies between Hindus and Muslims, Sikhs struggled to forge a community religiously and politically distinct from Hinduism and Hindus during the late colonial period. Sikh leaders’ aspirations for a separate Sikh state federated to either India or Pakistan at the time of partition in 1947 were not realized, but a political struggle for a linguistically defined, Punjabi-speaking state followed. Brian Keith Axel explains that the notion of a sovereign Sikh nation-state first emerged in the Sikh diaspora in the
1970s and was embraced after the watershed of 1984, when a massive military offensive violated Sikhism’s most revered site, the Golden Temple, or Harmandir Sahib. In retaliation two Sikh bodyguards assassinated Prime Minister Indira Gandhi on October 31, 1984, unleashing three days of brutal, orchestrated violence against Sikh communities by majoritarian Hindu political leaders with the participation of party Hindu henchmen, petty criminals, and even upper-caste and Dalit neighbors in some cases, and the complicity of the police. Afterward, until the end of the 1990s, a protracted struggle to constitute a sovereign Sikh state was brutally suppressed by military and police violence, and Sikhs were recast in the national imaginary as an antinational minority, terrorists, and religious separatists.

In her fieldwork in Delhi during and in the aftermath of the 1984 pogrom, Veena Das details the changing self-representations of Sikhs and dominant Hindu depictions of them. Das suggests that in 1981–84, during civil obedience campaigns led by Sikh leaders, Sikhs increasingly described themselves as a distinct race, whose history was written in the blood of martyrs and who were unambiguously masculine, militant Sikh literature portrayed Hindus as essentially effeminate, cunning, and weak. These categories were reversed in the imaginaries of majoritarian Hindus. Das crystallizes Hindu understandings of Sikh traits in circulation at the time: that Sikhs are loyal only to their religion, fanatical to the point of madness, capable of betraying the closest trust, snake-like in that they will bite the hand that feeds them, naturally aggressive, attracted to violence, and incapable of observing normal social constraints. Much like the genocide against Muslims in Gujarat, the terror inflicted against Sikhs was methodically executed and the police either deliberately did not intervene while the murderous violence raged for three days or, in some cases, reportedly participated in it. The compilation of interviews in the book The Delhi Riots: Three Days in the Life of a Nation is replete with accounts of the ways police refused to stop the victimization of Sikhs.

Delhi Police involvement in the 1984 pogrom and the broader shift in dominant perceptions and the strengthening of these racist stereotypes of Sikhs appears to have left an imprint on the constables in this group discussion. Once again cultural discourses are intensified by institutional imbalances, namely the declining representation of Sikhs in the Delhi Police. Historically Sikhs served in the military and police in numbers much higher than their share of the population (which is
approximately 2 percent); in 1991 they constituted an impressive 21 percent of the Delhi Police. However, since 1984 their numbers have been dwindling dramatically, as confirmed by the National Minorities Commission, with rumors of a ban against Sikh recruitment, according to Khalidi. Indeed in my numerous visits to police stations and police headquarters in Delhi, I was hard-pressed to find turban-wearing Sikhs. As Khalidi also confirms, the rank and file of Delhi Police is constituted largely by Haryana (Hindu) Jats. The constables’ responses in the group discussion indicate their ambivalence toward Sikhs due to national and regional histories that go unchecked by the skewed numbers in the Delhi Police force.

After the group discussions and other instances in which the police pointed to Muslims as the culprits of crimes under Section 377, I returned to the Delhi Police Headquarters to meet one of the senior officials for the third time with the intention of making him aware of the pervasive associations of sexual crimes with Muslims, and to a lesser extent Sikhs, among constables as well as the middle-rung police I encountered. But the official, one of only two turban-wearing Sikhs I encountered among Delhi Police, who had previously been helpful by authorizing the release of data to me, vigorously dismissed my concerns. “A few bad apples in the police force” was how he explained away what I sought to call to his attention. My point is not to argue for a monolithic view of the police or the reproduction of racializations but to underscore the queering of racialized religious minorities and the insistence on their association with criminality that so quickly rise to the surface in discussions among Delhi Police constables on Section 377. The extent to which these ideologies and sentiments are shared and acted upon during routine policing and the handling of complaints remains a matter for further investigation, but the fact that the police officers and rank and file who intervened on behalf of the victims in Gujarat in 2002 and Delhi in 1984 were exceptional is a reason to not be overly optimistic. Still, in their responses to how Section 377 is used, participants of both discussion groups emphasized the letter of the law, denying violence in some cases while openly defending it in others.
I ask the constables in the group discussion about when and under what circumstances they use Section 377. The responses come swiftly and almost unanimously. “Only when there is a formal complaint”; “When a formal complaint is lodged and after the medical examination, then Section 377 may be used.” I probe deeper, asking whether they use it when two men or two women are strolling in a park, whether it is used even when both parties consent to sex. “It’s when there is no consent that we do something about it and only then”; “377 is used even when consent is there”; “It’s mostly due to a complaint being lodged and due to sex in public places”; “It doesn’t come up when both parties consent, since no complaint is filed”; “We would not stop [threaten or arrest on charges of suspicion] two men or a young man and a woman in a park.”

The constables easily summarize the guidelines for enforcing Section 377—the filing of a formal complaint and a medical examination—implying that men consenting to same-sex sexual activity (in private) would be practically exempt from the force of this law. At odds with documented police abuse especially of young men suspected of being sexually dissident, these responses also do not address the fact that laws regulating public sex are hardly neutral, for a couple arrested for heterosexual public sex would likely be charged under public nuisance or public indecency laws, not the harsher punitive measure of Section 377. Almost lost in the din, one constable’s response that the law is used regardless of consent—“even when consent is there”—speaks to instances of police responding to or taking what they see as preventative action against male-to-male sexual activity in public areas, such as parks, near urinals, and other cruising areas, which itself is partly a result of Delhi’s high population density and lack of privacy in indigent, working-class, and even middle-class households.

Despite the troubling reports of police abuse and one constable’s caution that consent is immaterial to the antisodomy law, other police officials also denied violence against same-sex sexualities. When I first tried to delve into these allegations with the presiding New Delhi Police
commissioner in June 2003, the interview was terminated within a few minutes since he wasn’t aware of the Naz Foundation writ or its status, even though the Delhi Police were named as respondents (chapter 2). What did get his attention, however, was the issue of police abuse, which he vehemently denied, insisting that the institution’s role is merely to enforce the law, a point that would be hotly disputed by those who bear the brunt of this enforcement. The position that the police merely enforce the law was repeated almost to the letter two years later, in June 2005, by the New Delhi commissioner of police, who said, “We come into the picture only if there is something repugnant to the law. We enforce the law.” Even as it is possible that the constables and other police I encountered in my fieldwork were not personally violent toward same-sex sexualities, all denied using (extralegal) violence to enforce the law.

In sharp contrast, police violence was openly and unapologetically endorsed in the case of hijras. While the association between religious-cultural minorities and unnatural sex crimes was suggested in the two discussion groups, it is not clear whether these members of the police are more likely to target Muslims or Sikhs in maintaining sexual and social order. But such ambiguities were nowhere in evidence regarding hijras, whom the constables target them on the grounds that “they have sex in public places”; “they do it for money—for Rs. 50, Rs. 200 to 300” (approximately $1, $4–6). They tell me to see for myself: near the domestic airport, hijras attract clients and then rob them of their clothes and their money. In the second discussion group the more senior police men and women added, “They are criminals”; “They rob and steal from their clients”; “They are up to no good. It is our responsibility [to stop them]”; “They do wrong. They solicit sex.”

Perhaps the association between hijras and the antisodomy law is not unexpected, not least because one of the earliest cases (1884) under the statute had to do with a hijra, Khairati, who was charged without a complaint or evidence (chapter 3). More surprising is the vehemence and openness with which some police in Delhi alluded to and justified the targeting of hijras. Saying that this is “how hijras are,” the constables described the need for “preventative” policing—stopping hijras and demanding to know what they were doing, labeling them troublemakers and keeping an eye on them, and using violence as necessary. Anticipating complaints about police inaction from those they refer to as “people like me” (aap jaise log), the senior members suggest that constables are
being proactive by policing hijras. Representing hijras as “antipolice,” these members of the Delhi Police force see no difficulty in flexibly enforcing the antisodomy statute even when there are no complaints, victims of crime, or evidence of wrongdoing.

Yet, given the requirements for registering crime under Section 377, noted by the constables, policing often relies more formally on other legal provisions, most notably the Immoral Traffic Prevention Act (ITPA) of 1956. Aimed at curbing sex work, ITPA was amended in 1986 to be gender-neutral, thereby encompassing hijras and other non-woman sex workers. Although the law does not actually criminalize sex work or sex workers, its enforcement is primarily targeted at soliciting sex in public places, making hijras, sex workers, and others vulnerable. Despite the fact that hijras are heavily dependent on sex work and vulnerable to sexual violence from thugs, goons, and the police due to their extreme social marginalization, Section 377, ITPA, and other provisions are being stretched, bent, and rationalized by constables and their senior representatives in the interests of public morality and social order.

Represented in police accounts is not just the association between hijras and sexual transgression but also hijras’ inherent tendency toward crime in general, a view that derives from the colonial era. Overlaying the past of the antisodomy statute and hijras is their classification in the Criminal Tribes Act, first introduced in the northern provinces in 1871 of the colonial territory and then throughout British India by 1911. Mapping its history, Meena Radhakrishna writes that its underlying purpose was to suppress the “hereditary criminal” groups, for the problem of crime was seen as intrinsic to native society. Amended in 1897 to include eunuchs and hijras, every aspect of their lives was criminalized and subject to surveillance and harassment by the police, according to Arvind Nairain, and the local government was required to maintain a register of the names and residences of eunuchs, “deemed to include all members of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent,” who might be “reasonably” suspected of kidnapping or castrating children, or might be charged under Section 377 of the Indian Penal Code.

Even though hijras were eventually declassified as a criminal community, the associations between same-sex sexual practices and a tendency toward crime as a group continue to endure among the members of the Delhi Police. Hijras were forged out of the same overarching colonial
Fractures of Heteronormativity

I ask the constables whether Section 377 should change. Several say unequivocally, “Sex between men or between women is wrong”; “This is against our culture.” They raise concerns: “If 377 is removed it will increase homosexual behavior”; “What will happen to the population if everyone is doing unnatural sex, especially in the next hundred years?” But there is more. One constable says that the law should change: “Each person has a right to sexual satisfaction” (“Har ek ko sexual satisfaction ka adhikār hai”); “This law is wrong in the case of two adults who consent to sex. This law should change”; “This law should be changed as now we are free from colonialism”; “There should be a difference between forced and consensual sex.” The discussion and disagreement continue.

The constables have much to say on the future of Section 377, but they are not of one opinion. Several insist that same-sex sexual activity is inherently wrong, echoing what Monique Wittig has described as securing sex within a heterosexual matrix. Other constables reference cultural integ-
rity, saying that these sexual practices are against “our culture,” as does the same constable who racialized crimes reported under Section 377, and still others imply that the law should reflect the cultural injunctions against same-sex sexualities. Some raise concerns about the social implications of decriminalizing same-sex sexual activity: increased homosexual behavior and, not least, a decline in the population as a result—ironic, given the national count of more than one billion people.

But others disagree. One constable turns toward his colleagues who oppose the law to resolutely say that the law is wrong when applied to two consenting adults and it should therefore change. Invoking the colonial past and postcolonial present, another constable sees Section 377 as a burden of colonial history that ought to removed, making law and culture compatible once again. The distinction between consensual and coerced sex turns out to be important for some constables as they consider the possibility of retaining Section 377 only in cases of coercive sex. The discussion is lively and lasts for a while.

Perhaps most notable is the constable who says in Hindi that each person has a right to “sexual satisfaction,” a phrase he says in English. Elsewhere I have discussed the relevance of English in enabling a language of sexuality among the urban middle and upper classes, and the constable’s social class notwithstanding, the phrase sexual satisfaction allows him to capture the need for sexual gratification or fulfillment that everyone shares. As he says, “each person” (Har ek) has this need or desire for sexual satisfaction, framing it within a language of rights (adhika’r in Hindi). While this may appear to resonate within a sexual rights framework, best described by Diane Richardson as the result of heterosexist understandings of sexual activity and sexual pleasure giving way by the 1980s to the idiom of sexual identities, the constable’s response could be interpreted differently. Rather than reflecting a transnationally circulating grammar of gay rights, it may well be reflecting regional histories of sexuality and social class in which the rural and urban elite, especially the landed gentry and the nobility, were considered to be entitled to pleasure and desire, regardless of the object choice. Chatterjee reads the presence of same-sex desire within the context of master-slave relations in precolonial India, while Lawrence Cohen underscores the presence of more than one register of the sodomite and the gay in India’s present, where desire exists outside the aesthetic of middle-class urban life.
simply be accommodated within a transnational model of sexual citizenship but may be about the amplification of regional and class-based genealogies of same-sex desire.

Muslims’, Sikhs’, and hijras’ associations with sexual perversion was not openly or implicitly contested in the two group discussions, but both groups did debate who may be entitled to sexual satisfaction and endowed with the ability to consent unfettered by a colonial law. Undoubtedly some constables believed that same-sex consensual sexual practices among adults are wrong or go against the grain of Indian cultural orientation, and they expressed their dissent accordingly. Yet it also became increasingly clear that the subject who may or may not be emancipated by changes to Section 377 was not necessarily the maligned religious-cultural minorities or the gender-queers. By the time the discussion moved to the possibility of changes to Section 377, the subject who may or may not be granted the right to act on same-sex desire no longer seemed to be the same. Taken together, the excerpts suggest that while there may be some leeway in the policing of adult consenting same-sex sexual subjects, there is little tractability in the regulation of racialized queers and gender-queers; indeed the antisodomy statute may be used to enhance and justify governance in order to maintain social order.

Ruminations

Analyzing perceptions about the antisodomy law among the Delhi Police confirms the subjectivities of juridical practices of governance. Parallel to the inconsistencies between a law partly designed to persecute the sodomite and its expansive use to prosecute sexual violence on children, aggravated sexual assault on women, and more, policing related to the antisodomy law also yields an unexpectedly complex picture. In the examples of crime falling under Section 377’s ambit, constables identify potential examples—sex involving animals, old men trying to have sex with children, a wife filing a complaint against her husband—that do not easily align with homosexuality, or heterosexuality, for that matter. It is documented that police persecute same-sex sexualities, but whether Section 377 is its primary channel is uncertain.

Police responses associate the antisodomy law or the injunction against unnatural sex more closely with religious-cultural minorities, especially Muslims, which is to say, a law may be intended for one pur-
pose, but law enforcement practices invoke something else altogether. Not surprisingly the constables take the position that they enforce the law as it is written, and they deny any deliberate targeting of same-sex sexualities under Section 377, since it requires the filing of a complaint. At the same time, they tightly link unnatural sex to non-Hindu subjects: the constable’s claims that unnatural sex is more frequent among Muslims goes unchallenged by his peers, and a follow-up claim about Sikhs is endorsed with laughter. The question I posed initially was about the kinds of crimes committed under Section 377, but the discussion among the constables seamlessly shifted to the “who”—namely Muslims and Sikhs—and this racialized pejorative queering of religious-cultural minorities was partly repeated in the second discussion group with the more senior officials.

Identifying the race thinking implicit in the police responses helps explain the subjectivities of policing and the endemic forms of prejudice that so quickly rise to the forefront in discussions on the antisodomy law, even though race cannot be “epidermalized” in India quite as it is in the United States, Western Europe, South Africa, and elsewhere. Sharing his concerns about the occlusion of race among Indians in an unusual exchange with Amitav Ghosh, Dipesh Chakrabarty perceptively notes that racisms among Indians are often silenced, and accounts of “communalist” behavior are often difficult to distinguish from what elsewhere is called racism. The takeaway from the police responses is not the need to overturn a cultural and academic history that pivots around the term communalism but to come to grips with its racialized connotations—rearticulating the relationship between culture and nature to be attentive to the invidiousness of that which is inscribed on the body but also to cultural discourses that purport to be about innateness, inheritability, and sexuality.

The police discussions also gesture toward the flexible uses of Section 377 in conjunction with other provisions to capaciously target hijras, while bolstering law enforcement as an essential means to protect the social and sexual order. Unstinting and unapologetic about their derogatory perceptions of hijras, seen as inherently criminal due to their gender nonconformity, members of the Delhi Police justify preventative actions and brute force against them. That Section 377 but also ITPA and other laws may be used to this purpose became amply evident, for example, when police in Chennai arrested three Aravanis (the regional term for...
hijras) and eight men who have sex with men (MSM) based on allegations that they would routinely cruise for sex and money in a public park. Entrapped merely on the basis of their shared identities, the Aravanis and MSM were not booked under Section 377 but under Section 8b of the ITPA, since its bar is much lower and its gender-neutral language facilitates the policing of a range of queer subjects.

A focus on the intensity with which crime under Section 377 is recorded, the extent to which it is prosecuted in the higher courts, and its routine enforcement provides a thoroughgoing view of biopolitical and juridical practices that mediate the relationship between sexuality and state. The antisodomy law’s history and uses bring into view not only the profound irrationalities and passions of governance practices but also the complexities and counterintuitions of how regulating sexuality helps secure agencies and institutions constituting the state, such as NCRB, courts, and police. Each of these lenses complicates assumptions about Section 377’s detrimental effects on same-sex sexualities by indicating that the violence and harassment may be enacted not primarily through Section 377 but by juridical mechanisms; that Section 377 is part of a corpus of other provisions that, despite appearances, is likely affecting a host of other social subjects and sexual practices beyond the scope of same-sex consensual sex among adults; and that these biopolitical and juridical mechanisms deriving from the antisodomy law are helping reaffirm the indispensability of law, law enforcement, and number-crunching agencies. Going forward, these insights anticipate the difficulties of a struggle for social justice that pivots around the state, a narrowly conceived subject, and a focus on a specific law.