

# **Colonial Law of 1862 and the Regulation of Same-Sex Love in Hindu Society**

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## **Abstract**

In this thesis, I aim to explain the relation, if any, that exists between the colonial law- Section 377 of the Indian Penal Code- and Hindus' attitude to same sex love since the nineteenth century. While there are some contemporary Indian scholars who argue that the law brought about a paradigm shift and created new sexual identities in Hindu culture, I argue that the law alone was not responsible for it. In fact, there were institutions such as English education, the printing press and the public sphere that paved the ground for the cultivation of English moral attitude and values in Hindu society. Hence, while the law was certainly important in constructing and consolidating English values, it is equally important to consider the role the institutions played for that effect. This is the length and the breadth of my thesis. The focus, thus, is not so much the law but the institutions which were responsible for changing Hindus' attitude to same-sex love and to sex and sexuality in general.

## Acknowledgment

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## Introduction

The idea for this research occurred to me during my MA term paper at the University of Delhi. I was studying Faramarz Dabhoiwala to learn the moral attitude to sexuality in the eighteenth-century England and contextualize Samuel Richardson's *Pamela* based on my reading. The sexual revolution which took over the English society, as Dabhoiwala discusses, created interest in me to find out the origins of English moral attitude to sex, particularly same-sex love, in my own society.

I have chosen to focus on same-sex love because of the contemporary debate which is raging around this subject in India and of my own sexual orientation. For me, it is important to understand the origins of the moral attitude to same-sex love among my own people. The people such as Ruth Vanita, Shashi Tharoor and Arvind Narrain who speak in favor of same-sex love argue that there is a history of more than two thousand years of same-sex love in Hindu culture. They quote Hindu scriptures and epics such as the *Kamasutra*, the *Mahabharata* and many others to substantiate their viewpoints. They also refer to the figure of *Ardhnarishwar* and Visnu's *avatar* of Mohini to bring to the foreground the notion of gender and sexual fluidity in Hindu culture. They even mention the close intimacy between Arjun and Krishna to demonstrate the long history of the acceptance of same-sex intimacy between men in Hindu society. However, there are those who strongly oppose the claims made in favor of same-sex love in Hindu culture.

The people, especially Ram Dev and the members of Rashtriya Swayam Sevak Sangh (a Hindu right-wing outfit), who oppose same-sex love in India closely cling to the rhetoric of western influence and its threat to Hindu culture. They argue that same-sex love is an import

from the West and a threat to Hindu social values. They also refer to Hindu scriptures such as the *Dharmshastra* and the sentiment of contemporary Hindu society to restrain same-sex intimacy in India. In fact, they filed a petition against the repeal of Section 377 of the India Penal Code which criminalizes same-sex behaviour and activities in India.

For me, the arguments on both sides are slightly baffling. Although, I am obviously drawn to the side which speaks in favour of the rights of same-sex love, it is not enough to rely on the information I receive from queer activists and scholars. I have a deep curiosity to read Hindu scriptures and the colonial history to find out the truth and the lie of the regulation of moral attitude in to same-sex love and the role Section 377 play and continues to play in Hindu society or for that matter in India at large. Of course, the law affects not only one particular group but all communities in India. I, however, have chosen to focus on Hindu culture for more than one reason. First among such reasons has been a practical consideration. I could spend only a stipulated time to find an answer to my question about the relationship between the moral attitude to same-sex love and Section 377 in India. I, therefore, consider it right to focus only on Hindu culture instead of the diverse religious and social groups that inhabit India. Second, I, as a Hindu, am more interested in going back to my own cultural and religious roots. I am curious to know the representation of same-sex love in Hindu scriptures and society. Hence, it is also a personal reason that I have narrowed down my research on Hindus' attitude to same-sex love. Third, the right-wing outfits which vehemently oppose same-sex love and represent it as a foreign disease mostly comprise of Hindu religious pandits and their supporters. They invoke Hindu religious sentiment to garner support from the large Hindu base. They coerce people to subscribe to their own ideology or what they propagate to be the true version of Hindu culture. For me, it is important to read and understand the very scriptures and



religious texts these pundits and their supporters use to validate their negative attitude to same-sex love in India. Thus, for all these reasons, I have decided to keep my focus only on Hindu culture and society.

My research question focuses on the relationship between Section 377 of the Indian Penal Code and the regulation of the moral attitude to same-sex love among Hindus. I started with several hypotheses chief among them being that the British introduced Section 377 of the Indian Penal Code to cultivate English values and strengthen their control in Hindu society. I also read the arguments of scholars like Jyoti Puri, Arvind Narrain, and a politician-cum historian Shahi Tharoor who favored the idea that it was the law which created a sexual identity and gave birth to a moral attitude which was not recognized in India before the colonial law was introduced. While, I agree with their arguments, I think that it was not the law alone that brought about a shift in Hindu attitude to same-sex love. In fact, the law only concluded those moral debates which had already been taking place among Hindus from 1820s in India. Thus, I argue that there were institutions such as English education, the printing press and the public sphere which contributed much to bringing a paradigm shift in Hindus' attitude to same-sex love during the early nineteenth century. Hence, I think that it is important to focus on the role these institutions played in shaping up the colonial/negative moral attitude to same-sex love among Hindus.

In order to demonstrate my argument, I have first introduced some conceptual categories that I will use in my writing. The second and the third chapters focus on the representation of sex and sexuality in Hindu culture and English society respectively. I think that this will help the reader to understand the views that Hindus and English have traditionally held on sex and sexuality. Chapter four gives a succinct overview of the historical background

of the early decades of the nineteenth century ending with the institutionalization of the Indian Penal Code in 1860. I have discussed the historical background of the first half of the nineteenth century so that the reader becomes familiar with the social and political conditions which lie in the background of bringing about a change in the attitude to same-sex love in Hindu culture. Chapter five has an overview of the development of English legal system in India. Finally, chapter 6 is the main analysis chapter in which I show that English education, the printing press and the public sphere influenced Hindu moral attitude and paved a way for the institutionalization of Section 377 of the Indian Penal Code in 1860.

Although, there was much more I wanted to research and read before putting down my thoughts on the paper for this thesis. However, I had to stop short owing to the constraint of time but I do hope that the reader will find useful facts and information in this thesis. I also hope that I have done justice to the sources I have used and that the reader finds convincing my modest attempt to make a small contribution to the existing scholarship on the subject of same-sex love in India.

# Chapter 1: Conceptual Framework

## Hindu, Hinduism and India

In this thesis, I am primarily focusing on the impact of English institutional changes on Hindus and their traditions (Hindu society) and therefore it becomes crucial that I elaborate on the very terms ‘Hindu’ and ‘Hinduism’ and their difference or similarity with the term ‘India’. The word ‘Hindu’ is the Persian version of ‘Sindhu’ which is a Sanskrit word for the Indus River and the people who lived around it. The region about the river was called Sindh. ‘Sindhu’ became ‘Hindu’ because Persians dropped the first letter and the Greeks made a further change by dropping the aspiration and calling it *Indos* (Latin *Indus*) from which originates the term India.

The term Hinduism is derived from ‘Hindu’ which the Mughals, who conquered *Sindh* in the sixteenth century, used for the people of the region (Sindh). In 1787, Charles Grant, an evangelical Christian, first used the term Hinduism to denote a religion which was based on certain classical scriptures of Hindus.<sup>1</sup> Thus, Hinduism refers to the religion of Hindus- a people who have been the inhabitants of the Indus valley since antiquity. However, it is an error to interpret as a monolithic entity the religion(s) that Hindus practiced. Asko Parpola while defining the terms Hindu and Hinduism quotes Heinrich von Stietencron,

Hinduism *in toto*, with various contradicting systems and all the resulting inconsistencies, certainly does not meet the fundamental requirements for a historical religion of being a coherent system; but its distinct entities [the so called “sects”] do. They are indeed religions, while Hinduism is not. What we call “Hinduism” is a geographically defined group of distinct but related religions, that originated in the same region, developed under similar socio-economic and political conditions, incorporated

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<sup>1</sup> Asko Parpola, Defining “Hindu” and “Hinduism” in *The Roots of Hinduism: The Early Aryans and Indus Civilization* (New York, Oxford University Press, 2015), 2-3.

largely the same traditions, influenced each other continuously, and jointly contributed to the Hindu culture.<sup>2</sup>

In the above lines, Parpola quotes von Stietencron to explain that the religions that Hindus practiced comprised of several traditions ranging from Vaishnava, Saiva and Jainism to Sikhism and others. Truly, all these different forms of religious traditions mostly relied on the same Vedic scriptural authorities but they varied in their traditions of worship. Hence, Hinduism, as Parpola points out, came to be regarded as a homogenous fold in the nineteenth century.

While the Mughals called the region they conquered Hindustan, the British preferred to use the Latin version and named the region India. Perhaps, a new name was appropriate since Hindustan was not only the land of Sindhus (Hindus) but also of Muslims.<sup>3</sup> Later, Christianity also began to make its foothold in the region.<sup>4</sup> Therefore, India, as a country, not only referred to the land of Hindus but also of Muslims, Christians and several other ethnic communities who settled down in what was once called Sindh.

Since, the terms India and Hindu society refer to two different socio-cultural settings, when I refer to the term India, I am using it in a broader sense and the focus is all ethnic and religious groups who live there. However, when I use the term Hindu or Hindu society, I refer to the people of a particular religion and culture who are often suggested to be the original

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<sup>2</sup> Parpola, 2-3.

<sup>3</sup> Thus, the term Sindh is only applied to a region that was populated by Sindhus or Hindus. The later term Hindustan would refer to a land which was inhabited by both Hindus and Muslims. Further, as I have explained in the main text above, India is a broader term extending to all religious and ethnic groups.

<sup>4</sup> In India, it is popularly believed that the development of Christianity and colonization coincided with each other. However, there are scholars who argue that Christianity had had its foothold in India about 6<sup>th</sup> century AD. In fact, some claim that it is difficult to answer the questions of its origins. See Robert Eric, Frykenberg, *Christianity in India: from beginnings to the present* (Oxford: Oxford University Press, 2008), 92-106, accessed June 6, 2017, doi: 10.1093/acprof:oso/9780198263777.001.0001.

inhabitants of the region.<sup>5</sup> Therefore, I use the term Hindu as a monolithic term and do not break it down to refer to a particular sect within Hinduism. In other words, I use it to refer to all those groups who were distinguished from Muslims and Christians.<sup>6</sup> However, the Hindu society was going to experience a paradigm shift through the public sphere during the British colonization in the nineteenth century in India.

## Public Sphere

During the eighteenth century in the West, the spirit of reason and rational argument produced conditions wherein people questioned and evaluated common concerns. The concerns were common in that they affected all and were shared by everyone in the society.<sup>7</sup> They comprised a discussion of traditions, social moral attitude to laws, policies and proposals for socio-political changes. Furthermore, the demands for people's participation in political decisions was augmented by the rising bourgeois class that comprised of new businessmen and factory owners. They also wanted their interests to be reflected in political affairs. Hence, the use of reason, people's active participation in the public life and the emergence of an industrial society brought about a paradigm shift in the way power and governance were conceived. People, or we can use the word public instead,<sup>8</sup> raised questions with regards to the legitimate

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<sup>5</sup> Herman, Kulke and Dietmar, Rothermund, *History of India* (Suffolk: Routledge Taylor and Francis Group, 2010), passim.

<sup>6</sup> I have discussed in the beginning of this chapter that Hindu was originally a term for the people who lived in Sindh. Hence, it was a regional and not a religious identity. Later, however, it was used to refer to the people who were bundled up into one category for the similarity of their cultural habits and religious practices. Moreover, the reason behind using Hindu as a monolithic term is that the scholars whom I have referred to for my analysis also use the term 'Hindu' to represent people of all those sects which are put together in Hinduism.

<sup>7</sup> *The Idea of the Public Sphere*, eds. Jostein, Gripsrud, Hallvard Moe et al (Plymouth UK: Lexington Books, 2010), xiv-xxii.

<sup>8</sup> Ibid. By the term 'public' I mean everyone who was affected by the outcomes of human actions/political decisions; or people at large who came together to deliberate upon those issues which concerned them all.

conditions of political rule. It was argued that public discussion was necessary for good governance and a rational debate using empirical evidence should be a precondition to making laws and policies affecting the people at large.<sup>9</sup> It was not to be based on customs, habits, traditions, faith, prejudice and arbitrariness.<sup>10</sup> This was a paradigm shift away from the traditional form of rule wherein the ruler claimed that he derived his authority from god, and therefore, his actions and decisions howsoever arbitrary ought not to be contended. From such an arbitrary rule, it was a shift to the sovereign form of governance which stressed the participation of the ruled to determine which laws and policies would govern them.<sup>11</sup>

The idea behind such a sphere in which the public actively participated was to generate a consensus or common opinion on common issues. It was recognized as a public sphere because the issues which were deliberated upon were freely accessible to everyone and were of common interest to all members of the society and therefore the intervention of governmental institutions was legitimate.<sup>12</sup> Conversely, the private sphere of life dealt with issues that were left to people's private discretion and remained their personal secret. They mattered to an individual/an individual group more than the public at large.

Moreover, the physical space that the term public sphere denoted was largely of coffee houses and salons in England. Later, it came to denote parks, square or any similar spaces which were open to all.<sup>13</sup> It was in this public sphere that the issues of English moral attitude, in addition to other political concerns, were passionately debated and deliberated. The discussions were published in periodicals and journals which informed and influenced the opinion of those

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<sup>9</sup> Jostein, Gripsurd, Hallvard Moe, xiv-xxii.

<sup>10</sup> *ibid*

<sup>11</sup> *ibid*

<sup>12</sup> *ibid*

<sup>13</sup> *ibid*

who did not directly participate in these forums.<sup>14</sup> Thus, the public sphere created an arena or space where customs, institutions, laws became subject to scrutiny and ready for a potential transformation.

While the public sphere produced much social transformation and was regarded as an ideal space for stating one's voice and vote, there were thinkers who thought it to be too good to be true.<sup>15</sup> Georg Freidrich Hegel was one of the firsts to raise his suspicions about the possibility of an ill-informed and irrational public participating in the public sphere or private interests making their way into public opinion and intervening in government decisions.<sup>16</sup> Thus, while the public sphere was a harbinger of a radical change, it was also liable to corruption. Similarly, it was quite possible that a particular class of people controlled and influenced the public sphere of life and that it represented the opinion of politically motivated groups alone and not that of the commons/the public.<sup>17</sup> Furthermore, some writers also argued that the public sphere was replacing the tyranny of despot rulers with the tyranny of numbers.<sup>18</sup> Hence, the numbers were gradually taking over the notion of rational deliberation. The scholars argued that the public was comprised of only a certain group of people dependent on the socio-political context of the place. Sometimes it was the new educated class, the aspiring middle class and at other time the bourgeoisie but seldom did it include people from the lower strata of life. Hence, while the public sphere was originally meant to represent the opinion of the common people, it potentially ended up representing the opinion of the dominant class. Thus, a platform which

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<sup>14</sup> Jostein, Gripsurd, Hallvard Moe, xiv-xxii. The women, however, were often the convener of such debates when they took place in the salon of their mansions.

<sup>15</sup> Ibid

<sup>16</sup> ibid

<sup>17</sup> ibid

<sup>18</sup> Ibid. John Stuart Mill was one of those writers who feared the tyranny of numbers.

originally marked the beginning of a new public life eventually became a tool in the hands of a select few who represented the interests of new political and economic regimes.

## Sexuality

The term ‘sexuality’ has continued to evolve and come to mean different things at different ages since it first appeared in 1797. In the eighteenth and the nineteenth centuries, it came to denote sexual feelings and sexual activities while in the twentieth century it was used for one’s sexual identity in medical and legal discourses. In the present time, the term is encumbered with a list of meanings ranging from sexual desire, sexual behavior, and discussions about the type of body, the physiological expression of pleasure and pain, and fetishes, and it has evolved into a conceptual word. When I use the term ‘sexuality’ in my paper I mean to signify a sexual behavior or moral attitude to sex and sexual acts unless stated otherwise.<sup>19</sup>

As stated above, the meaning of the term sexuality has evolved over a period of time just as our concepts of morality or evil and good. In English society, sexuality was always associated with negative freedom. Its purpose was propagation and not pleasure.<sup>20</sup> Thus, the moral attitude to sex was very stringent and social/cultural institutions deployed several measures to restrain it.<sup>21</sup> In the Victorian age, however, this restraint aggravated into a pathological obsession to repress sexuality. Michel Foucault attributes it to the rise of bourgeois order.<sup>22</sup> One reason for it, as Foucault explains it, was to manage reproduction and leisure. The

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<sup>19</sup> Vinod, Kumar, “Pamela and Sexuality” (term paper, Department of English, University of Delhi, November 2015).

<sup>20</sup> Michel, Foucault, *History of Sexuality: The Will to Knowledge* (London: Penguin Books, 1990-92), passim. I have inferred this notion about the attitude of English society, or for that matter of the West, to sex after reading Michel Foucault’s works on sexuality.

<sup>21</sup> Vinod, Kumar, “Pamela and Sexuality” (term paper, Department of English, University of Delhi, November 2015).

<sup>22</sup> Foucault, *The Will to Knowledge*, 4-6.



management of both these activities was linked with the economic interests of capitalists. On the one hand, the wealth of the nation was tied to its population and therefore it was necessary for the bourgeois regime to regulate reproductive activities. On the other hand, it was equally crucial to employ most of the time of workers for economic output. Hence, it was ideologically desirable to create a moral code or moral attitude to sex so that workers did not indulge in their leisure but saved their energy for productive and procreative activities. The Victorian regime was, thus, successful in cultivating a moral attitude to sex to effectively use it for a capitalist society.<sup>23</sup>

Furthermore, sexuality was a category to divide people into different social groups and a tool for governing them. It was one's sexuality that defined one's identity and was intrinsically linked with one's social, physical, emotional and mental conduct.<sup>24</sup> Hence, sexuality was placed at the centre of social life. There were doctors and psychologists, in addition to priests, who were employed to engage with sexual confessions to build a useful knowledge about people's sexuality. This knowledge that they created helped to gain more power over the people. The people became subject to even more intense scrutiny and the regime virtually controlled their actions and behaviour. Further, the knowledge also created a division between sexual acts and those who performed them. The categories of homosexuality and heterosexuality originated in the background of this moral attitude to sexuality.

Thus, heterosexuality and homosexuality also became strict moral divisions in England. The penalty for the latter was no less than a death sentence. The division of sexuality between

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<sup>23</sup> In other words, the moral attitude to sex was intrinsically linked with economic interests.

<sup>24</sup> Foucault, *The Will to Knowledge*, 33-36 and 114. Of course, the purpose for placing sexuality at the centre of moral attitude was to contain people's sexual acts and behaviour and by doing so regulate their leisure and pleasure, give it a discursive existence.

two explicit categories was a singular Victorian Age phenomenon. It aggravated the moral attitude to certain sexual acts/sexuality. It linked sexual acts with a psychological condition.<sup>25</sup> By labelling homosexuality as a mental disease, the Victorian regime normalized reproductive sex but permitted it with a moral discretion and allowed it only in a marital relationship.<sup>26</sup>

Thus, sexuality was an important moral tool that the English used to control and propagate their commercial and political interests. With the help of science and moral codes, they sustained a moral regime that was efficient in managing people's sexual activities. It not only yielded to power but also knowledge about sex which was successful in producing an effective regime.

## Conclusion

The concepts and terms I have discussed above are mostly the ones I will refer to in the subsequent chapters. The purpose is not to apply them as a theory but use them as tools of analysis to substantiate and elaborate my argument throughout the thesis and most particularly in chapter six. It is in chapter six that I will employ the concept of public sphere and the terms of Hindu culture to argue that it was English institutions such as the public sphere which brought about a change in Hindus' attitude to sex and sexuality in the nineteenth century.

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<sup>25</sup> Khaled, El-Rouyaheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800* (Chicago: University of Chicago Press, 2005), 43-45.

<sup>26</sup> Faramerz, Dabhoiwala, *The Origins of Sex: A History of the First Sexual Revolution* (London: Penguin Books, 2012), 116-9. It is important to bear in mind, that the upper class did not necessarily observe these moral codes. In fact, they were often involved in all types of sexual transgressions. Hence, the sexual discipline in the Victorian age was undercut by class and gender.

## Chapter 2: Same-sex love in Hindu culture

The representation of ideas of sex and sexuality is fairly prominent in Hinduism. It percolates in Hindu scriptures, philosophy and politics sometimes in the form of explicit treatise<sup>27</sup> and at other times in analogous terms wherein a ritual<sup>28</sup> is often likened to a sexual activity. Wendy Doniger- an eminent scholar on Hinduism and Indian culture- recognizes sex and sexuality as an integral aspect of Hindu culture.<sup>29</sup> She observes that sensuality and desire have been a recurrent trope in Hinduism represented through ancient religious texts and visual arts in Hindu temples. Considering the works of many scholars from Doniger to Ruth Vanita, one could argue that notions of sex and sexuality are more central to Hinduism than any other religion in India or perhaps in the world. In this chapter, I will present the ideas of sex and sexuality in Hinduism with a slightly more focus on the description of same-sex love.

In Hindu philosophy, the four aims of human life are *Dharma* (piety, duty), *Artha* (profit, money, and success), *Kama* (sex, desire, pleasure) and *Moksha* (release, liberation). Although there is no explicit hierarchy, *Moksha* is the ultimate goal and the other three contribute to its fulfillment. Further, the life of a human being is divided into separate stages and one ought to observe a different goal at each stage in order to achieve *Moksha* and unite with *Brahman*- the soul of the divine. The first stage is devoted to the learning of *Dharma*. It is followed by the second stage of practical activity to earn *Artha* to fulfill one's desire for *Kama*. At the final stage of life, the focus should remain religious practices and *Dharma* to achieve *Moksha*. In Hinduism, this *Trivarga* (*Dharma*, *Artha*, *Kama*), also called the path of

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<sup>27</sup> *The Kamasutra* is a formal piece of work on the subject of sex and sexual conduct in Hinduism.

<sup>28</sup> See Wendy, Doniger, "From Kama to Karma: The Resurgence of Puritanism in Contemporary India" and "Indra as the Stallion's Wife" in *On Hinduism* (New York: Oxford University Press, 2014), 398-9, accessed March, 2017, doi: 10.1093/acprof:oso/9780199360079.001.0001.

<sup>29</sup> *Ibid*, 398-400.

*Purusartha*- the object of human pursuit, is central to Hindu philosophy and to the way of social and moral life.<sup>30</sup>

As discussed above, unlike its representation in many other cultures and religions, *Kama* plays an equal and essential role in Hinduism. In fact, there is a whole range of texts from antiquity to more recent times which represent a ‘kama world’<sup>31</sup> comprised of the aesthetics of art, domestic life, gender, friendship, music and material culture. Yet, the dominant meanings in the concept and discourse of *Kama* remain desire, pleasure, sex and eroticism. Moreover, in Hindu mythology, *Kama* is the name of the god of erotic love personifying cosmic desire and making all creation possible.<sup>32</sup>

The representation of *Kama* in various Hindu texts ranging from the *Rig Veda*, and the *Mahabharata* to the *Ananga Ranga* represent the ideas of sex and sexuality and the *Kamasutra* is a formal treatise on it. The *Kamasutra* is also the source of those writings that succeed it on the subject of sexuality in Hinduism. Vatsyana, the writer of the *Kamasutra*, himself acknowledges that his work is a compilation of several traditions and practices which have come before his time and have been duly recorded by his predecessors.<sup>33</sup> The *Kamasutra* is also a text on social etiquette and behaviour and gives a holistic picture about the ideas of sex and sexuality as they are represented in Hinduism.

*Kama* (sex and sexuality), one of the primary goals of life in Hinduism, forms an integral aspect of social life. It is a vital experience for human beings, as they invariably

<sup>30</sup> See Vatsyayana, *Kamasutra*, trans. Wendy Doniger and Sudhir Kakar (New York: Oxford University Press, 2009) xi-xv; Doinger, *On Hinduism*, 130.

<sup>31</sup> See Daud, Ali, “Rethinking the History of Kama World in Ancient India”, *Journal of Indian Philosophy* 39, no. 1, (February 2011), 1-13. Accessed April 14, 2017, <http://www.jstor.org/stable/23884104>.

<sup>32</sup> Britannica encyclopedia

<sup>33</sup> Vatsyayana, *Kamasutra*, xi-xii.

experience it in order to achieve *Moksha*. However, *Kama*, writes Vatsyayana, has the power to please as well as hurt the human body. Thus, it is crucial that people know how to master the art of sexuality or pleasure so that it can be enjoyed to the maximum and turned to one's own advantage. In this way, Vatsyayana treats the subject of sex and sexuality as one would treat art and aesthetics. The purpose behind training men and women, instructing them to become proficient in the art and craft of *Kama* (matters related to sexuality) is to make them appreciate the aesthetics of it and that of bodily pleasure.

The chief aims of the *Kamasutra* are to instruct and educate men and (some) women in the matters of sex and pleasure. Vatsyayana explains that sex is a fundamental drive and has both creative and destructive powers. Hence, he goes into explicit detail of the subject so that learned men can tame sexuality and turn it into pleasure and advantage. Vatsyayana notes that he is writing this manual for men-about-town in which case one may argue that the text is aimed for a particular audience. This argument, however, may be opposed because the contents of the *Kamasutra* are based on social practices and wisdom that are discussed in similar texts written in previous ages. While it may be true that the *Kamasutra* is primarily addressed to the people of a particular caste, gender and class, it also discusses social-sexual practices of genders, castes and regions of what we recognize as India today. Moreover, the ideas, especially those pertaining to Hinduism cannot be limited to a particular caste, class or gender because they are central to Hindu philosophy which informs the very way of everyday life of Hindu society.

Linked with this notion of instruction and education is the idea that the society to which Vatsyayana refers or in which the *Kamasutra* is produced is a very evolved culture. The Hindu civilization instead of relegating the subject of sex and pleasure to the background or forming

prohibitions against it, chooses to engage with it (or so it appears from reading the *Kamasutra*). Hence, the Hindu society represents a sharp contrast to many traditions and societies that look at sex and sexuality as sinful acts and impose several restrictions on them. The fact that Hindu society treats the subject in such an open way, that there are written treaties on it, only shows that the ancient Hindu culture was an open society that considered sexuality in a positive light. The only negative aspect which it may have attributed to sex would have been the lack of knowledge of it, which could hurt or harm one's sex partner.

Many scholars have compared the sexual universe of the *Kamasutra* with that of the Christian world since its translation in English by Richard Francis Burton in 1883.<sup>34</sup> I think the comparison is inappropriate and problematic. It seems odd when examined in the light of Michele Foucault's works on sexuality and the origins of sexual morality in Christianity. The two worlds are diametrically apart in that Christianity looks at sexuality as sinful and preaches restraints of sexual activities aside from procreation. Further, in the Christian society, especially since the eighteenth century, sexual acts are divided along the lines of heterosexual and homosexual acts but in Hindu philosophical tradition no such division is recognized. In fact, Doniger and Kakar, who have translated the *Kamasutra*, have themselves pointed out the difficulty of interpreting the *Kamasutra* through the western lens. Thus, the comparison between the sexual moralities of the two worlds should be made with caution.

Book two of the *Kamasutra*, is dedicated to acts and behaviour of sexual pleasure. It is important to notice, once again, that the sexual acts are described in terms of the role that sexual partners perform and often in terms of sexual activities between men and women. They are not

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<sup>34</sup> Burton shares the credit of the translation with the Indian Civil Servant Forster Fitzgerald Arbuthnot who was assisted for the project by a student Shivaram Parshuram Bhinde and an archaeologist Bhagwan Lal Indrajai.

described as homosexual or heterosexual acts, as tends to be the case in the modern age. The focus is the desiring male and female or the very desire and pleasure themselves. Nowhere does it lay more emphasis or make a special remark on any particular sexual activity than the other. Although, Vatsyayana does observe that many sexual acts especially oral and anal acts are not enjoyed by everybody nor are they performed in all regions. He says that the reason for it has more to do with a person's personality and regional practices and traditions that the person has been accustomed with. Moreover, he continues, the person's liking matters as well and forcing one into a sexual act against his or her desire is ruining sexual pleasure; but he makes this observation without judgement.

The impulse of modern scholars to interpret the ideas of sex and sexuality in the *Kamasutra* in terms of homosexual and/or heterosexual acts raises suspicions because Vatsyayana does not offer any such categorization. For instance, he often does not use explicit male and female pronouns when referring to the inversion of role play which adds to the ambivalence of the performers of sexual acts.<sup>35</sup> However, there are scholars, such as Saleem Kidwai and Ruth Vanita who have for their own purpose assigned male or female subjectivity to these actors which Vatsyayana leaves ambiguous.<sup>36</sup> Although, it is possible that a western theoretical lens may enrich the meaning of the *Kamasutra*, I would argue that it may amount to an act of anachronism and an error of wisdom. Besides, the tendency to recast desire and sexual behaviour into homosexual and heterosexual acts remains a modern phenomenon.<sup>37</sup>

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<sup>35</sup> Vatsyayana, *Kamasutra*, xxviii-xxxix. Doniger and Kakar also mention this issue of ambiguity in their introduction to the book.

<sup>36</sup> See introduction in *Same-Sex Love in India: Readings from Literature and History*, ed. by Ruth Vanita and Saleem Kidwai (New Delhi: Palgrave Publications, 2011), xviii.

<sup>37</sup> Michel, Foucault, *The Use of Pleasure: The History of sexuality-Volume 2* (London: Penguin Books, 1985), 26-28. Foucault argues that in the modern age, particularly in the nineteenth century, the focus shifted from desire to the formation of subjectivity that is how an individual has to construct himself, through a legal discourse.

The notions of biological sexes in the *Kamasutra* breaks free from gender binaries of strict male and female roles although there have been many scholarly speculations around it. Kakar argues that Vatsyayana mentions *Kliba* (the person of third nature) only because he wants to make his treatise more inclusive while other scholars have interpreted it in terms of the elements of homoeroticism in the *Kamasutra*. While all these arguments may be supported in some ways or the other, they can also be counter-argued. Depending on the lens, the intention and the prejudice of the scholar different interpretations can be inferred from the text. However, I would like to argue that the representation of sex between the person of third nature and a man only indicates another type and act of sexual behavior. Vatsyayana says that the person with the third nature may choose to live as a man or a woman, which I believe, is his attempt to represent the person of third nature within a male-female binary. However, it is difficult to argue this case because the text that I am referring to is a translation rather an original, which could give more insight on the gender roles ascribed to the person of third nature. Moreover, when Vatsyayana describes sexual acts between a man and a person of third nature, I think, his focus is on the form of the sexual act, the desire and the sex partner. It does not appear to be his intention to classify the sexual acts between them as distinctively heterosexual or homosexual. The oral and the anal sex which Vatsyayana describes between a man and a person of third nature is also described between a man and a woman elsewhere in the text. In this sense, Vatsyayana breaks free from the notions of gender-binaries and does not represent them in terms of strict sexual identities.

Vatsyayana also demonstrates that sex is not only an act of procreation in which human beings indulge in to propagate the human species but rather it is a fundamental way of life. He, therefore, shows that Hindu culture and civilization have been in harmony with nature since



antiquity. In Hinduism, one does not prevent what is most innate and elementary to human nature and therefore not going against natural and bodily functions.

If there has been any mention of same-sex activity in Hinduism, the *Kamasutra* refers to them in the least. However, one can find reference to them in the *Arthashastra* and the *Dharmashastra*. These scriptures advocate restraint of same-sex activity, but they are not excessively hostile to them. In the *Arthashastra*, there is hardly any mention of same-sex acts. I have come across only one such reference in Book three in which the author refers to sexual activities and the penance or fine that men must pay for committing a transgression with any man.<sup>38</sup> I cannot say for certain that the author refers to same-sex acts here when he mentions transgression with men but it can be inferred from the context. Even if the author refers to same-sex acts here, it matters little because it is only discussed in half a sentence in the book and the penance for it is a minor fine. This brevity of space can be interpreted in two ways. First, one could understand that same-sex activities between men were not that common in Indian society. Or, perhaps, the same observation could be twisted and one could say that people regarded sex between men as so deeply abominable that the author gave it the space of only half a sentence. However, this does not hold much ground when considered in light of the punishment for these acts which was a meagre fine.

Similarly, in the *Dharmashastra*,<sup>39</sup> one comes across a similar description and brevity of space given to the subject of same-sex desire and pleasure. It also mentions it in half a sentence and treats it as a minor offence to be punished by minor penance. It recognizes sex between men as an act equivalent to a man having sex with a menstruating woman or during the day.

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<sup>38</sup> Kautilya, *Arthashastra*, Tr. by R. Shamasastri, (1915), 222-29, in the Libgen Digital Library, accessed March 2017, <http://gen.lib.rus.ec/book/index.php?md5=F2C8936431B9587A3448E1B3D8EFF8E8>.

<sup>39</sup> *The Law Code of Manu* (Oxford, New York: Oxford University Press, 2004), 203.

The amends involve bathing with clothes on, fasting for some days and consuming specific cow milk and urine products.<sup>40</sup> The failure to perform these retributive acts may result in loss of caste. One might deduce from the identical penance for a same-sex act and sex with a menstruating woman implies that a sexual act between men was just as common a phenomenon as monthly menstruation among women. Hence, in spite of negligently discussing the matter, the text gives vital insight into same-sex desire.

Besides the *Arthshastra* and the *Dharmshastra*, there are other scriptures which represent the notions of sex and sexuality in Hinduism. While some scholars have understood them in terms of same-sex love and desire, the question remains as to whether we should examine that representation in terms of a modern discourse on sexuality which functions on sexual and gender-binaries. For instance, Vanita and Kidwai, who have written an exemplary work tracing a history of same-sex love in Indian culture and Hinduism, describe some episodes from the *Mahabharata*.<sup>41</sup> They focus on the relationship between Krishna and Arjuna and try to interpret it in terms of same-sex love. I find this problematic because they are applying their own cultural knowledge and prejudices to interpret a relationship which is not explicitly described within the binary of same-sex and opposite sex. Of course, they love and desire each other but it is perhaps anachronistic to interpret this love and desire in terms of homo-eroticism. I wonder if we don't fall short of understanding the concepts of love or sex and sexuality in the ancient world when we impose our own notions of sex and sexuality on it. Thus, I would observe discretion before interpreting the representation of sex and sexuality in Hindu scriptures in terms of same-sex desire.

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<sup>40</sup> Ibid.

<sup>41</sup> Vanita and Saleem Kidwai, 2-7.

I have tried to show in this chapter the representation of sex and sexuality in Hinduism by referring to a diverse range of Hindu scriptures and leading scholars who write on the subject of sex and sexuality in Hinduism. I have argued that the ideas of sex and sexuality have been central to Hinduism, Hindu culture and Hindu philosophy. I have deliberately refrained from extensively critiquing the sources because I will deal with that in my analysis chapter. However, I have argued that the ideas of sex and sexuality in Hinduism are essential to human life without shifting the focus on same-sex desire and love.

## Chapter 3: Sex and Sexuality in English Culture

The colonial law of 1860 and the regulation of Hindus moral attitude to sex was based on a model which the English developed in nineteenth century Victorian England.<sup>42</sup> The obsession with sexual morality and perversion in Victorian society is well documented.<sup>43</sup> Although this preoccupation with sexual austerity was not new to England, the reason for its increasing intensity during the nineteenth century can be attributed to the sexual revolution in the previous age. It was in the eighteenth century that the English, as I will demonstrate, first attempted to break free from the repressive sexual moral attitude of the English society. However, the attempt at sexual liberty, while yielding a momentary freedom, produced adverse effects and paved a way for the new sexual regime which connected the knowledge of sex/sexuality with power and efficient governance.<sup>44</sup> In India, the British used the very same model to strengthen their rule.

In England, sex/sexuality was always a subject of strict discipline from the period of early Christianity and lasting much after the Victorian Age.<sup>45</sup> People believed that by sinning

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<sup>42</sup> By the term 'the British' I mean to refer to the colonial administration in India comprising of the East India Company, the English officers working in India and the English politicians who might have been living in the Britain (or held an office in Parliament) but governed policies and rule in India. However, when I use the term 'English' I specifically refer to the English people, the common masses living in England and had no direct links with the colonial administration in India.

<sup>43</sup> See Dabhoiwala, *passim*. Furthermore, the Victorian literature, such as the works of George Eliot or literary response, and even the legal proceeding, to Oscar Wilde's trial over sodomy charges, are replete with examples of moral attitude to sex as it was observed in Victorian England.

<sup>44</sup> See Foucault, *The Will to Knowledge*, Michele Foucault, *passim*. The knowledge about people's sexual fantasies, sexual desire, behavior etc. produced power to manage and contain it. By managing people's sexuality, the regime got more control over them. Although it is a much-simplified version of Michele Foucault's argument, this is precisely the point, as I understand it, he seems to be making and explains that medicine and legal system in Victorian England formed a repressive sexual regime which controlled people by having a control over their sexuality.

<sup>45</sup> Peter, Brown, *The Body and Society: men, women and sexual renunciation in early Christianity*. (New York, Columbia University Press, 1988), *passim*. Brown writes that the development of sexual abstinence was initially a secondary concern for the preachers of Christianity. However, the sermons which gradually became heavily invested with idealization of soul and condemnation of body invariably built up to a very stern attitude to sexual morality in the Christian world.

against God, Adam had already condemned the entire human race and therefore, sexual relations, particularly illicit sexual intimacy, angered God. Thus, in order to save humanity and achieve salvation, the general people regarded it as their duty to impose sexual discipline and prevent Christians from giving into bodily temptations. However, the English sexual revolution in the eighteenth century challenged this old attitude to sexual morality and prepared the ground for a new sexual culture.<sup>46</sup> The reasons behind it were several and I shall discuss them presently.

The first reason that paved the way for the sexual revolution in the eighteenth century was the Toleration Act that the government passed just before the beginning of the eighteenth century.<sup>47</sup> The act gave English people freedom to practice their own form of Christianity, while still being a part of the Church of England. The masses took this liberty out of its context and interpreted it differently than the government had intended. The non-conformists and the dissenters took it as a legal pretext to take personal freedom in the matters of morality. The old Protestant doctrine of unmediated worship of God further weakened the religious claims on the matters of sex and some people openly argued in favor of sexual liberty. It created disorder in English public life because many began to argue that the dissenting Protestants and their preachers were corrupting Christian morals. There were others who themselves wanted to have sexual liberty and argued that the government observed biased codes of conduct and that they should be given the liberty which the law granted to their counterparts. The Toleration Act, in

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<sup>46</sup> See Faramerz, Dabhoiwala, 4-10.

<sup>47</sup> Ibid, 40-45; The history of this revolution can be traced even further back in the in the seventeenth century when England was going through massive social and political upheaval especially because of the reforms that the Puritans wanted to introduce in English society and the changes that happened in the wake of The Restoration.

its bid for religious plurality and to gather the support for the new regime, paved a way for a deviant sexual morality that had been punishable by death in the previous centuries.<sup>48</sup>

The second reason behind the sexual revolution could be attributed to the economic development of English society in the eighteenth century. It was the age of industrial revolution and colonial naval ventures. The cities were becoming increasingly urbanized while London increased in size both in terms of its inhabitants and area. Transportation and lodging increased throughout the country because of improved connectivity by turnpikes and canals. Enclosure Acts drove landless peasants out of villages and they settled in places like London and worked in Industrial factories.<sup>49</sup> The overwhelming number of people made it difficult for watch groups to morally police everyone.<sup>50</sup> The rising number of inns and lodges and the movement of men and women to cities also witnessed a surge in brothels, prostitution and licentiousness.<sup>51</sup> The cross-class dynamics between rich and poor also spurred sexual liaisons between men. Whether cruising in a crowded street or in the privacy of a Turkish bath, wealthy men got a thrill from these explicit social transgressions.<sup>52</sup> However, it was a brief period of sexual liberty which produced stricter regulations of sexual morality in the subsequent age.

Indeed, the economic and industrial revolution was complimented by the temperament of the age in the eighteenth century. It was the era of science and reason and people were

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<sup>48</sup> Vinod, Kumar, "Pamela and Sexuality" (term paper, Department of English, University of Delhi, November 2015).

<sup>49</sup> Enclosure Acts was a series of Acts of the British Parliament which deprived the peasants of using common land and open fields in the country. See *Managing and owning the Landscape*, UK Parliament, accessed April, 2017, <http://www.parliament.uk/about/living-heritage/transformingsociety/towncountry/landscape/overview/enclosingland>

<sup>50</sup> Dabhoiwala, 61-65. Before eighteenth century and the rise of Industrialization in England, every parish used to have a watch group of moral policing and keeping sexual morality in check. This strategy was successful because the parish used to have a small closely-knit community. However, with Industrialization and rise in population, it became difficult for these groups to do their job.

<sup>51</sup> *English Literature in Context*. Ed. Paul Poplawski (New Delhi: Cambridge University Press, 2008), 162-165.

<sup>52</sup> Dabhoiwala, 354-6.

encouraged to question established regulations of sexual morality. These questions took the form of public discussions in salons and coffee houses across England. People gathered in these places and debated political issues and matters concerning sex. The coffee house and salon culture took the form of a public sphere in that the debates which took place there were published in the form of periodicals and circulated among the masses.<sup>53</sup> Thus, the print media was also playing a role in revolutionizing the sexual mores of the English society. However, science and reason also became the very tools that the moral watch groups employed to restrain the sexual revolution during the eighteenth century.

The supporters of moral attitude to sex continued with their efforts to reform the soul and the actions of lost people. They even devised new measures to restrain the regular offenders from indulging. The watch groups collected money from individuals and parishes and hired constables who could devote their full time to moral policing. This new force of professional watch groups would be on the look-out for men and women soliciting for sex and arrest them for a trial. Hence, the vigilance of sexual deviance and indiscipline took a new turn within this new era of sexual discipline. Further, the print media, which had been used as a vehicle to spread the new ideas of sexual liberty, was overcome by traditionalists.<sup>54</sup> These moral and religious watch groups also published and propagated the Christian notions of sexual morality to restore sexual order and discipline.<sup>55</sup> Consequently, the notion of sex and sexuality took a new form and preoccupation in English society which manifested itself in Victorian moral

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<sup>53</sup> Vinod, Kumar, "Pamela and Sexuality" (term paper, Department of English, University of Delhi, November 2015).

<sup>54</sup> By traditionalists, I simply mean the people who supported sexual morality of the previous ages.

<sup>55</sup> Samuel. Richardson, "Introduction" in *Pamela; or, Virtue Rewarded*. (United States: Oxford University Press, 2001), vii-xiv. This retaliation from the traditionalists also manifested in literary polemics between the writers of that age such as Samuel Richardson and Henry Fielding.

sensibilities. In Faramerz's opinion, this sexual transformation laid the grounds for the sexual culture of Victorians: "the urban ways of living and discussing sex, the enduring association between morality and class, and our endless fluctuating obsessions with natural and unnatural behaviour, and pornography".<sup>56</sup> Thus, the state created a discourse of objectively investigating the sexual experiences, acts and behaviors of people. Since society was talking about it anyway, the state only had to record these experiences and create a discourse around them to regulate sexual morality. For the Indian context, the British sought to use the very same tools.

By the time the British began to consolidate their control over Hindu society in the nineteenth century, they already had lessons from their own history that regulations of sexuality could produce efficient rule and governance of a people. It was therefore easy for them to duplicate the tested formula that helped them regulate sexual morality and strengthen their rule. However, it is crucial to note that the British did not have an exclusive focus on sexuality in Hindu society. In the context of Hindu culture, they had to transform the entire cultural landscape. The introduction of the printing press and salon culture helped them introduce a range of reforms such as the introduction of the public sphere, education, morality, law, communication system etc. All of this strengthened their rule by creating an empire based on the English value system.

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<sup>56</sup> Dabhoiwala, 350.



## Chapter 4: Historical Background of 19<sup>th</sup> century India

In the nineteenth century, India phased into a politico-legal and economic shift which also catalyzed a change in the existing social and cultural milieu. The Mughal Empire was in a rapid decline and the colonial rule was growing across the country. These changes promised different things for different communities in India. For Muslims, it meant a fall from their former social and economic grandeur as it was the British who enjoyed the freedom and the excess that Muslims had possessed during the Mughal Period.<sup>57</sup> Hindus, however, quickly moulded themselves to the new regime and began to reap benefits of it.<sup>58</sup> All this was happening in the background of a politically and economically throbbing environment. In order to show this, I will give a succinct account of the Mughals and the colonial rule and my focus will remain the first half of the nineteenth century up until the moment when the British introduced the Indian Penal Code in 1860 in India.

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<sup>57</sup> See Gauri, Vishwanathan, *The Beginnings of English Literary Study in British India*, Oxford Literary Review, Volume 9 Issue 1, pg 1-26. First, the statement that the influence of Muslims declined and they suffered a great loss, more than other communities in India, in their fortune is largely/mostly substantiated with historical accounts. However, this does not apply to all Muslim ranks and nobilities. For instance, there were *Talukdar* Muslim gentry who gained much influence and wealth by collaborating with the British. Thus, such claims about the loss of fortune of Muslims are always undercut by the class. The British who were replacing the Mughals played in riches and power. The corruption was rife in the ranks of the British officers who amassed inordinate amount of wealth and had little control over their rapacious activities.

<sup>58</sup> See Christophe A. Bayly, *Indian Society and the Making of the British Empire*. (Cambridge: Cambridge University Press, 1988), passim. Such a claim about Hindus is also undercut by the class. Not all Hindus benefitted from the change in regime. However, they quickly adopted to the change. There were more Hindus than others who filled the ranks of English schools in the nineteenth century. Hindu merchants and traders such as Jagat Seth in Bengal and Aggarwals in the North quickly adjusted to the new economy and took the advantage that the British tradesmen presented. The claim that Hindus benefitted more than other communities in India is further supported by the anxiety of Muslim leaders who accepted that their people were excluded and reduced to the status of subordinate citizens in India. The British also consciously discriminated against Muslims, playing the card of divide and rule, to curtail their influence and systematically decimate the influence of the Mughals.

## 4.1: Mughal Rule

The Mughals were a group of Muslim warriors who came to India in the sixteenth century. They came from central Asia and established in India a rule which lasted for almost three hundred years. When they came and settled down here they also brought over their culture. It is interesting to note that they integrated with Hindus and other Indians to create the Mughal Empire.<sup>59</sup> During their reign, although Hindu society experienced a lot of transformation, the people mostly lived fairly happy because their new rulers were both kind and open to suggestion from local Rajas. In fact, they allowed Hindus to live according to their own traditions and very few of them tried to impose their own customs and lifestyle on Hindus. The Mughal Empire was successful in establishing a very efficient administrative system. However, local rulers vying for autonomy and disturbances within the Mughal Empire made it vulnerable to exploitations by the British imperialists seeking political and economic gains.<sup>60</sup>

In the beginning of the nineteenth century, the Mughal Emperors, such as Shah Alam II who was the third last Mughal Emperor, made an attempt to restore their lost glory and rule. In his desperate attempts, Shah Alam sought help of several local princes and chieftains sometimes turning to Marathas and at other times local warlords and regents. The Marathas, in fact, supported and fought on his side but the loss of the Mughal Empire was beyond restitution.<sup>61</sup> In the absence of a strong Mughal emperor and seeing an opportunity to maximize their own fortunes, the zamindars, old faithful rajas and even Mughal ministers separated themselves from the court and declared themselves as independent of the Mughal Empire.

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<sup>59</sup> Michel H. Fisher, *The Mughal Empire* (London: I. B. Tauris & Co. Ltd. 2016), 2-4.

<sup>60</sup> Ibid, 219-225.

<sup>61</sup> Ibid, 220-222.

Chief among such regents were the Nizams of Hyderabad and the Nawabs of Bengal.<sup>62</sup>

Although the autonomy and ambition of these former Mughal courtiers were checked by the British, it is crucial to note that these regents were successful in securing a legacy for themselves. The Mughals, in the absence of resistance from their own courtiers and withdrawal of support from the princely states, could not stop the expanding frontiers of the British. Hence, the Mughals rulers continued to reign but their authority survived only nominally.<sup>63</sup>

Surprisingly enough, despite a decline in the influence and the authority of the Mughals, the Mughal court in Shahjahanabad attracted artists and British alike making it the longstanding center for Persianate high culture.<sup>64</sup> The British also recognized the nominal sovereignty of the last emperors (Shah Alam, Akbar II and Bahadur Shah II), minting coins in their name and receiving Khilats (gifts).

However, the British also observed several restrictions on the last Mughal Emperors. The British had fixed a pension for the last Mughal Emperors but they were debarred from participating into politics and were confined to Shahjahanabad. The British put them under strict supervision and intervened in their successions. In other words, the Mughal Empire was turning to witness the dawn of its empire.<sup>65</sup>

By the 1850s, the British had decided that Bahadur Shah II would be the last Mughal emperor. They decided that his successors would be given a pension but not the title of an

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<sup>62</sup> See Fisher, 215-17; Barbara d. Metcalf and Thomas R. Metcalf, *A Concise History of India* (Cambridge: Cambridge University Press, 2002), 29-42. This process of the imperial disintegration, however, had begun in the eighteenth century. See. Also refer to

<sup>63</sup> See Fisher, 220-22. Shah Alam was captured and his eyes dug out by one of the regents called Ghulam Qadr Rohilla.

<sup>64</sup> Ibid, 219-25. After making several attempts to restore the dignity of the Mughals, Shah Alam finally gave in to his destiny and the British fixed him a pension but also confined him to Shahjahanabad which remained the last Mughal domain until the end of the Mughal Empire in 1860.

<sup>65</sup> Ibid, 224-25.

emperor like their forefathers. In fact, they would be sent away to some rural place. However, the circumstances of 1857 put the last emperor at the center of the rebellion and power. The rebels declared Bahadur Shah II their *shansha* (the king of kings) and chased away the British force from Shahjahanabad. However, the British managed to recapture the place, subside the mutiny and exiled the so called *shansha* to Burma where he died in 1862.<sup>66</sup>

Thus, the Mughal Empire witnessed its end soon after the rebellion of 1857 which also commenced the British Raj in India. It was one of the most powerful and successful empires that conquered most Indian territories and exercised its rule over them for nearly three hundred years. During the Mughal Period, India rose to the heights of prosperity and abundance. Of course, there were some internal problems and some disturbing events which brought about a shift in the society but mostly it was a peaceful reign in which local Rajas and rulers could administer their own kingdoms. However, the British colonial rule brought it to its end and had India under its direct governance.

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<sup>66</sup> Fisher, 224-25.

## 4.2: Colonial Rule

At the heart of the colonial rule in the nineteenth century was a gradual shift in the British attitude to ruling India by their own rule of law rather than turning to indigenous traditions and customs. I think a major reason behind this was the persons, namely the Governor-Generals who were at the helm of the colonial rule in India from the late eighteenth century leading up to the institutionalization of the India Penal Code in 1860.<sup>67</sup> The institutionalization was a final move in directly governing India through English rules and regulations. Truly, these British leaders in India, along with some liberal minds from England such as Adam Smith, Jeremy Bentham and John Stuart Mill, and people like Thomas Babington Macaulay who was directly involved with making policies and laws for India, completely hegemonized the Indian society. In fact, hegemony was not the only ideological tool they used. Men such as Lord Dalhousie, even used coercion and force to transform the native social and cultural milieu for establishing a proper colonial government in India.<sup>68</sup>

Throughout the nineteenth century, the British used what I want to call a mounting strategy to establish a firm rule in India. The first among such mounts was investing the resources to have a knowledge of India. It was Warren Hasting who had set in motion what was to be called mastering India's history in the latter half of the eighteenth century. However, his plans could materialize only in the first few decades of the nineteenth century when the later Governor-Generals and other British administrators mounted them to the next level. For this purpose, trained administrators and scientists travelled around India and observed local

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<sup>67</sup> The most notable Governor-Generals whom I have in mind are Wellesley, Bentinck and Dalhousie.

<sup>68</sup> See Metcalf and Metcalf, 93-94. Lord Dalhousie introduced laws that were meant to curtail princely sovereignty. The Second Sikh War which happened during his governorship secured the British government the annexation of critical province of Punjab.

traditions.<sup>69</sup> They measured the length and the breadth of the countryside and mapped structural knowledge of the land which could later be used for political and economic expansion. Furthermore, some British were employed to get familiar with Indian news writers and postal services while there were others who were stationed in princely courts. Some even collaborated with local landlords and informants for the survey of the countryside.<sup>70</sup> In sum, the purpose was to understand the locals and their practices to effectively intervene and strengthen the British rule.

The mounting interaction with local customs and practices coincided with racialization of Indian people. The liberals whom I have mentioned above thought of India as far inferior to English race with Sir William Jones regarding them as “most enslaved portion of the human race” and according to Macaulay Indians could be treated of their primitiveness through “an imperishable empire of our [English] arts and our morals, our literature and our laws”.<sup>71</sup> Before the nineteenth century, the efforts of Hastings and Jones were directed to retrieve the history of Hindu culture for appreciating and making it available for the instruction of the British officers.<sup>72</sup> In the nineteenth century, however, the same project had worse racial consequences. The British condescended Indians as superstitious and as lacking the ability to reason. The Indian rulers, they called, despots and debauched incapable of taking the people to the path of progress.<sup>73</sup> Thus, it was in the interest of Indians, thought the British, that they should intervene.

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<sup>69</sup> See Metcalf and Metcalf, 63-65; Bernard S. Cohn, *Colonialism and Its Forms of Knowledge* (Caledonia: Princeton University Press, 1996), 7.

<sup>70</sup> Metcalf and Metcalf, 64

<sup>71</sup> Ibid, 80-81.

<sup>72</sup> Ibid, 62. But Jones also thought that Indians were children when it came to reason and science.

<sup>73</sup> Radhika, Singha, *A despotism of Law* (Delhi: Oxford University Press), passim; Metcalf and Metcalf, 57.

The power dynamics yielded to further racial prejudices between the British and the Indians. The British lived in separate enclaves and clearly demarcated boundaries between the English colonies and what were called ‘Black town’ of Indians further mounted the separation between the two communities.<sup>74</sup> In addition to that, the British officers enjoyed many benefits living a much more privileged life than most Indians. This economic and cultural difference together with political influence and military prowess of the British backed up their claims of superiority. The representation of Indian culture abroad and even in India created sharper distinctions between the British and Indians which solidified during the nineteenth century.

Before the nineteenth century, the British were one of the rulers in India. However, in the nineteenth century they had more control and power than the most. The local rulers were merely puppets in their hands with little autonomy or authority over the matters of governance.<sup>75</sup> With the introduction of subsidiary alliance, this puppet-master relationship mounted to the next level wherein the local rulers were neither allowed to have their own security forces nor have any diplomatic relations with others.<sup>76</sup> Moreover, the pressure on the local rulers for payments and supporting the British troops in their states turned them more despotic to their own people than they had wanted. Consequently, the people turned hostile and despised their local rulers. The local kings could do little to redeem themselves from their circumstances. Helpless and disappointed, for having failed at all attempts to govern their states, they turned to comforts and luxury of their courts sporting a lavish and debauched lifestyle. This assured the British of their assumptions about the decadence of Indian rulers.

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<sup>74</sup> Metcalf and Metcalf, 64.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

They held them in contempt and were convinced that India needed a reform and a better way of life that only English cultural values could offer.<sup>77</sup>

Furthermore, in the nineteenth century, there were many economic reforms which the British government introduced in India. In theory, all new traders were allowed to come and trade in India but in practice the entry was dependent on the financial and military needs of the East Indian Company which had practiced a monopoly on commercial activities in India.<sup>78</sup> The British Parliament, however, officially ended this monopoly and the private merchants spurred by the Industrial revolution came to India in great numbers. However, the market crashes of the 1830s and 40s exerted an economic pressure on everyone. The British drained funds from the Indian economy and invested them in England. The only foreign capital that remained in India was the private property of English residents in India.

Nineteenth century was also termed as the age of reform in India because the British also introduced many a reform in local culture and tradition ranging from education to administrative offices. They opened government schools in major cities and capitals but remote villages and countryside did not feature in their plans. They introduced competitive exams and a robust civil service bureaucratic system.<sup>79</sup> All these plans were taken up with the intention of modernizing India. In fact, the British introduced most of their modern institutions first in India and later in England.<sup>80</sup> Thus, the first half of the nineteenth century, witnessed a huge social and

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<sup>77</sup> See Metcalf and Metcalf, 57.

<sup>78</sup> Ibid

<sup>79</sup> Ibid, 59-60.

<sup>80</sup> David, Skuy, "Macaulay and the Indian Penal Code of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century," *Modern Asian Studies* 32, no. 3 (1998): 513-57



cultural transformation which paved the way for much legal and political shifts culminating in the institutionalization of the Indian Penal Code in 1860.

## Chapter 5: The Indian Penal Code of 1860-62

In this chapter, I will demonstrate the history of the Indian Penal Code and the reasons for its institutionalization in India. Since, the primary focus of my work is a shift in Hindus' attitude to same-sex love which Section 377 of the Indian Penal Code consolidated in Hindu culture, I will briefly elaborate the origins of this law as well.

### **History of the Indian Penal Code**

The British institutionalized the India Penal Code (hereafter IPC) in India in 1860 and it came into force in 1862. However, the history of the law goes back to the eighteenth century when the East India Company was expanding its commercial base and extending its rule in Indian territories. The Company had established courts as early as 1726<sup>81</sup> but the development of English legal practices coincided either with historical events or the strategies of some British statesmen who were directly or indirectly responsible for the administration of the British rule in India. Whether persons or events, they gradually sought to replace Hindu personal laws and the Mughal system of justice. The British argued that the old system was decaying, turning corrupt and needed a reform while there were others like Thomas Macaulay- a member of the Indian Council- who thought that there was no organized and uniform legal system in India.<sup>82</sup> In either case, the intervention by the British was already underway and concluded in the form of the institutionalization of the IPC.

The first important event in the history of the development of English legal system in India was the Battle of Plassey. The Battle was fought in 1757 between the East India Company

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<sup>81</sup> See Skuy, 513-57.

<sup>82</sup> Singha, 294.

and the Nawabs of Bengal with the help of the French army.<sup>83</sup> The victory of the British in the Battle brought several territories under their control. With the expansion of its rule, the East India Company now had a large base to overlook and manage. The Company took the entire care of revenues and administrative justice. Many intermediary offices were abolished and rules were made to control the exigency of the country, manners of the people and to redress the previous wrong done to farmers.<sup>84</sup> Many regulations were passed and some were also printed in local languages. The printed regulations, however, remained without any form and order, and referred to by few people and fewer officers of the government.<sup>85</sup>

Warren Hastings, the first Governor-General of Bengal was appointed to the office in 1772 and was an important figure because the regulations and changes he introduced played a crucial role in transforming the administration of justice, or rather intervening in the local system of justice to strengthen the rule of the British government. It commenced with the regulating act of 1774 for the management of the affairs of the East India Company. The Governor-General was appointed as the head and a council of four members to assist him with his work in India.<sup>86</sup> A Supreme Court in Fort Williams consisting of a chief justice and three other judges were also introduced. The act stipulated that the Governor-General would also head the civil and the military government and the judiciary body consisting of the judges.<sup>87</sup> Further, the English laws were extended to the British ruled territories for the benefit of the

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<sup>83</sup>See Peter, Harrington, *Plassey 1757, Clive of India's Finest Hour* (London: Osprey Publishing, 1994), passim. The British had strong influence in Bengal which was to become a separate Presidency in 1765 after the defeat of the Nabobs of Bengal in the Battle. Initially, the Nabobs used to give concessions to the British in lieu of their military protection. However, the later generation of the Nabobs grew suspicious of the rising monopoly and the trade activities of the East India Company. Consequently, it concluded in an armed fight in which the Nawabs were defeated.

<sup>84</sup> See Harrington, 4-8. Harrington notes that the office of Naib Dewan, one of the intermediary offices, was abolished and the Company took over the government of the provinces.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid, 8-9.

<sup>87</sup> Ibid

natives and English officers working there. Hastings was a key figure in spearheading these changes in India.

The new reforms while might have helped with organizing the British rule, they also gave rise to a lot of confusion. The new laws extended only to those places which the British ruled and there were places where Hindu and Muslim laws continued to be practiced. However, if a native worked for the British administration then he was subject to the English law. Confounding this situation was the debate and conflict over laws between the British administration and the indigenous culture. The British argued that the Mughal system and old Hindu laws were arbitrary practices formed under an arbitrary government whereas the British laws were based on reason, practical experience and had a long history.<sup>88</sup> Hence, the general application of the British law was necessary and the Governor-General and the council was given power by the British government to make regulations, pass ordinance from time to time as they deemed fit.

The British government thought that Hindu laws and Mughal system of justice were arbitrary but it remains to be answered whether giving the Governor-General power to draft regulations according to his wisdom was not an arbitrary act in itself especially when he had little knowledge of local traditions and practices of Hindu society. It seems that the British did not have a choice but to leave a major part of legislation and regulation of justice to the whims and fancies of their colonial officers. This was also true given that that the British government had warned the East India Company from intervening in the matters or practices which were linked with religious sentiment of Hindus and Muslims.<sup>89</sup> Moreover, the British government

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<sup>88</sup> Harrington, 8-9.

<sup>89</sup> Also, regarding succession, inheritance, marriage, caste dispute, religious usages and institutions.

was initially reluctant to extend full laws to Hindu/Muslims because it would have conferred full citizenship rights and privileges on them.<sup>90</sup> In any case, it was clear that the English laws made their way to India through the East India Company. The British legislature was first introduced to manage the affairs of the Company. Later, it was extended to local practices.

The Charter Act of 1793, renewed the license of the East India Company to continue to operate its commercial, military and administrative activities in India. By now, it was discussed in the Great Britain that it was impractical to introduce English laws in India. Rather, the British should form a system of government that would preserve, as much as profitably can be done, the laws of the Hindus and Muslims.<sup>91</sup> Furthermore, it would also be the best way to supervise civil, military and financial matters. However, Lord Wellesley who was appointed the Governor-General in the last decade of the eighteenth century clearly had a different opinion on the subject. In fact, he was an important component in turning the phase of imperial rule further up in India. He explicitly lobbied and pushed for direct control and conquest of Indian states/India and even argued that British were a superior race to Indians.<sup>92</sup> During his governorship and mostly through the first two decades of the nineteenth century, there were a lot of inconsistencies in the colonial rule of laws. The laws privileged the English over the natives and the authority of the court did not extend to nawabs - the persons of the royal stature- and those persons who were related to him.<sup>93</sup> These practices, thus, created a lot of unrest and discrimination within the judicial administration.

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<sup>90</sup> See Harington, 12-16.

<sup>91</sup> Ibid

<sup>92</sup> See Bayly, *Indian Society and the Making of the British Empire*, 79- 105.

<sup>93</sup> See Harington, 48-50.

The period from 1820 to 1860 marks crucial stages of the development of a robust legal system both in India and England. In the background of all this, there was also a rise of a utilitarian political theory.<sup>94</sup> John Stuart Mill (also Jeremy Bentham) who was a staunch proponent of utilitarianism wanted to reform the English legal system based on utilitarian principles<sup>95</sup>. However, in England, it would have not been as feasible. India, on the other hand, could prove an ideal laboratory for testing the legal reforms that the British wanted to introduce in their own country. Hence, India/the Indian society became a laboratory for legal experiments for the British and from 1830s onwards a series of legal ventures made their way to India.<sup>96</sup>

In 1833, the British Parliament passed the Charter Act of 1833 which formed the Indian Law Commission. The intention was to improve the corrupt and deficient legal system which was then prevailing in India under the supervision of the East India Company.<sup>97</sup> Thomas Babington Macaulay with Mill's intervention was appointed to this Commission.<sup>98</sup> He came to India in 1834, and was extremely dissatisfied with the moral and legal corruption and the discrepancy that he witnessed in the British administration. Fortunately or unfortunately, most other members of the Commission fell sick and the responsibility of drafting the law fell on him.<sup>99</sup>

Macaulay was a critical figure in introducing crucial changes which not only consolidated the British rule but also transformed the very social practices of Indian society. In

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<sup>94</sup> Skuy, 513-57.

<sup>95</sup> Eric, Stokes, *The English Utilitarians and India* (Oxford Clarendon Press, 1959), passim.

<sup>96</sup> Skuy, 513-57.

<sup>97</sup> Ibid

<sup>98</sup> Ibid. Macaulay was a British statesman a member of the Council for India. His intervention in India was responsible for the major changes which overhauled the traditional society there. Some of those interventions ranged from formalizing English education and drafting the Indian Penal Code. Mill and he were close because both of their political ideology; both favoured utilitarian principles for politics.

<sup>99</sup> Ibid.

his speeches and addresses in the British Parliament, he always made the argument that his intention was to benefit the natives and the crown.<sup>100</sup> During his visit to India, he noticed that there was no single code of law that the authorities practiced. The East India Company applied its own regulations, the Presidencies followed different laws from each other, the Parliament passed its acts and there was also the obligation of observing Hindu and Muslim personal laws in many legal matters. The judges, in the wake of all this, were left with applying a combination of regulations and acts which all built up to a deplorable confusion and a very inefficient legal system.<sup>101</sup> Moreover, the judges placed in India were poorly trained in English laws and nor did they have any knowledge of the local laws and traditions. Further, in many cases when the judges did not find a resolution or assistance in the available legal paraphernalia, they were permitted to turn to their own conscience for judgement.<sup>102</sup> Thus, Macaulay suggested that it was in the interest of the people of India and the British government to introduce a new uniform penal code for India.

Although Macaulay had finished the draft of the India Penal Code in 1837, it was much later that it was institutionalized. In the same year as 1837, the British Parliament passed the 1837 Acts to improve the English criminal laws. In fact, it is no coincidence that the development of the two bodies- reform in the English criminal laws/ and the IPC- coincided. David Skuy has brought this up in his excellent essay in which he argues that the IPC was the result of an ambiguous, backward and deficient English criminal law system.<sup>103</sup> The British wanted to reform their own criminal laws and India became their guinea pig. Skuy's claim is further strengthened by his finding that through 1840s the Royal Commission was drafting

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<sup>100</sup> Skuy, 513-57.

<sup>101</sup> Ibid

<sup>102</sup> See Harington, 62-64.

<sup>103</sup> See Skuy, 513-57.

reports to assess the deficiency in its own legal system.<sup>104</sup> It was the same decade when the Law Commission for India was reviewing Macaulay's draft of the IPC. It finished its review in 1847-48 and in the same year the Royal Commission finished its draft criminal code.<sup>105</sup> Finally, the British Parliament passed the 1861 Acts soon after the IPC was institutionalized in 1860 and enacted it in 1862.

### **Section 377 or Anti-Sodomy Law**

While the IPC preceded the reforms in English criminal laws, the codes in it were based on and were very similar to statutes and common laws of English society. Since, the development of public character and strict morals defined English culture from the early period of Christianity,<sup>106</sup> laws and regulations for moral discipline had always featured in the legal constitution. Hence, the anti-sodomy regulations in England went through several legal and social stages of elicitation and I shall briefly trace its origins.<sup>107</sup>

In England, the history of the anti-sodomy law goes back to 1533 when King Henry VIII separated the Church of England from the Roman Catholic Church and converted into the Buggery Act of 1533 a catholic doctrine that recognized sodomy sinful and criminal.<sup>108</sup> The law

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<sup>104</sup> See Skuy, 550-57. The Royal Commission was responsible for rectifying criminal laws in England. The reforms and Acts were passed through 1820 to 1860.

<sup>105</sup> Ibid.

<sup>106</sup> See Dabhoiwala, 1-27.

<sup>107</sup> See Carson, Keith, "United Kingdom Criminalizes Gross Indecency", Salem Press Encyclopedia, January 2016, accessed May 2017, <http://eds.b.ebscohost.com/eds/detail/detail?sid=e8ec694e-2578-406e-884b-8643776a824e%40sessionmgr102&vid=0&hid=112&bdata=JnNpdGU9ZWRzLWxpdmU%3d#AN=96776029&d=b=ers>. The term 'sodomy' goes back to the stories of Sodom and Gomorrah in the Genesis. Although it is difficult to give a precise legal definition, it mostly denotes anal or oral sex which is often phrased as 'unnatural sex' in Section 377 and in the anti-sodomy laws/regulations which preceded it in England. It is noteworthy that the act itself has always been crypted in different terms and never been directly referred to making both the offence and punishment subject to the interpretation of the presiding legal authority. Further, it is being argued that the restriction on sodomy was an attempt to normalize heterosexual relations and promote heterosexual marriages.

<sup>108</sup> Ibid.



was surrounded with a lot of ambiguity since its formation and afterwards.<sup>109</sup> The prescribed punishment for it was death but it was never clear what could and could not amount to buggery. Initially, it applied to anal and oral penetration on a body whether animal, man or woman. However, it seems that it gradually began to tighten its noose only around men. Furthermore, the scholars have raised questions about the very nature of the crime which often exempted rich nobility but not the other classes.<sup>110</sup> In England, it remained a capital punishment until 1861 when it was changed to life imprisonment.<sup>111</sup> In India, it was passed in the form of Section 377 of the IPC in 1862.

Certainly, the law and the regulation to prevent sodomy was predominantly a British practice. In India, no such rigid laws existed prior to the colonization.<sup>112</sup> In fact, in Hindu culture, moral attitude to sex was never stringent but the English rule cultivated strict moral discipline towards sex and concluded it in the form of a legislation in 1862.<sup>113</sup>

## Conclusion

The IPC of 1860-62 was a watershed in the history of colonization in India. It not only paved the way for a successful British empire but also consolidated English traditions and cultural practices which had already penetrated deep into Indian/Hindu society. Although the British administrators ranging from the Governor-Generals to Macaulay claimed that India did not have a single rule of law, it never occurred to them that a) they did not have a sufficient and

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<sup>109</sup> See Oaks, Robert F. "Things Fearful to Name": Sodomy and Buggery in Seventeenth-Century New England." *Journal of Social History* 12, no. 2 (1978): 268-81.

<sup>110</sup> Gilbert, Arthur N. "Buggery and the British Navy, 1700-1861." *Journal of Social History* 10, no. 1 (1976): 72-98.

<sup>111</sup> Section 377 of the IPC introduced in India 1860 reflect this amendment of 1861 Acts. See Section 377 of the Indian Penal Code, Of Affecting the Human Body, 1860, chap 16.

<sup>112</sup> See the chapter "Same-Sex Love in Hindu Culture" in this thesis.

<sup>113</sup> See the next chapter "The Colonial Law and the Regulation of Same-Sex".

uniform system of law in their own country, b) it was a pretext to experiment a criminal code in India, c) that they needed a reform in their own legal system, d) and finally that it was impractical to graft/introduce English laws in a culture which was diametrically different from their own. And yet, the British implemented and institutionalized the English rules and laws in India. On the one hand, it provided with a model of the finest legislation, and on the other hand formalized the English reforms in Indian society which ultimately made the process of institutionalization of the law sans resistance.

After the Indian Independence in 1947, the IPC continued to form a part of the Indian Constitution. As for Section 377 of the IPC, it was repealed in 2009 but the Supreme Court of India reinstated it in 2014. Presently, a final petition is lying with a special bench of Supreme Court judges whose words will be final on the destiny of this law.

## Chapter 6: Colonial Law and the Regulation of Same-Sex

In India, the British introduced Section 377 of the Indian Penal Code (hereafter IPC) in 1860 and it came into force in 1862<sup>114</sup>. It was Thomas Babington Macaulay, a member of the Council of India, who had drafted the colonial law in 1837 but it was introduced after a review almost two decades later.<sup>115</sup> According to Section 377 “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section”<sup>116</sup> In contemporary India, many scholars, activists and politicians have raised the question over the relevance of Section 377 of the IPC in the regulation of moral attitude to sex, especially same-sex love, in Hindu culture. Jyoti Puri writes in her *Sexual States* that it was Section 377 which inaugurated the category of the sodomite in the social and the legal history of India.<sup>117</sup> Complimenting her argument is Arvind Narrain’s surmise in *Queer* that Section 377 created a same-sex subject which did not exist in pre-colonial India.<sup>118</sup> Furthermore, Shashi Tharoor, an India politician and writer, proposed a bill to repeal Section 377 in Lok Sabha on the grounds that it created a moral attitude which was in line with Victorian morality and had no ethos with Hindu

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By the ‘colonial law’ in the title I mean Section 377 of the Indian Penal Code.

<sup>114</sup> By the term ‘the British’ I refer to the East India Company, the British Parliament, the Governor-Generals, English missionaries and the English civil servants or any English person who was directly responsible for planning and implementing economic, political and social transformation in India.

<sup>115</sup> See my chapter “The Indian Penal Code of 1860-62” in this thesis for more details on the history of the IPC and Section 377.

<sup>116</sup> By order of nature it implies same-sex relations, and or sexual intercourse with animals but my focus will remain the former.

<sup>117</sup> Jyoti, Puri, *Sexual State: Governance and the Struggle over the Antisodomy Law in India* (Durham: Duke University Press, 2016), 61.

<sup>118</sup> Arvind, Narrain, *Queer: “Despised Sexuality”, Law, and Social Change* (Bangalore: Books for Change, 2004), 37-48.

traditions.<sup>119</sup> Implicit in their arguments is the thought that it was Section 377 which brought about a change in the regulation of same-sex love and created a moral attitude which was foreign to Hindu culture. These scholars suggest that the law created an identity (of homosexual) which did not exist in Hindu society earlier. Certainly, there were instances of same-sex love but they were not categorized into identity types in Hindu culture.<sup>120</sup> Hence, according to these scholars, Section 377 of the IPC brought about a paradigm shift in the regulation of same-sex love in Hindu society.

While I agree with Puri, Narraïn and Tharoor's arguments that Section 377 of the IPC created an identity which did not exist in Hindu culture before, I want to further edify their claims by stating that it was not the law alone which brought about this change. I argue that even before the law was introduced, there were institutions such as English education, the printing press and the (new) public sphere which had begun to influence Hindu culture and Hindus' attitude to same-sex love from 1820s onwards. I will demonstrate that these institutions made available Hindu traditions and customs available for a rational inquiry. They created an English educated commons/elites among Hindus who sympathized with English moral values and it brought about a paradigm shift in Hindus' attitude to same-sex love. It was on the grounds of these institutional changes that Section 377 of the IPC inaugurated the category of the sodomite and the regulation of same-sex love in Hindu culture. In other words, the law was successful in consolidating a moral attitude to same-sex love, or sexuality in general, because English education, the printing press and the public sphere had already paved grounds for it.

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<sup>119</sup> Shashi, Tharoor, "Bill to Decriminalize Homosexuality" (video of speech, Lok Sabha, March 11, 2016), accessed June 2017, <https://www.youtube.com/watch?v=fxFjhiIt3Ps&t=282s>.

<sup>120</sup> See chapter "Same-Sex Love in Hindu Culture" in this thesis for more details.

Furthermore, the institutions the British used for cultivating a new sexual moral attitude in Hindu culture was a tested one.<sup>121</sup> They were successful in restraining sexual freedom in their country in the eighteenth century and it had resulted in a stringent sexual culture in the Victorian England.<sup>122</sup> The purpose behind it, whether in England or Hindu society, was to strengthen the British rule and create an empire based exclusively on English values.<sup>123</sup>

### **English Education**

During the period of colonization, the British strategically intervened in local traditions and customs to strengthen their control in Hindu society.<sup>124</sup> By the turn of the nineteenth century, the populace had already begun to fear a rising intervention in Hindu traditions and customary laws. Christopher Alan Bayly recognizes the nineteenth century as the watershed in Indian history. During this period, the British had gained control of most Indian states under their dominion and were spearheading a series of reforms to set right what they presumed to be moral corruption within the ranks of their officers and in Hindu society. Bayly notes that William Bentinck, the Governor-General of India from 1828-35, was leading this reform

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<sup>121</sup> For more details on how in Hindu society the British used the same institutions they had used to cultivate a sexual moral attitude in the Britain, see chapter “Sex and Sexuality in English Society” in this thesis.

<sup>122</sup> Here I am referring to the sexual revolution which went on through the eighteenth century in England and the one that Faramerz Dabhoiwala also talks about in *The Origins of Sex*. I have discussed it in detail in chapter- “Sex and Sexuality in English Society”. What is important to note, however, is that the sexual liberty which English claimed, or at least a section of English society did, was short-lived because the moral police-people who were against the sexual freedom- curtailed it using the very same means which had given rise to it in England. Consequently, one sees harsher sexual discipline which is scholars recognize as Victorian sexual morality.

<sup>123</sup> See Brown, *passim*. The English values that I am referring to are closely linked with the Christian moral paradigm which draws distinction between the body and the soul and preaches that the latter is more important than the former. According to this moral paradigm, the body is under the power of flesh: the desire to sin and liability to death. Hence, the body, as the temple of the soul, should not be violated by giving into earthly desires. Furthermore, it is also linked with the notion that human beings were born out of sin of Adam and Eve and they were estranged from God because of their sexuality

<sup>124</sup> See Bayly, *The Indian Society and the Making of the British Empire*, 113-5. The intervention of the British began as early as the eighteenth century when they took over the control of the administration of Hindu temples acting as their protectors and donors. They even founded schools such as Benares Sanskrit College as early as 1791. On the pretext of fostering local traditions and culture, the British used it as an opportunity to take control of them, and later sought to change them.

campaign during his governorship and Bayly termed this period as the Age of Reform.<sup>125</sup>

Since, my argument relies heavily on the reforms that the British introduced to bring about a change in Hindu culture, I will take as a departure point for my argument this Age of Reform.<sup>126</sup>

Over the years from the late eighteenth century, a strategy that the British employed and regarded it as the reform for Hindu culture was gradually taking control of local traditions.<sup>127</sup> At the turn of nineteenth century, the British supported and kept from directly intervening in Hindu traditions especially those which were based on scriptural authority. They would observe Hindu and Islamic laws in the local courts they presided over with more rigidity than Hindus and the Muslims did themselves. Gradually, however, they replaced Hindu social practices, whether they were suttee or adultery laws, in the name of reforming Hindu culture.<sup>128</sup> As I will elaborate presently, this strategy was very useful in introducing English education in India.

The strategy of gradualism in education began with the intention of appeasing Brahmins-the intellectual elite of Hindu society- and replacing them with Indian elites who were “a class of persons Indian in blood and colour, but English in taste”.<sup>129</sup> The Brahmins, the British thought, were the biggest impediment in introducing English moral and cultural values in Hindu society. Hence, it was crucial to either co-opt Brahmins in the process or create a class

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<sup>125</sup> See Bayly, *The Indian Society and the Making of the British Empire*, 120-22.

<sup>126</sup> Ibid. I think it is crucial to note that initially Bentinck’s focus was economic reforms because when he became the Governor-General of India, the East India Company was under huge monetary loss and Indian economy was undergoing a depression. However, influenced as he was by James Mill utilitarian philosophy, he wanted to formulate reformed laws to produce desirable subjects and therefore shifted his focus to social and educational reforms.

<sup>127</sup> The British first upheld the local traditions and found similarities between English and Hindu culture but later replaced them with the English values by arguing that they fell short of rationality.

<sup>128</sup> See Bayly, *The Indian Society and the Making of the British Empire*; Singha, *passim*.

<sup>129</sup> Thomas, Babington Macaulay, *Minutes on Education*, 1835, accessed June, 2017, [http://www.columbia.edu/itc/mea/laac/pritchett/00generallinks/macaulay/txt\\_minute\\_education\\_1835.html](http://www.columbia.edu/itc/mea/laac/pritchett/00generallinks/macaulay/txt_minute_education_1835.html).

among Hindus who would critique Hindu morality and culture. The British realized that it was a wholesale cultural project wherein the entire Hindu civilization would undergo stages of intellectual evolution. For this end, it was important for the British to efface the memory of old beliefs from the minds of Hindus and they, as Bayly notes it, proposed introducing English thought and culture through native languages particularly through Sanskrit.<sup>130</sup>

Surely, the British anticipated that the process of overhauling Hindu cultural practices, moral or otherwise, was inevitably long. They did not want to hasten the process and desired this transition as smoothly and painless as it could get. Mountstuart Elphinstone, the commissioner of Deccan and governor of Bombay from 1819 until 1827, implemented a similar strategy to strengthen the British stronghold in the Deccan region. In order to introduce English education to Hindus, he first appeased the upper-class Brahmins who had suffered the most from the defeat of the Maratha Empire. He did not take away their privileges nor did he put a restraint on their religious practices. In fact, he opened a Hindu college to placate them and win their trust. Later, when things began to materialize as he had expected, he opened an English school- Poona Hindu College in 1821- for English education and trained young men in science. Here, people who could not or did not have access to classical learning and Hindu texts were introduced to English model of education including Brahmin youth. Soon, pupils of this school began to demand a closure of the old system of education because they thought it was devoid of

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<sup>130</sup> See Bayly, *Empire and Information: intelligence gathering and social communication in India, 1780- 1870* (Cambridge: Cambridge University Press, 1996), 224. J R Ballantyne, the principal of the Banaras Sanskrit College delivered it in one of his addresses that it was important to target native intellectuals and coopt them into the British system of thinking and arguing so that they will critique and notice the error of wisdom in Vedas and other ancient Hindu scriptures.

practical use, or what Bayly called ‘useful knowledge’.<sup>131</sup> Moreover, the *dakshna* system<sup>132</sup> was replaced with fellowship and scholarship for people of all caste and class and chair in Sanskrit was replaced with English, science etc. Thus, the strategies the British used to introduce English culture began to materialize. The students, whether they wanted it or not, had to study the curriculum which the British designed because their education was funded by the British. Further the curriculum mostly comprised of English ideas which prepared the ground for cultivating English culture.

The efforts of the British to change cultural practices and moral attitude in Hindu society had a huge support from Thomas Babington Macaulay- a member of the Council of India from 1834 to 1838- and the person who was responsible for arguing in favor of introducing English education to Hindu society “for the revival and promotion of literature and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of the science among the inhabitants of the British territory”.<sup>133</sup> Coincidentally, Macaulay also drafted the Indian Penal Code in 1837 and was the person behind the introduction of Section 377. He emphasized the need to have this law to check sexual moral attitude of Hindus. Macaulay wanted to introduce English education to cultivate English morals and sensibilities in Hindu culture. He denounced Hindu scriptures, traditions and philosophy which constituted the very moral and social consciousness of Hindus as paltry wisdom and argued that “a single shelf of a good European library was worth the whole native literature of

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<sup>131</sup> See Nanda, "Emergence of the Educated Élite" in *Gokhale: The Indian Moderates and the British Raj* (Delhi: Oxford University Press, 1999, Oxford Scholarship Online, 2012), 14-16; Bayly, *Empire and Information: intelligence gathering and social communication in India, 1780- 1870*, 224-27.

<sup>132</sup> *Dakshna* roughly translates to ‘donation’ In Hindu culture, it was a money donation that students received to pursue their education in Hindu Vedas and Shastras. Ibid.

<sup>133</sup> Thomas, Babington Macaulay, *Minutes on Education*, 1835, accessed June, 2017, [http://www.columbia.edu/itc/mea/la/pritchett/00generallinks/macaulay/txt\\_minute\\_education\\_1835.html](http://www.columbia.edu/itc/mea/la/pritchett/00generallinks/macaulay/txt_minute_education_1835.html).



India”.<sup>134</sup> Macaulay was certain, and he had even convinced the members of the British Council for India, that English education would improve the morals of Hindus and contribute to the efficiency of the British rule.<sup>135</sup>

Although the plans Macaulay conceived had an effect on all communities in India, he had targeted Hindus more than other Indian communities in his speech. On more than one occasion in his address, he singled out Hindu scriptures, customs, morality and Hindus for the purpose of introducing English education. From his minutes on education, it comes across that he was mindful that Hindus were a majority and a moral shift in their values would affect much transformation in India. In addition to that, Hindus were, as Macaulay himself points out in his speech, proving much more proficient with learning English. Thus, they were much more amenable to English culture and morality than other communities in India. This observation is further augmented by Bayly’s observation that Hindu benefitted more by the reforms that the British were introducing.<sup>136</sup> With their openness to embracing English instruction, Hindus filled the ranks in the British administration and mediated between the British and the indigenous masses. Muslims, on the other hand, resisted English education and sending their children to English schools. They even protested against those elite Muslims who had received English education and had begun to criticize the Quran and other scriptures just as their Hindu counterparts were critiquing Hindu scriptures.<sup>137</sup>

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<sup>134</sup> See Macaulay, *Minutes on Education*.

<sup>135</sup> By English education, Macaulay and other British officials or Hindus implied the introduction of English literature, philosophy, sciences to introduce western thought, morals and rationality to Hindu society. The aim was to make Hindus use reason science and rationality, in other words the Enlightenment ideals, for questioning their own traditions.

<sup>136</sup> Christopher, Alan Bayly, *The Indian Society and the Making of the British Empire*, passim.

<sup>137</sup> Ibid.

Indeed, for Macaulay, and for many other British statesmen after him, the introduction of English education to Hindus (or in India) was a moral obligation. It was a question of morality to introduce English instruction because doing otherwise was “a course hardly reconcilable with reason, with morality, or even with that neutrality which ought.... to be sacredly preserved”.<sup>138</sup> English instruction, he was certain in his opinion, was the cultivation of moral values and that it would also pave the way for strengthening the British rule. In light of Macaulay’s thoughts on English instruction, it does not come as a surprise that he drafted the Indian Penal Code soon after institutionalizing English instruction in India.<sup>139</sup> Further, English education, as hinted above, was making Hindus compare Hindu customs and values with that of the English morals. The educated elites participated in debates and discussions questioning the very rationality of the old scriptures. Their arguments percolated through hearsay and the printing medium in the society preparing grounds for the social change that the British wanted all along.

### **Public Sphere and Printing Press**

Certainly, the purpose of introducing English education was to prepare a class of persons who could critique Vedas, Hindu philosophical wisdom and morals. The British wanted Hindus to use the tools of rational-philosophical and empirical methods in order to question the errors in the wisdom of ancient Hindu scriptures and traditions.<sup>140</sup> Were there indeed errors in Hindu cultural and Vedic thought? Of course one could argue for and against this question but it bears attention that Hindus: pandits, traders, soldiers, scholars and the new educated elite,

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<sup>138</sup> See Macaulay, *Minutes on Education*.

<sup>139</sup> Macaulay had drafted the Indian Penal Code in 1837 and it was finally introduced in 1860.

<sup>140</sup> Bayly, *Empire and Information: intelligence gathering and social communication in India, 1780- 1870*, 224-9.

began to look at their cultural morality and values through the prism of English education.<sup>141</sup> For instance, James Robert Ballantyne, Principal of the Banaras Sanskrit College (1845—62), who studied the concept of *Nyaya* and interpreted it as ‘Hindu Logic’ treated it as a system of rational thought which functioned on empirical proof.<sup>142</sup> However, nowhere in his study did he mention the notions of *Dharma* which coexists with *Nyaya*.<sup>143</sup> In fact, he uses the prism of western philosophical tradition to interpret Hindu cultural practices.<sup>144</sup>

The British used Hindu elites and educators for grounding Hindu wisdom and knowledge within English thought to “moulding what we [the British] present to them [Hindus] as nearly as possible in accordance with what is sound in their own system”.<sup>145</sup> It was a British strategy to represent Hindu thoughts and moral values through the English cultural framework. It seems that the intention was to read Hindu texts, which were the source of Hindu way of life, and appreciate what was rational and scientific in them. This interpretation and representation amounted to misrepresentation and appropriation of Hindu traditions. The British, as it appears

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<sup>141</sup> See Macaulay, *Minutes on Education*. Macaulay, in his Minutes, notes that Hindu students were willing to give up their classical and religious education for English instruction because they could earn better living through it. They wanted to turn to empirical knowledge and science which connected them with the rest of emerging nations like Australia and South of Africa. In other words, Hindu youth saw more value in learning English for it promised better return and opportunities. In addition to that, the British government had decided to stop sponsoring classical Hindu education. If students wanted to study Sanskrit and Vedic philosophy, Hindu laws, then they were required to pay for their tuition. The scholarship and fellowship which the British advertised were meant to sponsor English/western education. This step also had a huge influence in turning young scholars to English instruction.

<sup>142</sup> See James Robert, Ballantyne, *Christianity Contrasted with Hindu Philosophy: An Essay in Five Books Sanskrit and English* (New York: Cambridge University Press) xix; Bayly, *Empire and Information: intelligence gathering and social communication in India, 1780- 1870*, 224-6.

<sup>143</sup> See Ballantyne, 33. In Hindu epics, *Nyaya* and *Dharma* are represented as two sides of the same coin. For instance, the virtues of *Nyaya* and *Dharma* were two Hindu concepts which informed the traditional legal system in Hindu society. The two precepts functioned as two sides of a coin in Hindu social and cultural practices. One could give *Nyaya* only when one followed one’s *Dharma*. *Dharma* translates to duty and *Nyaya* translates to justice/propriety or fitness/ Hindu Logic.

<sup>144</sup> His language and terminologies that he uses in his book to talk about *Nyaya* is molded in western concepts. When one reads the book, it seems that one is reading western concepts which interpret the world through scientific and empirical data.

<sup>145</sup> See Bayly, *Empire and Information: intelligence gathering and social communication in India, 1780- 1870*, 224.

from Ballantyne's case, adopted the strategy of finding similar legal and moral grounds between English and Hindu traditions and later show the lower position of Hindu practices.

The English education proved successful in building up the networks of communication and debates in the public sphere. First, it was the British themselves who debated their viewpoints through the press and pamphlets and Hindu traditions became mired into domestic political division.<sup>146</sup> Later, the educated Hindus and traders also joined the ranks and began to contribute to political and cultural issues. It is important to note that the printing press greatly contributed to the formation of the public sphere in India.<sup>147</sup> Hindus and the British debated and discussed their thoughts through pamphlets, magazines and newspapers.<sup>148</sup> The missionaries also joined educational campaigns and published pamphlets for popular consumption and these pamphlets were full of moral sentiments to improve the moral attitude of Hindus.<sup>149</sup>

Even before the nineteenth century, it was the British print media, such as the *Bengal Gazette* of the 1780s, which was disseminating official information on political issues and the Company's legal and economic matters. The British published for various reasons. For instance, the Missionaries wanted to create an English/Christian moral society, while James Augustus Hicky, the owner of the *Bengal Gazette*, criticized the vices of the East India Company. The print media was a source of information on the British Empire and the East

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<sup>146</sup> See Bayly, *Empire and Information: intelligence gathering and social communication in India, 1780- 1870*, 238-43. When Bayly mentions this in his works, his focus is not limited to Hindu traditions but he writes that it were the Indian issues which had become entangled in the political controversy among the British.

<sup>147</sup> In Britain, however, the public sphere was not limited to or created through the printing press. It was coffee house and salon culture alongside the printing press which built a very strong public sphere in which people discussed cultural and political issues and influenced the opinion of the masses.

<sup>148</sup> In the past, such discussions were held in what was known as *Sabha or Samaj* wherein men and leaders of communities gathered to discuss social political issues and in some cases even preside over local disputes.

<sup>149</sup> Surely, the target was not limited to Hindus, but it is because my analysis focuses exclusively on Hindu culture, I therefore use the term Hindus instead of Indians. Besides the very category 'Indian' has a long history which I have discussed in the chapter titled Conceptual Framework.

India Company which both the British and the educated locals subscribed to. It was also a medium of representing Hindu traditions which the British wrote about from their own perspective. This representation of Hindu culture by the British was a crucial one because it, as I understand it, evoked mixed response. While there were people like Ragaviah, an educated Tamil, who vehemently opposed the polemics against Hinduism and Hindu traditions, there were others like Ram Mohun Roy who pushed for the reforms of Hindu practices.<sup>150</sup> Thus, the print media was both a platform to debate Hindu traditions and propose a reform for them. Such discussions and debates increasingly made Hindu culture vulnerable and subject to criticism which paved a way for easy consolidation of the law.

An important body that contributed to enhancing the environment of public debates and grafting English thoughts and values among Hindus was Society for the Diffusion of Useful Knowledge (SDUK) founded in 1839 in Calcutta. Its explicit purpose was to introduce an English model of moral attitude through western texts in order to dispel social backwardness of Hindus. It even directed its efforts to cultivate the belief that the British were a superior race while also introducing religious tenets to keep Hindus from their 'erotic fantasies'.<sup>151</sup> In fact, it even used to conduct classes in the late hours with the sole agenda of distracting working-class people from immoral behavior and sexual fantasies.<sup>152</sup>

That Hindus moral attitude to sex was contentious for the British becomes clear from their efforts to organize bodies like SDUK and direct its efforts to restrain Hindus from indulging in sexual freedom which Hindu culture permitted. The larger aim was to create

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<sup>150</sup> See Bayly, *Empire and Information: intelligence gathering and social communication in India, 1780- 1870*, 213. Roy was one of the leading reformer who rallied against a lot of Hindu cultural practices, chief among them being the suttee.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid, 215.

‘useful knowledge’ which would target old traditional knowledge and replace it with English ideas. By ‘useful knowledge’, I think, was implied western ideas, practical and rational ideas, debate and discussion on Hindu thoughts etc. I think the intention was to introduce English thoughts and culture and in a manner that would prove that the British had a superior civilization and moral culture. Further, many educated Hindus found institutions like SDUK purposeful because it printed books, circulated information which English education was feeding them in schools and universities. They consumed all this information and spread it among the local masses.

Further, Lord Bentinck- the Governor-General of India from 128-1835- also contributed to the rising phenomenon of printing and public arena of life. He favored Indian newspapers more than his predecessors<sup>153</sup>. His purpose of supporting Indian press was to promote ‘useful knowledge’ which would have made educated Indians more receptive of English sciences, rationality and culture. Similarly, a lot of books were printed for library and school and circulated among the masses. The cumulative effect of this was that the educated Hindus engaged in political debates and matters related to moral attitude and values. They even began to write and give their opinion in newspapers, journal articles and magazines which were largely read among the educated elite of Hindu society. These people now gave preference to the English empirical knowledge over Hindu Shastra. They regarded western science and rationality as much higher and useful than old Hindu texts and body of knowledge. It was only inevitable that they even began to favor the British sexual moral attitude. Thus, the British had managed to give Hindu culture and society a class of people who to begin with were insiders

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<sup>153</sup> See Bayly, *Empire and Information: intelligence gathering and social communication in India, 1780- 1870*, 218.

and gave their critique of Hindu culture from an insider's perspective. Hence, the changes that British now suggested to Hindu traditions faced much less resistance as compared to the past.

However, this phenomenon coincided with the moral corruption within the ranks of the British soldiers and officials who indulged in sexual freedom and it did not go unnoticed to the British government. Some English Parliamentarians made this argument that it was the very conditions of the Indian society that corrupted their British soldiers and officials. Others argued that the British men who showed such immoral behavior took advantage of their situation. They took advantage of being away from home and observed sexual indiscipline because they thought they were not in their own society and hence could get away with anything. Thus, this also was preparing grounds or rather putting the British under pressure to introduce a law to regulate sexual morality in Indian society.<sup>154</sup>

## Conclusion

For the British, the emergence of science, rationality, university education, and the public sphere which developed in the form of coffee houses and salon culture and the printing press were useful to regulate public opinion and moral attitude in England. In fact, I would infer that it was for their experience in England that the British could come up with the strategy to use English education, printing press and public sphere to cultivate English values and change the attitude to sex in Hindu society. From the effect this model had on Hindu culture, that is it affected people's opinion of their own traditions and they began to argue in favor of English culture and values, it is evident that the British had successfully cultivated means to regulate and dominate Hindu society. Since, the people had already embraced English values and

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<sup>154</sup> See Vishwanathan 1-26.

molded their thoughts after the English culture, the British, it seems, were confident that they would not face any resistance if they were to institutionalize a legal system in India. Yet, they needed a pretext to introduce a formalized legal system such as the Indian Penal Code- one on which Macaulay had been working since 1837.<sup>155</sup>

While the British introduced English culture to Hindu society, they were also alongside making a lot of economic changes in the society at large. Although this does not directly fit into the subject of discussion in my chapter, it does have a bearing on the institutionalization of the Indian Penal Code. Moreover, the economic reforms, or rather the economic strategies to drain India of its wealth that the British had introduced coincided with the social and cultural reforms. Hence, it is crucial to note that the cultural/moral shift that the Hindu society experienced was largely felt by a particular section of the society. This section or class of society was mainly the rising middle class, the old nobility and the upper-class Hindus. Since they were influential in constituting Hindu morals and traditions, a shift in their perception of culture also meant a shift in Hindu culture at large. The lower class/caste and poor farmers continued to struggle under the tax and revenue system of the British. In fact, Bayly notes that Indian economy was in decline from 1830s through 1840s with little or no improvement in profits for the British or the locals. The East India Company was suffering huge revenue losses and the poor farmers and the laborer class bore the brunt of it.<sup>156</sup> The economic exploitation of the society was also taken up by some educated elites who rallied against the government in newspapers and magazines. Ultimately, the socio-economic conditions broke into a nation-wide rebellion against the British Empire in 1857. The British were successful in subduing the

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<sup>155</sup> Macaulay had written the first draft of the Indian Penal Code in 1837 but it was not introduced until 1860 in the wake of the or in the aftermath of 1857 war between Indians and the British.

<sup>156</sup> See Bayly, *The Indian Society and the Making of the British Empire*, passim.



rebellion and it gave them a pretext for institutionalizing the Indian Penal Code. The Indian Penal Code contained elaborate codes, section 377 being one among many, for organizing and structuring the English culture which the English education, public sphere and the printing press had already cultivated in the society. Thus, while the law consolidated the social and cultural shifts, the very introduction of these values and moral attitude was done through the medium of English education, the public sphere and the printing press.

## Conclusion

In this thesis, I have attempted to edify the argument of some scholars who observe that Section 377 of the Indian Penal Code created new sexual identities and brought about a paradigm shift in Hindus moral attitude to same-sex love.<sup>157</sup> I have argued that even before the law was introduced there were institutions such as English education, the printing press and the public sphere that had set in motion a shift in Hindus' attitude to same-sex love and other moral practices. These institutions were meant to reform Hindu culture but they also cultivated a huge debate and discussion on ancient Hindu scriptures during the nineteenth century. The new educated class among Hindus who were exposed to English education participated in public discussion on Hindu morals and cultural values and pitted Hindu traditions against English culture. They thought that in comparison with the rational, scientific and empirical knowledge of English culture, Hindu tradition held very little value. In fact, they supported the claims of the British that English culture was superior to Hindu culture and looked down upon Hindus practices.

Certainly, the British introduced the institutions I have mentioned above for strategically governing Hindu society. Gradually, they took control of local traditions by first upholding and finding similarities between English culture and them, and later they completely overhauled them. Further, they identified groups within Hindu communities such as Brahmins who would have opposed any reform to Hindu traditions. In order to appease the Brahmins, the British opened schools for Sanskrit and Hindu ancient knowledge but gradually began to

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<sup>157</sup> Scholars such as Arvind Narrain, Jyoti Puri and Shashi Tharoor. For more details see chapter 6 of this thesis.

introduce English philosophy, science and literature in the curriculum. The British also used their economic and the political influence and were successful in luring students to English education I have mentioned in the earlier chapters that Macaulay was the main colonial administrator behind institutionalizing English values in Hindu society. He on purpose stopped funding Hindu cultural education and diverted scholarship funds for English education. In addition to that, while the students were being trained in rational argumentation and English philosophical texts, the emerging printing press such as Indian newspapers and magazines provided with a platform to publish and circulate English ideas to the public at large. Hindu merchant and traders who were directly benefitting from the colonial administration and those who were employed in the colonial service much discussed these western ideas. For the British, these changes were fruitful because they reformed what they regarded as immoral attitude and despotic rules and regulations in Hindu society. They denounced Hindu traditions, laws and social structure as arbitrary and used the educated elites to bring about a paradigm shift in Hindu culture.

Indeed, the institutions prepared a way for the colonial law which was introduced in 1860 and came into force in 1862. In order to demonstrate this, I have also given a brief overview of the development of English legal system in India. I have discussed the social and political landscape of the nineteenth century to give the reader a background to the reforms that were taking place in India. The decline of the Mughal Empire and the incline of the colonial rule, I have discussed to demonstrate that the power shift which was taking place during the first half of the nineteenth century much contributed to the change in Hindu society.

Furthermore, I have also devoted a section on the representation of same-sex love in Hindu culture and the regulation of moral attitude to same-sex intimacy in English society.

Both the cultures, as it would appear to the reader, have huge differences in their attitude to same-sex love and sexuality in general. While in Hindu culture there were no explicit restriction or a severe punishment for same-sex love, in English society it was punishable by death and the moral attitude to sex was highly stringent. This comparison, as I understand, explains or rather makes even more perceptible the paradigm shift that the cultivation of English moral values brought about in Hindu society. The restriction and regulation of same-sex love created an attitude which made it easy for the British to institutionalize Section 377 of the Indian Penal Code in 1860. By then, Hindu society, especially the Hindu elites who were influential in shaping up the new Hindu culture, was already accustomed to English moral code to same-sex love and sexuality. Thus, the colonial law did not alone bring about a change in Hindu attitude to same-sex love but was supported by the institutions of the printing press, the public sphere and English education that preceded it.

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