Chapter 1

1. The Bharatiya Bar Girls Union emerged under the leadership of Varsha Kale, a union activist and not a bar dancer herself, following a public rally in 2004 to demonstrate against increasing state restrictions, police harassment, a greater share of customer tips, and more. See Agnes, “State Control and Sexual Morality”; Seshu, “Bar Girls Seek Rights.”

2. Bunsha, “Morality Check in Mumbai.”


4. Mitchell argues that the state should be considered “not as an actual structure but as the powerful, apparently metaphysical effect of practices that make such structures appear to exist” (Society, Economy, and State Effect,” 89). In “Limits of the State” he argues that the boundaries between state and society are not self-evident but are discursively produced.

5. Even though the issue of dance bars did not play out only at the level of the regional state and over the course involved numerous local, regional, national, transnational actors and discourses of governance, its axis was tilted toward the regional state.


7. For example, see John and Nair’s useful discussion in the introduction to A Question of Silence?

8. The now considerable literature on nationalism and sexuality was inaugurated by Mosse, Nationalism and Sexuality. Relevant here is also Stoler’s point in “Affective States” that nation is analytically privileged over state.

9. During partition some seventy-five thousand women were raped or abducted by men across religious-cultural lines, which was seen as a matter of national shame, and the recovery of women, a matter of national honor. In a matter of
months some twelve million people crossed the new borders, with Muslims migrating into Pakistan and Hindus and Sikhs arriving in India, leaving behind land, immovable assets, and livelihoods. It is estimated that one million people lost their lives in the bloodbath on both sides of the border. The wrenching of families and communities from their lives and homelands, intense bloodshed and hatred, and the violation of women continue to echo in the recesses of living memory. On the issue of how the hurt against women as was seen as a violation of the nation and how the recovery of women became a matter of national honor, see Butalia, *The Other Side of Silence*.

10. Das, *Life and Words*, 170. Elaborating on the postcolonial sexual contract in “Framing the Postcolonial Sexual Contract,” Keating also draws attention to the racialized aspects of the fraternal order represented by the postcolonial Indian statistic.

On the details on how state institutions and procedures served as the instruments of recovering women and protecting national honor, see Menon and Bhasin’s *Borders and Boundaries*. The authors detail the more than seventy amendments, the exhaustive parliamentary discussions on the Abducted Persons Act of 1949, and the virtually unlimited powers granted to police to recover abducted women. The Act was the result of an agreement between the Indian and Pakistani governments in 1947 and was renewed annually until 1957. It authorized an extensive network of state representatives, ideologies, and practices in the recovery of women, including the police, social workers, refugee camp officers, tribunals, courts, and central and provincial bureaucrats and politicians. At the same time, women thought to be abducted were denied rights, legal recourse, or the agency of choice and could be forcibly confined to the refugee camps.

11. For example, see Sunder Rajan, *Scandal of the State*, for an analysis on the limits of the state and (heterosexual) women’s issues in India, ranging from Muslim child brides and compulsory sterilization to the Uniform Civil Code.

12. For a treatment of obscenity in relation to the moral fabric of the nation, see Bose, Introduction to *Translating Desire*. For an alternate emphasis on the state in managing issues related to obscenity, see Puri, “Forging Hetero-Collectives.”

13. Also notable is that charges under obscenity law are typically coupled with other provisions of the Indian Penal Code: religious offenses, inciting harm against a group, creating public mischief, Indecent Representation of Women (Prohibition) Act of 1986.


15. There exists a considerable body of poststructuralist literature on the state that owes much to the combined influences of Corrigan and Sayer’s approach to the state as cultural production (*The Great Arch*), Abrams’s demystification of the state into both a system and an idea (“Notes on the Difficulty of Studying the State”), and Foucault’s reflections on governmentality (“Governmentality”; “Subject and Power”).
16. Critical ethnographies on states have usefully focused on the mechanisms through which states are produced and enacted. See, for example, Ferguson and Gupta, “Spatializing States”; Gupta, Red Tape; Gupta, “Blurred Boundaries”; Ong, Flexible Citizenship; Scott, Seeing Like a State. Also see the essays in the following volumes: Hansen and Stepputat, States of Imagination; Joseph and Nugent, Everyday Forms of State Formation; Steinmetz, State/Culture. For feminist discussions highlighting questions of sexuality and pedestrian aspects of governance, see Stoler’s contributions, particularly, Race and the Education of Desire; Carnal Knowledge and Imperial Power; Haunted by Empire. Also see Weston, “A Political Ecology of ‘Unnatural Offences.’”

17. On the significance of theorizing the political and subjective aspects of the state, see Rose, States of Fantasy. Stoler’s “Affective States” also usefully lays the groundwork for thinking through the role of affect, sentimentality, and such, propelling (colonial) state governance.

18. For a particularly useful discussion on the affects of law, see the introduction to Brown and Halley, Left Legalism/Left Critique. Also relevant here are the contributions of Nair, Women and Law in Colonial India; Agnes, Law and Gender Inequality; Basu, She Comes to Take Her Rights; Menon, Recovering Subversion; Parker, “Observations on the Historical Destruction of Separate Legal Regimes.”


20. A path for a structural understanding of sexuality was explicitly laid by Foucault in History of Sexuality and further developed by Sedgwick in Between Men. It is analogous to a structural understanding of gender (see, for example, S. Charusheela’s discussion of economic structures as “bearers of gender”). Seen in terms of states, a structural understanding of sexuality is also parallel to Goldberg’s notion of racial states developed in the eponymous book, The Racial State. For more specific explorations of the state from a non-identitarian view of sexuality, see Povinelli’s contributions, especially “Disturbing Sexuality”; “Sex Acts and Sovereignty”; The Empire of Love.

21. Examples of the prominent theories of the biopolitical that ignore the relevance of sexuality are Agamben, Homo Sacer; Hardt and Negri, Empire; Hardt and Negri, Multitude. For useful exceptions, see Stoler, Race and the Education of Desire; Puar, Terrorist Assemblages. Nikolas Rose (Powers of Freedom) is perhaps the most well-known example among scholars taking the view that the state is increasingly obsolete and analysis of governance must tend to the complexities of governance, be they in the realm of personal relationships, family, the national domestic, biomedicine, or media, among others. For sexuality studies scholarship on neoliberalism pivoting away from the state, consult Berlant, The Queen of America Goes to Washington City; Duggan, Twilight of Equality?; Richardson, “Desiring Sameness?”
22. For excellent examples documenting ordinary people’s views of states, see Navaro-Yashin, *Faces of the State*; Gupta, “Blurred Boundaries.”

23. In *The Nervous System*, Taussig argues that marginalized groups fetishize the state, a point that I think has to be moderated. See especially the chapter “Maleficium: State Fetishism.”

24. Noted by Wittig in *The Straight Mind*, this point has been developed by scholars such as Peterson, “Political Identities/Nationalism as Heterosexism.” For useful analyses of states that are nonetheless developed around the dualities of homosexuality and heterosexuality, see Duggan, “Queering the State” and, more recently, Canaday, *The Straight State*.

25. For this reason, I have previously emphasized the idea of sexuality respectability (*Woman, Body, Desire*). Also see Geeta Patel’s notion of the heteroproper in the Indian context (“Advertisements, Proprietary Heterosexuality, and Hundis”).

26. On file with the author. My gratitude to Flavia Agnes for sharing it with me.

27. Bill No. 60 of 2005, 1–2.

28. SNDT-FAOW, “Backgrounds and Working Conditions of Women Working as Dancers in Dance Bars”; SNDT-FAOW, “After the Ban.” Also see Anandhi’s reflections on these research studies as well as the intense debates among the feminist researchers and activists that were provoked by the results, “Feminist Contributions from the Margins.”


30. See the second study by SNDT-FAOW, “After the Ban” on this point. Also see Agnes, “Hypocritical Morality”; Pandit, “Gendered Subaltern Sexuality and the State.”


32. For the full text of the judgment, see Indian Hotel and Restaurants . . . v. The State of Maharashtra, Bombay High Court, April 12, 2006, http://www.lawyerscollective.org/wp-content/uploads/2013/05/Bombay-High-Court-judgment-12-4-2006.pdf.

33. The text of the judgment can be found at Civil Appeal No. 2705 of 2006, Supreme Court of India, http://judis.nic.in/supremecourt/ims1.aspx?filename=40565.


35. “Maharashtra Firm on Decision to Ban Dance Bars.”

36. For informed and informative histories of dance bars, see Agnes, “State Control and Sexual Morality”; Pandit, “Gendered Subaltern Sexuality and the State.”
37. The elaborate licensing system that developed between 1947 and 1990 is euphemistically referred to as the license raj (or license rule). As Agnes notes in “State Control and Sexual Morality,” the thicket of licenses was coupled with the hafta raj, or the rule of bribery.

38. For a particularly useful overview of the state after liberalization, see the Gupta and Sivaramakrishnan, “Introduction.”


40. Banerjee-Guha, “Neoliberalising the ‘Urban’.” Also see Prakash, Mumbai Fables.

41. Agnes, “State Control and Sexual Morality.” Agnes has been the legal representative for the bar dancers’ union.

42. Agnes, “State Control and Sexual Morality.”

43. See Agnes, “State Control and Sexual Morality”; Pandit, “Gendered Subaltern Sexuality and the State.” Mazarella also takes the position in “A Different Kind of Flesh” that the dance bars represented vernacular entertainment forms and were seen as an irritant to the cultural politics of globalization. In contrast, Kotiswaran in “Labours in Vice or Virtue?” repudiates a neoliberal framework in analyzing dance bars.

44. Joseph, “Neoliberal Reforms and Democracy in India,” 3215; also see Fernandes and Heller, “Hegemonic Aspirations” for a useful discussion on this point.

45. In contrast to the view that the state is retreating, I take the position that it is reconfiguring. States have expanded responsibilities in ensuring a suitable climate for capital investment, providing infrastructure, and regulating public sector organizations, even as they are being “hollowed out” in some respects. For useful discussions on these points and critiques of the erosion of the state in post-liberalizing India, see Gupta and Sivaramakrishnan, “Introduction”; Gupta, Red Tape; Sharma and Gupta, “Introduction.”


47. Mehta, Maximum City, 286.


Chapter 2

1. For a useful discussion on the impact of routinized practices, see Nayan Shah's analysis of the governance of public health in San Francisco that historically worked to bolster popular racisms with the credibility of science and the authority of the state, *Contagious Divides*.


3. On this point, see “Spatializing States,” Ferguson and Gupta’s discussion of how popular and academic discourses sustain visions of the state as “above” family, local community, and society and as “encompassing” these circles of affiliation.


5. Gupta, “Blurred Boundaries,” 376; Stevens, *Reproducing the State*. For a particularly useful discussion of the importance of ethnography among state institutions, see Oldenburg’s ethnography of a district in the Indian state of Uttar Pradesh, “Face to Face with the Indian State.”

6. All names of officials at the NCRB are pseudonyms.

7. In the introduction to their collection, *States of Imagination*, Hansen and Step-putat provide a particularly useful discussion on imaginations of the state as constitutive of it. This also resonates with Abrams's demystification of the state into a system and an idea in “Notes on the Difficulty of Studying the State.”

8. NCRB, “Empowering Indian Police with IT.”


15. Grosz, “Bodies-Cities.”

16. Along with Henri Lefebvre, other scholars have usefully examined the junc-
tures of state and space. The list includes Neil Brenner, Bob Jessop, Martin Jones, and Gordon Macleod.


19. Tarlo, Unsettling Memories, 75.
22. The point is that crime affects women differently based on their social class, where they live, whether they are religious or ethnic minorities, or live in areas that are under military occupation.
24. Hacking, “Biopower and the Avalanche of Printed Numbers,” 281; also see Hacking, “How Should We Do the History of Statistics?”
28. For Hacking’s useful discussion on the origins of statistics as moral science, especially in France, see “How Should We Do the History of Statistics?” 182. Extrapolating from Sanjay Nigam’s work, Appadurai addresses the differences in the use of statistical measures in the colonies (“Number in the Colonial Imagination,” 318).
31. In their overview of the constructionist approach to social problems Holstein and Miller underscore, “They are the interpretive processes that constitute what come to be seen as oppressive, intolerable, or unjust conditions like crime, poverty, and homelessness” (Reconsidering Social Constructionism, 6).
33. Consider here Gyan Prakash’s discussion of colonial governmentality, which, he argues, set off bureaucratic expansion, rationalization, the use of statistics, and the constitution of a population identified by the challenges of health, productivity, sanitation, disease, and more (Another Reason, especially chapter 5).
34. Also a pseudonym.
35. More recently the rape law has been expanded to include sexual assault, a point that I take up more fully in the conclusion.
36. Scott, Seeing Like a State.
40. Bumiller, In an Abusive State.
41. The version of the PWDVA that was passed into law was drafted by the Lawyers’ Collective, the same legal advocacy organization that served as the legal representatives for the Naz Foundation writ against Section 377. See Jaising, “Bringing Rights Home” for a detailed discussion on PWDVA.
42. Singh and Butalia, “Challenging Impunity on Sexual Violence in South Asia.”
43. Abram et al., “Planning by Numbers,” 249.
44. Brown and Boyle, “National Closets.”
45. Kinnar and Aravani are forms of self-identity embraced by some in an effort to distance themselves from the pejorative connotations of hijra. Kinnar is more likely to be used in northern India while Aravani has resonance in the southern regions of the country.
47. This discussion is indebted to Foucault’s speculations on the biopolitical in the last section of the History of Sexuality, and then more fully in his March 17, 1976 lecture at Collège de France, published in Society Must Be Defended.
48. On the first dimension, see Epstein, Inclusion; Ong, “Making the Biopolitical Subject”; Rose, The Politics of Life Itself. On the second, see Agamben, Homo Sacer; Giroux, Stormy Weather; Hardt and Negri, Empire; Mbembe, “Necropolitics”; Pease, “The Global Homeland State.” For Hardt and Negri, the passage from disciplinary to biopolitical power means that whereas under disciplinary society power corresponds to the resistance of the individual body, under biopolitical power it comprises the whole social body (Empire, 24). Through Foucault and Deleuze and Guattari, they also stress that just as power unifies and envelops every aspect of social life, it reveals a new context, a singularity, an event (25).
49. Foucault, Society Must Be Defended, 254. For exceptions, see Giroux, Stormy Weather; Ong, “Making the Biopolitical Subject”; Puar, Terrorist Assemblages.
50. Foucault, Society Must Be Defended, 252. By invoking the metaphor of homo sacer and the rule of exception, Agamben seeks to reveal the paradox whereby citizens and others are increasingly stripped of their political and natural rights in the interests of the body politic. His contribution is to lay bare the grammar of the body politic through the idioms of refugee and the camp, the exceptions that illustrate the principle of widespread exclusion, whereby citizens gradually start to resemble refugees. Even though modern democracy justifies itself as a vindication and liberation of zoē, the bare life that is common to all living beings, by incorporating it into bios, or political life, it systematically denies this inalienable right.
51. Mbembe, “Necropolitics.”
52. Gupta, Red Tape, especially chapter 5 and chapter 7, 251–52.
54. On the deployment of vagrancy laws to regulate gender and sexual minorities, also see Gupta, “The Presumption of Sodomy.”
55. Thangarajah and Arasu, “Queer Women and the Law in India.”
56. A safari suit consists of a monochromatic pair of trousers and short-sleeved jacket-like shirt.

Chapter 3

1. The numbers were for the period 1996–2005, although the numbers for 2005 were incomplete. No cases were reported for the state of Jammu and Kashmir as the Indian Penal Code and constitutional protections have been troublingly suspended since 1990 under the Armed Forces Special Powers Act (AFSPA) of 1958. A few cases were reported for the states of Arunachal Pradesh, Assam, Meghalaya, Sikkim, and Tripura, but none for Manipur, Mizoram, and Nagaland, even though AFSPA was first deployed in these northeastern states. No cases were reported for the states of Jharkhand and Chattisgarh, which were carved out of the existing states of Bihar and Madhya Pradesh, respectively, in 2000. No cases were reported for the union territories of Andaman and Nicobar, Dadra and Nagar Haveli, Daman and Diu, or Lakshwadeep.

2. These numbers are from 2005; see NCRB, “Crime against Women.”

3. For the years, 1999–2003, the number of records for Section 377 varies between 49 and 67, while they range between 381 and 490 for Section 375.


5. For a useful critique of how consent is dismantled in cases of sexual violence against women due to its location in systems of exchange, property, and marriage, see Basu, “Sexual Property.”


7. See Guha, “Chandra’s Death,” in Subaltern Studies V; Weber, Economy and Society, vol. 2. Even though the ironies of the “rule of law” in colonial contexts have been repeatedly noted, the hallmark of the modern state is still seen as equality before the law. Critical race legal theorists have also discredited the neutrality and objectivity of law by pointing to the institutionalized biases of law in the United States.


9. Nair, Women and Law in Colonial India.

10. Indian Law Commissioners, A Penal Code, 47.
11. Narrain, Queer, 49.

12. See Macaulay, “Introductory Report upon the Indian Penal Code.” Macaulay, who steered the drafting of the penal code, clarifies, “These illustrations will, we trust, greatly facilitate the understanding of the law, and will at the same time often serve as a defence of the law” (321).

13. In his discussion on the criminal justice system of nineteenth-century England in “Macaulay and the Indian Penal Code of 1862,” Skuy describes the efforts of early Victorian reformers to reduce capital offenses in the statute book. Known as the Bloody Code, the two hundred statutes punished the majority of crimes with death but were unenforced due to the disproportionate punishment.


15. In England by the nineteenth century the meaning of the term sodomy had come to cohere around transgressions of normative maleness, including homosexuality. In his discussion of the changing legislation and meanings of sodomy in England in Talk on the Wilde Side, Cohen traces a gradual shift from sodomy as a crime against God to a felony against the state, from a religious to a social transgression, from a sin to a crime against persons, and eventually to a normative transgression, especially associated with males. In Homosexuality in Renaissance England, Bray notes that sodomy was strongly associated with debauchery, and in The Worst of Crimes Goldsmith states that its meaning comes to rest on the effeminate homosexual, or the molly. Even as notions of sodomy and homosexuality extant in England may have shaped the syntax of Section 377, the specificities of the colonial context had a bearing as well. Extending the analytics of colonialism and criminality introduced by Anand Yang and Satadru Sen, Arondekar in For the Record underscores the unsubstantiated beliefs among British colonial administrators that sodomy was characteristic of and widely prevalent in the colony.


17. There is a divergence among legal historians about the particular set of factors that triggered the process of codification by the 1830s, even as subsequent colonial administrators contested it. Bernard S. Cohn explains that British interests in law in India were inextricable from the tax and revenue systems (Colonialism and Its Forms of Knowledge), while Nair emphasizes that a body of substantive law had not been established by the 1830s (Women and Law in Colonial India). In “Codification and the Rule of Colonial Difference,” Kolsky suggests that there was some concern among legislators in England about the East India Company’s administration of justice in making and executing laws, which prevailed in the early 1830s while the Company’s royal charter was being renewed.


20. Cohn, Colonialism and Its Forms of Knowledge.

21. Presidency towns were the urban-centered colonial administrative units and the mofussils were the non-urban or rural areas. In Colonialism and Its Forms of Knowledge Cohn identifies established competing colonial ideologies between the colony as lawless and despotic and the colony as theocratic. If one aspect of the ideological scaffolding of British rule in the eighteenth century was that India had thus far been governed capriciously and autocratically, thereby requiring the rule of law, then another aspect was the reification of extant legal systems into Hindu and Muslim law.


24. Singha, A Despotism of Law.


26. See Goldsmith’s discussion of Bentham’s writing, which appears to have been first published in 1978 (The Worst of Crimes, 19).

27. Narrain, Queer, 37.

28. Gupta, “Section 377 and the Dignity of Indian Homosexuals.”


30. Arondekar, For the Record.


33. Merry, Colonizing Hawai’i.

34. At least five cases in the archive are about women filing for divorce from their husbands partly on the grounds of being coerced into unnatural sex. While Indian law does not recognize marital rape, divorce was granted in all of these cases. For more detailed discussions, see Bhaskaran, “The Politics of Penetration”; Gupta, “Section 377 and the Dignity of Indian Homosexuals.”

35. Gupta, “Trends in the Application of Section 377.”

36. In 2012 the scope of Section 375 was expanded and the Protection of Children from Sexual Offences Act was passed.


38. Gupta, “Trends in the Application of Section 377.”

39. The details of the victims were unreported in ten cases; gender was unknown in one case; and the age of the man or boy was unclear in two cases.

41. Sardar Ahmad v. Emperor 1914 AIR Lahore 565.
42. Ganpat v. Emperor 1918 AIR Lahore 322.
45. Mirro v. Emperor 1935 AIR Sind. 78.
46. Arondekar, For the Record.
47. Ghanashyam Misru v. The State of Orissa 1958 AIR 78.
51. Narrain, Queer, 53.
57. Tarlo, Unsettling Memories.
58. Gupta, "Section 377 and the Dignity of Indian Homosexuals." In his nuanced analysis, Gupta argues that when the Delhi High Court initially dismissed the Naz Foundation writ against Section 377 in 2004, it was correct that the law was not being used against consenting homosexual persons (see chapter 5) but without conceding that such biases may be present in trial court proceedings which are archived differently.
59. Gupta, "Section 377 and the Dignity of Indian Homosexuals."
62. See Yang, Crime and Criminality in British India; Sen, Disciplining Punishment; Radhakrishna, Dishonoured by History.
63. Sen, Disciplining Punishment, 51, 204.
64. Notably, in the online edition of the Oxford English Dictionary, the meaning of habitual is associated with belonging to innate or inward dispositions.

Chapter 4

3. See Gupta, “Section 377 and the Dignity of Indian Homosexuals.”
4. People’s Union for Civil Liberties, “Human Rights Violations against the Transgender Community.”
5. Foucault, “Ommes et Singulatim.”
7. In contrast with interviews that would likely make police more circumspect, the discussion groups had the advantage of allowing members of the Delhi Police to express their views relatively securely and even disagree from each other. My count of the number of those present for the second group discussion was between forty-six and forty-eight.
8. As noted previously, I gathered FIRs and statistics of the crimes registered under Section 377 in the Delhi area as well as nationally. This required repeated visits to a number of police stations spread across Delhi and also the Delhi Police Headquarters, which presented further opportunities for informal encounters with constables and police who occupy the middle ranks as inspectors and station heads. I also had discussions with police officials in Delhi, including meetings with two police commissioners and one former commissioner of Delhi, as well as police officials in Chennai and Kolkata.
9. Although accounts by members of the Delhi Police give insight into their perspectives on same-sex sexualities and the antisodomy law, the extent to which they shape policing practices cannot be deduced.
10. Communalism is a concept peculiar to India and other South Asian nations, used to describe sectarian difference, competition, and conflict between Hindus, Muslims, Sikhs, Christians, Jains, Buddhists, and Parsis, among others.
11. For example, Jains are not typically racialized, while the naturalized differences imposed on Muslims and Christians can be distinct.
16. Dhillon, Police and Politics in India.
18. “Martial races” was a category invented by the British to create groups who
seemed well suited for warring and policing. These groups were described as physically strong, fearless, and loyal to British interests and were recruited for the military and police. The groups varied regionally. British administrators grouped together various ethnic and caste groups as “Brahmans” or “low castes” in a related strategy of reducing and enumerating the tremendous cultural, religious, class, and caste-based differences in the subcontinent.

19. Arnold, “Bureaucratic Recruitment and Subordination in Colonial India.”

21. In his discussion of political violence and the police, Subramanian suggests that the two-tier system of policing may be attributed to tensions between state control of civilian police and paramilitary forces under central control (*Political Violence and the Police in India*, 65).


27. Hansen and Stepputat, introduction to *Sovereign Bodies*, 4.
28. See the OED for a discussion on the adjacent terms communal and communalism.
29. Kaviraj, “The Imaginary Institution of India.”

30. Given the innumerable differences in Hindu religious sects and practices, languages, geography, history, castes, and more, there is no single “Hindu” religious holiday that is observed across the country. Similarly the right-wing parties, the Shiv Sena in the state of Maharashtra, the Vishva Hindu Parishad with a stronger hold in the central and northern parts of the country, and the Tamil Protection Movement in the state of Tamil Nadu have numerous ideological differences and do not speak in a single voice.

32. This is not to discount the formations of complex alliances in which Hindu Dalits are at the forefront of the violence against Muslims and Christians, for example, incited by upper-caste Hindu groups. See Chatterji. *Violent Gods*, for an insightful discussion.

33. The complete report is available online at Government of India, “Social Economic and Educational Status of the Muslim Community of India.”
34. Bharucha, “Muslims and Others,” 4246.
35. Chatterjee, *Gender, Slavery and Law in Colonial India*; Loomba, “Race and the Possibilities of Comparative Critique.”

36. The relationships between minority communities and the abstract majoritarian Hindu community or the state are characterized by different histories and
imperatives. While Sikhs have felt the need to delineate physical and biological differences from Hindus (and Muslims), Muslims, often accused of being aliens, have not developed a political grammar of physical or biological differences.

38. Arnold, “Bureaucratic Recruitment and Subordination in Colonial India.”
40. Loomba, “Race and the Possibilities of Comparative Critique.”
42. For example, in his ethnography of the 2002 genocide of Muslims in Gujarat, “Ahimsa, Identification and Sacrifice in the Gujarat Pogrom,” Ghassem-Fachandi notes that meat eating, excessive sexual appetites—especially for Hindu young women—and excessive violence is consistently ascribed to Muslims by majoritarian Hindus. See also Ghassem-Pachandi, “The Hyperbolic Vegetarian.”
43. See Jeffery and Jeffery, “Saffron Demography.” Despite the fact that fertility rates among Muslims have decreased over time, the Hindu right has twisted data and reports to fan fears about an explosive fertility rate among Muslims, pejoratively called the Muslim growth rate, especially after the release of reports from the 2001 census. On this, see Bose, “Beyond Hindu-Muslim Growth Rates”; Gupta, “Censuses, Communalism, Gender, and Identity”; Gill, “Politics of Population Census Data in India.”
44. Bharucha, “Muslims and Others,” 4239.
46. Khalidi, *Khaki and Ethnic Violence in India*.
47. V. N. Rai, quoted in Khalidi, *Khaki and Ethnic Violence in India*, 78.
49. Brass, *The Production of Hindu-Muslim Violence in Contemporary India*; Das, *Life and Words*; Setalvad, “When Guardians Betray”; Pandey, “In Defence of the Fragment”; Pandey, “Hindus and Others”; Wilkinson, “Introduction.” The violence unleashed in Gujarat in 2002 was preceded by instructions from none other than the director general of police, the highest-ranking police official in the state, to all police stations to gather detailed information on Muslims and Christians, whereas no such information was gathered on Hindu communities (Varadarajan, *Gujarat*).
52. Das, *Life and Words*.
54. For example, see Setalvad’s “When Guardians Betray.”
55. Gupta suggests that when police encounter those they perceive to be homosexual, they are likely to solicit money or sex, thereby committing the crimes
that they are supposed to be preventing (“Section 377 and the Dignity of Indian Homosexuals”).

56. Radhakrishna, Dishonored by History, 2.
57. Narrain, Queer, 59.
58. Hereditary criminality is hard to account for a group that does not reproduce internally and must rely on socializing young and adult outsiders.
59. Radhakrishna, Dishonored by History, 55.
60. Puri, Woman, Body, Desire in Post-Colonial India.
62. Richardson, “Constructing Sexual Citizenship.”
63. I owe this point to a personal conversation with Maitrayee Chaudhuri.
65. Engaging Frantz Fanon’s discussion of “epidermalization” in Black Skins, White Masks, Gilroy explains that it is about a historically specific system that makes bodies intelligible by endowing them with qualities of “color” (Against Race, 46).
67. Balibar analyzes comparable forms of racisms, such as anti-Semitism, as “culturalist” racism, the kind that does not rely on the pseudo-biological concept of race as its driving force (“Is There a Neo-Racism?” 24). In “Race and the Possibilities of Comparative Critique” Loomba explains that Balibar’s reference point is the racism directed largely at Muslim immigrants in Europe, but that this racialization of religion is hardly new and has deep historical roots. My purpose here is not to collapse the differences between unambiguously naturalized representations of race and the ones that naturalize qualities as innate to faith, but to connect their similarities.
68. Field notes, Chennai, July 2005. Aravani is the term preferred over hijra among some in the Chennai area. The arrests followed a report in the English-language daily Indian Express, itself based on complaints from middle-class residents in the area.
69. Section 8 b reads, “Solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency for the purpose of prostitution.”

Chapter 5

2. In Mumbai a coalition including the Forum against the Oppression of Women (FAOW), the Human Rights Law Network, and Stree Sangam (now LABIA) led a signature campaign asking for Section 377 to be repealed. FAOW is the same
organization that conducted surveys among bar dancers in Mumbai and published reports to intervene in the state government’s crackdown against the women performing in dance bars. As a nonfunded autonomous women’s group, it brings together issues of labor, social class, and justice across sexual orientation and gender expressions. In Patna, a city in central India, an organization, AASRA, disseminated a pamphlet calling Section 377 an outdated colonial law and a health hazard (on file with the author).

3. http://nazindia.org, accessed May 17, 2011. Among its programs are outreach and a drop-in center for MSM; an outpatient clinic for people who are HIV-positive; home-based care for people living with AIDS; a care home for HIV-positive orphans; peer education–related training on gender-based violence and sexual health; and training programs, workshops, and resources related to HIV/AIDS and sexual health.

4. Shaleen Rakesh, Naz representative for the writ against Section 377, personal interview, July 2003. The Infinity Foundation in New Jersey, with Hindu nationalist leanings, initially provided a small amount of funding to Naz for the outpatient department. This is surprising given the group’s leanings. However, this funding was inexplicably withdrawn, according to Anjali Gopalan, director of Naz (India) (personal communication, 2005).

5. Personal interview with Anjali Gopalan, June 2005. The point about police harassment was confirmed in a discussion group with Naz Foundation outreach workers, as one of them, Pammy, said at the outset in Hindi, “The police harass us, check our bags, hit and beat us, they threaten us that if we don’t stop working, they will imprison us under Section 377” (group discussion, Naz, July 2005).


10. ABVA published the groundbreaking book Less Than Gay—A Citizens’ Report on the Status of Homosexuality in India (1991), in which it took a position against Section 377 by first seeking legislative recourse. It filed a writ in the Petitions Committee of Parliament in 1992 to repeal the law on the grounds that it violated fundamental rights, but when no member of Parliament was willing to introduce it as a bill for discussion, the writ was revised into a PIL and submitted to the Delhi High Court. The ABVA petition argued that Section 377 violated the following fundamental rights: right to protection against discrimination, right to freedom of speech and expression, and right to life and liberty, including the right to privacy—anticipating the Naz Foundation writ.

11. Baxi also notes the limitations of social action litigation in his essay “Taking Suffering Seriously.” For a more thorough critique of PILs, see Aggrawal, The Public Interest Litigation Hoax.
12. Supreme Court of India, Compilation of Guidelines to be Followed for Entertaining Letters/Petitions Received in This Court as Public Interest Litigation, accessed May 18, 2011, http://supremecourtofindia.nic.in/circular/guidelines/pil guidelines.pdf. See the general principles of PIL in Upadhyay, Public Interest Litigation in India, 10–12.

13. For a useful overview of the cultural climate of the 1990s and thereafter from the perspective of same-sex desire, see Shahani, Gay Bombay.


15. This was also the period that resulted in landmark legal judgments alternately upholding and undermining the rights of HIV-positive persons.


17. Despite the law criminalizing same-sex sexual practices, NACO recognizes the presence of MSM and their susceptibility to HIV/AIDS and directs prevention efforts toward them.


19. For descriptions of the articles of fundamental rights, see Bakshi, The Constitution of India.

20. The position that privacy is the right to be left alone is attributed to Thomas Cooley; see, Glancy, “The Invention of the right to Privacy.”


22. Civil Writ Petition 7455, 46.


24. In 2001 in the city of Lucknow, nine members of two NGOs, Bharosa Trust and Naz Foundational International, focused on HIV/AIDS, were arrested by the police and held in prison for forty-five days and charged under Section 377, among other penal codes.

25. For a useful account of the early responses and concerns especially of lesbian feminist groups in Delhi and Mumbai to the Naz Foundation writ, see Dave, Queer Activism.


27. See Basu, She Comes to Take Her Rights; Menon, “Rights, Bodies and the Law.”


29. Personal interview, June 2005. The memorandum shows the following organizations represented at the meeting: All India Women’s Conference, Butterflies, CALERI, Human Right Law Network, Humnawaz, Humrahi, Naz, Nirantar, Partners for Law and Development, Positive Life, Sakshi, Sangini, TORCH, Women’s Right Initiative, and Young Women’s Christian Association (on file with the author). Letters of interest but regrets for being unable to attend were sent by Joint Women’s Program, Jagori, UNIFEM, TARSHI, AAG, and Parivar Seva Sansthan.

30. While the meeting in Bangalore was held in December 2000 and the one in Mumbai in early 2001, I could not ascertain the precise dates.

31. The letter was dated January 8, 2002 (on file with the author).
32. On file with author.

33. Even though transcripts are not available, the list of orders given by the presiding justices can be obtained through the Delhi High Court and are on file with the author.

34. The JACK intervention was filed by the legal counsel Ravi Shankar Kumar on November 25, 2002.

35. In my joint interview with Mulloli and Singh, Mulloli took the position that there is little evidence to support claims of the prevalence of HIV and that the crisis is the effect of a conspiracy between the multinationals, the U.S. Central Intelligence Agency, politicians, police, NACO, government bureaucrats, and, not least, NGOs like Naz.

36. In the interview with Mulloli and Singh, Mulloli made no bones about the fact that he had an axe to grind with Anjali Gopalan and Naz Foundation as an organization. Not surprisingly the counteraffidavit questions the integrity of both Naz Foundation and the Lawyers’ Collective.


38. The order was dated November 27, 2002.

39. For an earlier take on the government’s reply, see Puri, “Sexualizing the State.”


42. In June 2003 I met with the director at the Judicial Division, G. Venkatesh, who supervised the drafting of the government’s reply, and his successor, Kamala Bhasin, in May 2005. Perhaps because he was no longer at the Judicial Division, Venkatesh was forthcoming about the process through which the government’s response was formulated, which was confirmed by subsequent interviews in the department, including with the joint secretary. Even though he was transferred to a completely different state institution by then, I met Venkatesh again in May 2005 since he was still following the Naz legal case with interest. I have also used pseudonyms here because of the first director’s request for anonymity.

43. Throughout the interview he sought information related to homosexuality but quickly asserted distance at my offer to make resources accessible to him, perhaps because the interview occurred a few months before the government filed its reply in September 2003.


46. Interview, New Delhi, May 2005.

47. Interview, New Delhi, June 2005.

49. Remarkably the Delhi meetings were held at the office of Saheli, indicating the sea change in positions among those who had been Naz Foundation’s fiercest critics. Humsafar Trust hosted the meeting in Mumbai.

50. While the upper courts may rule on any laws, matters of fundamental rights are brought before the Supreme Court.

51. As many as 140 people attended the Bangalore meeting, representing some forty-six organizations, and thirty-seven organizations participated in the January 2005 meeting in Mumbai.

52. The minutes are on file with the author.

53. An SLP may be filed when an appeal to a high court or tribunal to review its decision is turned down and a petitioner wishes to challenge the order. For more details, see the Supreme Court of India website, http://supremecourtofindia.nic.in/.

54. At the final meeting in Mumbai, forty-nine participants supported and only five opposed filing an SLP in the Supreme Court.

55. This was later converted to Civil Appeal No. 952 of 2006.

56. PUCL and Anr. v. Union of India 9 SCC 580, Supreme Court of India, 2004.

57. SLP (Civil) No. 7217-7218 of 2005, 12.

58. The government’s reply to the Naz Foundation SLP in the Supreme Court was filed promptly on September 26, 2005.


60. Government’s reply to SLP (Civil) No. 7217-7218 of 2005, 8.

61. Supreme Court order, February 3, 2006.


63. Basu, She Comes to Take Her Rights.

64. Personal interview, July 2003.


67. Kaviraj, introduction to Politics in India, 11.

Chapter 6

1. Epigraph text is available at http://kafila.org/2013/12/11/justice-will-prevail/.

2. More than one critic has noted that the ruling seems hastily written. See Khaitan’s discussion of the Supreme Court justices’ considerable docket that likely accounts for the ruling’s cavalier tone, “Koushal v Naz.”

3. For further information on Voices against Section 377, see their facebook page: https://www.facebook.com/voicesagainst377.


5. “Campaigning for Sexuality Minority Rights,” Sangama, February 3, 2007,
Among the most egregious examples of lurid reporting was on the murder of two men, Pushkin and Kuldeep, in what came to be called the Pushkin affair. For a useful analytical commentary, see Cohen, “Song for Pushkin.”

First pioneered in Kolkata in 2003, the gay/queer pride or queer azadi (freedom) march became an annual event in the major metropoles by 2008, and also gradually began to be organized in the smaller cities.

Alternative Law Forum, accessed August 31, 2011, http://www.altlawforum.org/. That law is inherently political was the guiding orientation of the Alternative Law Forum when it was established in 2000 as a legal service provider focusing on issues of social and economic injustice. Arvind Narrain is a founding member.

The Voices coalition included Amnesty International India, Campaign for Human Rights; Anjuman, the JNU Students’ Queer Collective; Breakthrough: Building Human Rights Culture; CREA (Creating Resources for Empowerment and Action); Haq, Centre for Child Rights; Jagori, Women’s Training, Documentation and Resource Centre; Nigah Media Collective; Nirantar, Centre of Gender and Education; Partners for Law in Development, Legal Resource Group; PRISM (Persons for the Rights of Sexual Minorities), a forum for issues relating to sexual and gender identities; Saheli Women’s Resource Centre, an autonomous women’s group; SAMA, Resource Group for Women and Health; TARSHI (Talking about Reproductive and Sexual Health Issues). The coalition’s leadership came in part from PRISM, whose members brought experience in responding to human rights violations as well as doing advocacy work with the state, and was supplemented by representatives of other groups, especially Nirantar and TARSHI. An autonomous forum, PRISM was created in 2001 to help free the four workers of Bharosa Trust, an HIV/AIDS-related organization based in the city of Lucknow, who were charged under Section 377, among other codes, for doing HIV/AIDS advocacy work.

Civil Miscellaneous writ of 2006 in the matter of CWP No. 7455 of 2001, 13, on file with the author.

In 2006 Lucknow police arrested four persons at a restaurant, falsely charging them under Section 377 for having sex in a public place.

The equivalence between sati and decriminalizing homosexuality was also noted by state agents in the Ministry of Home Affairs but excised from the government’s reply filed in the Delhi High Court in 2003 (see chapter 5).

16. Atul is a pseudonym.

17. However, the news made barely a dent in the U.S. media, which at the time was captivated by Michael Jackson's death.

18. For example, see Agnes, Law and Gender Inequality; Menon, Recovering Subversion. Menon problematizes the feminist argument that what is needed to protect women in India, and elsewhere, from sexual assault are better formulated laws. She points to the decreasing number of successful convictions and the assumption underlying even successful convictions.


20. Numerous citations in the judgment supporting the decision to decriminalize homosexuality were introduced during court hearings by the legal counsel for Voices. They included references to the Yogyakarta Principles, which oblige states to respect, protect, and fulfill the human rights of all persons regardless of their sexual orientation or gender identity; a study on the impact of sodomy laws on homosexuals in South Africa by the legal scholar Ryan Goodman; the Criminal Tribes Act; case law from Fiji and Nepal; and the Lawrence v. Texas decision in the United States.


25. A particularly useful document is Narrain and Eldridge, The Right That Dares to Speak Its Name.

26. From all accounts, Siras was secretly videotaped having sex with another man and suspended from his position at the university as a result. Although a regional high court ordered his reinstatement, he was subsequently found dead, apparently from suicide. A highly publicized case, it stirred much discussion about the role of the university in framing Siras but also the ineffectiveness of the Delhi High Court’s ruling to protect individuals like him from harm.

27. Vikram Raghavan, “Taking Sexuality Seriously: The Supreme Court and the


29. Suresh Kumar Koushal and another v. Naz Foundation and others, Civil Appeal No. 10972 of 2013, Supreme Court of India, New Delhi, December 11, 2013, 57.


31. The unofficial transcripts for the Delhi High Court hearings were posted on the Yahoo group LGBT-India, then edited and reproduced in the primer on the 2009 judgment, Narrain and Eldridge, The Right That Dares to Speak Its Name. The transcripts for the Supreme Court hearings were compiled from various note takers present at the time and posted on the Yahoo group LGBT-India primarily by Vikram Doctor. A sanitized version of the transcripts is available at http://www .globalhealthrights.org/wp-content/uploads/2013/12/Koushal-v.-Naz-Foundation-record-of-proceedings.pdf.

32. Vikram Doctor, day three of the hearings, posted on the listserv LGBT-India, posted February 16, 2012, accessed March 7, 2014. An edited version of these hearings can also be found at http://orinam.net/supreme-court-hearings-on-naz-full-transcript-2012/.

33. Naz v. Government also includes a discussion of Sections 375 and 376 but in the context of the 172nd Law Commission’s recommendation to amend these provisions and, at the same time, delete Section 377.


36. I consider the sexual assault laws more fully in the conclusion to this book and make the point that they were hastily passed in the aftermath of the rape and death of a young woman in Delhi. Still, this incorrect point, that Section 377 had been come up repeatedly in Parliament, was introduced by a representative for the government, Additional Solicitor General P. P. Malhotra, who also initially misled the court into thinking that the government was indeed continuing to challenge the Delhi High Court’s bid to decriminalize homosexuality. As it turned out, the government did not seek to challenge the outcome and was not an appellant in the Supreme Court.
38. On the concept of law struggles, see Sundar, “The Rule of Law and the Rule of Property,” 188. Also see Gupta and Sivaramakrishnan, “Introduction.”
39. For particularly useful commentaries on the postliberalization context, see Gupta and Sivaramakrishnan, “Introduction”; Sharma and Gupta, “Introduction”; Sharma, “Crossbreeding Institutions, Breeding Struggle.”
40. For useful critiques of the gay rights regime, see Duggan, The Twilight of Equality?; Richardson, Desiring Sameness; Brown, States of Injury; Collins and Talcott, “A New Language.”
41. Consider here the predication of funding from the West on the promotion of gay rights in settings such as India.
42. Naz v. Government, 34.
46. Franke, “The Domesticated Liberty of Lawrence v. Texas.”
47. See Shah’s discussion of the implications of the Lawrence v. Texas decision, “Policing Privacy, Migrants, and the Limits of Freedom.”
48. The sexual health perspective in which the writ is framed means that though lesbians and bisexual women, hijras, and others are included, the focus remains on those who are seen as especially vulnerable to the spread of HIV and AIDS-related complications, namely MSM and gay men. The police have frequently used Section 377 to intimidate lesbians and bisexual women, often at the behest of family members. Even though lesbians are not immune to the threat of Section 377, they are sidelined in the writ as a group at low risk for HIV infections. Especially since the language of the law emphasizes penetration in its explanation of Section of 377, it leaves open the possibility of prosecuting lesbians.
49. If only private consenting sex were to be excluded from the purview of Section 377, same-sex sexual activity in public would still carry the harsh punishment
of up to ten years’ imprisonment. On the other hand, without the proviso of privacy, same-sex sexual activity in public would be treated similarly to heterosexual activity in public, which means being charged under a different and less harsh section of the Indian Penal Code.

50. While not all males who have sex with males are economically marginal, the term MSM was coined to set apart typically lower-middle-class and poor males from middle- and upper-class English-speaking men who are likely to identify as gay. See Khan, “Kothi, Gays and (Other) MSM”; Khan, “A Rose by Any Other Name.”

51. Sharma, Logics of Empowerment.

52. I am grateful to Chaitanya Lakkimsetti for sharing with me B. P. Singhal’s intervention. For a fuller discussion of his intervention, see Lakkimsetti, “Governing Sexualities.” B. P. Singhal is a former director general of police, erstwhile member of Parliament, a bureaucrat, and appointee to the Central Board of Film Certification. His intervention haphazardly spanned issues of homosexuality, criminality, health, and public well-being, among others.

53. For the text of Ambedkar’s speech, see “Constituent Assembly of India.”

54. On this point, see also Narrain and Eldridge, The Right That Dares to Speak Its Name.


56. “Constituent Assembly of India.”

57. Narrain, “Persecuting Difference.”

58. The Naz v. Government judgment quotes Ambedkar at length to argue that constitutional principles—especially a commitment to equality—and democratic values need to be cultivated in the Indian context. On the point about the values of a democratic nation, see Mehta, “Its about All of Us,” On the issue of sexual citizenship, see Gitanjali Misra, “Decriminalising Homosexuality in India,” Reproductive Health Matters, 2009, accessed February 2, 2012, http://www.countmeinconference.org/downloads/RHM.MISRA.pdf. In a commentary entitled “Good for All Minorities,” Khaitan argues that if the Naz v. Government judgment were to be upheld by the Supreme Court, it would provide unprecedented constitutional protection from discrimination to all vulnerable minorities (120). In a longer version of the commentary, “Reading Swaraj into Article 15,” Khaitan makes the thought-provoking case that the potential innovation of the judgment does not solely lie in the fact that it has extended the list of factors in the constitutional right to prohibition from discrimination to include sexual orientation, but also in linking protection from discrimination to matters of personal autonomy and the strict scrutiny test (limiting the state’s infringement of constitutional protections).

59. Liang and Narrain, “Striving for Magic in the City of Words.”

60. For example, see Kapur and Cossman, “On Women, Equality and the Constitution.”

61. In his review of the discourse of minorities, “India’s Minorities,” Weiner ar-
gues that the category has come to mean non-Hindu in which Muslims and Sikhs loom especially large as minority groups.


65. References to Coca-Cola and fashion parades occurred during the hearings.


68. Rancière, Dis-Agreement.

69. On this point, also see Narrain and Gupta, introduction to Law Like Love, xxii.

70. Legal scholars have noted that the senior Supreme Court justice has not shied away from judicial activism in previous cases and assuredly not in a ruling he delivered merely forty-eight hours before Koushal v. Naz, in which he issued sweeping orders to curb the abuse of red lights on government cars (thereby giving government and state officials special privileges); for example, see Vikram RagHAVAN, “Taking Sexuality Seriously: The Supreme Court and the Koushal Case, Part II,” Law and Other Things, December 16, 2013, accessed April 2, 2014, http://www.lawandothertings.blogspot.in/2013/12/taking-sexuality-seriously-supreme_16.html.

Afterlives

1. The full text of this judgment can be found at Writ Petition (Civil) No. 400 of 2012, Supreme Court of India, http://supremecourtofindia.nic.in/outtoday/wc40012.pdf.

2. The first seventy-four pages are attributed to Justice K. S. Radhakrishnan; Justice A. K. Sikri elaborates, clarifies, and sharpens the spirit of the ruling in the rest of the document.


4. Nirbhaya, which translates as fearless, was the pseudonym popularly assigned to the young woman to shield her identity. The contexts of sexual violence vary considerably; while violence occurs at the hands of the military and paramilitary forces in Kashmir and the Northeastern States under military occupation, the troubling mix of caste and gender exposes Dalit women to higher caste men in the states of Haryana and Punjab. The systematic targeting of Sikh women in Delhi in 1984 and Muslim women in Gujarat in 2002 speaks to how women of minority religious communities are vulnerable during pogroms and genocide (see Tanika Sarkar, “Ethnic Cleansing in Gujarat; Sarkar, “Semiotics of Terror”; Citizen’s Ini-
 Numerous reports also document the fact that sexual violence is not limited to women and girls but also includes the shocking extent of sexual violence by police against hijras, kothis, and other queer subjects.

5. See the numerous critical interventions by a range of commentators and collectives published on the blog site Kafila.org.


7. For a critical overview of sexual violence as it is believed to play out at the village level in India, see Grewal, “Outsourcing Patriarchy.”


10. For particularly useful analyses of sexuality, state, and immigration, see Lubhéid, Entry Denied; Lubhéid, “Queer/Migration”; Shah, Stranger Intimacy.


12. Ramachandran, “‘Operation Pushback.’”


14. Quoted in Dutt’s writ to Delhi High Court, CWP No. 3170 of 2001, 8, on file with the author.

15. Personal interview, November 2009.

16. The justices directed state agencies, especially the Delhi Police and the Union of India, to deport at least one hundred unauthorized Bangladeshi migrants from the city on a daily basis. To better understand the procedures I followed up with police in charge of the Bangladeshi cells in Delhi police stations that are aimed apprehending and deporting migrants. Among other things, these meetings confirmed what activists have long claimed, that it is typically difficult to decipher between Indian Muslim Bengalis and Muslim Bangladeshi migrants and that police often rely on information provided by informants in immigrant communities.

17. Personal interview, November 2009.
18. Canaday, The Straight State. Canaday describes the historical role of the Bureau of Immigration, the military, and federal agencies in the United States in disbursing welfare benefits and, in the process, producing homosexuality as a category of differential citizenship.

19. Mendras, Russian Politics. Also see Robinson, Russia.

20. Essig, Queer in Russia.