

A Queer Fight for Decolonization: The Detriments of British Colonialism on India's Hijra Community

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Abstract

The *Hijras*, a once celebrated LGBTQIA+ community in precolonial northern India, now struggle to fight for equal economic opportunities, social esteem, and political rights, most significantly, the right to freely express their homosexuality. This paper investigates the detrimental effects of English colonialism in molding India's postcolonial culture of homophobia and oppressing the *Hijra* community. Specifically, this research initially analyzes ancient Hindu scriptures to demonstrate the *Hijras'* precolonial prominent social roles and show indigenous Indian society's tolerance of homosexuality. After examining the origins of modern homophobia in England, this essay unpacks how British colonial institutions and stereotypes enforced an agenda of *Hijra* extermination and replaced India's fluid understanding of sexuality with strict heteronormativity. Ultimately, since these homophobic colonial laws and thinking continue to impact India, this paper uniquely argues that the fight for queer and *Hijra* equality in postcolonial India is a fight for decolonization.

I. Introduction

"My gender, my right! My sexuality, my right! We want justice: you can't stop our love," chanted hundreds of Indian LGBTQIA+ activists in January 2014 in the streets of New Delhi.¹ Even though they dressed in all black to express their mourning and solidarity for the many persecuted LGBTQIA+ individuals in India, the activists proudly waved their rainbow flags and wore colorful face paint.² They did not wish to hide their identities nor let the Indian government suppress them.

Just one month before these significant protests, the Supreme Court of India overturned its landmark 2009 ruling in case *Naz Foundation v. Govt. of N.C.T. of Delhi*, which repealed Section 377 (S377) of the Indian Penal Code (IPC). Removing this colonial law that criminalized homosexuality with imprisonment and sometimes life sentences represented a major step toward LGBTQIA+ equality in postcolonial India. However, just before the queer community could celebrate this significant win, conservative religious and political parties contested the 2009 ruling. In *Suresh Kumar Koushal v. Naz Foundation*, the Supreme Court sided with the conservatives in December of 2013, unanimously upholding the constitutionality of S377.³ Indian right-wing parties, such as Rashtriya Swayamsevak Sangh, viewed this Supreme Court ruling as a rehabilitation of traditional Indian cultural values over "woke" left rhetoric imported from the West. However, what the conservative parties fail to understand is that queerness is not a modern, Western identity, nor is India's acceptance of gender and sexual diversity a

¹ While beginning as a derogatory term, the LGBTQIA+ community has reclaimed the significance of the word "queer" in recent history, morphing it into a term of empowerment and an umbrella term for non-cisgender and non-heterosexual people. For this reason, the words "LGBTQIA+" and "queer" will be used interchangeably.

² Ira Trivedi, "The Indian in the Closet: New Delhi's Wrong Turn on Gay Rights," *Foreign Affairs* 93, no. 2 (2014): 21–22.

³ "Navtej Singh Johar v. Union of India," Global Freedom of Expression, November 27, 2018, <https://globalfreedomofexpression.columbia.edu/cases/navtej-singh-johar-v-union-india/>, 1–2.

contemporary idea. The historical story of the *Hijras*, an indigenous LGBTQIA+ community in India, crucially refutes these conservative notions.⁴

While their identities are complex, *Hijras* are essentially an indigenous “third gender” native to South Asia who date back to early precolonial times, according to religious texts. They are cross-dressing people assigned male at birth who willingly practice castration and homosexuality. Their sexual and gender expression is rooted in their worship of the Hindu goddess, *Bahuchara Mata*, who underwent gender transformations and had a fluid sense of sexuality, as Hindu folktales described.⁵ Moreover, *Hijras* live in tight-knit kinship systems based on a teacher-disciple relationship, known as the *guru-chela* system, where older *Hijras* pass down intergenerational knowledge through oral stories to younger followers. Their name comes from the Islamic term for migration, *hijrah*, which directly relates to their nomadic lifestyle.⁶ Still, because they have primarily resided in the northern parts of the subcontinent, this research centers on northern India, which, in postcolonial terms, also includes parts of Bangladesh.

The *Hijras* were once a celebrated LGBTQIA+ community in precolonial northern India, but now they struggle for the right to freely express homosexuality under S377. This essay reveals the reason for this change, attributing it to the detriments of English colonialism. Because British colonists viewed homosexual populations as a threat to colonial authority and to their heteronormative social norms, they created homophobic institutions and ideas to gradually eliminate the *Hijra* community, molding a postcolonial Indian culture of homophobia.

To reveal how colonialism has harmed the LGBTQIA+ community, this paper uniquely highlights the precolonial, colonial, and postcolonial story of the *Hijras* in India, intertwining it with the narrative of the rise of modern homophobia in Europe. Specifically, this research initially analyzes ancient Hindu scriptures from the Vedic period to demonstrate *Hijras'* prominent precolonial roles and indigenous Indian society's tolerance of homosexuality. After, by examining the origins of modern homophobia in England, this paper unveils the specific reasons why British Raj colonists created laws that criminalized the *Hijra* community's homosexuality. Through an analysis of colonial legislation, letters, and court cases, this essay unpacks how English institutions and stereotypes enforced an agenda of *Hijra* extermination and replaced India's fluid understanding of sexuality with strict heteronormativity. Often grouping gender under sexuality, rudimentary British understanding of queerness only allowed them to directly criminalize *Hijras'* homosexuality, assuming that the gender non-conforming part of the *Hijra* identity came with their sexual orientation. For this reason, this paper mainly focuses on the rise of homophobia in Britain, rather than transphobia, and analyzes one part of the *Hijra* identity—homosexuality. Ultimately, since homophobic colonial laws and thinking, which are remnants of British colonialism, continue to impact India, this paper argues that the fight for LGBTQIA+ and *Hijra* equality in postcolonial India is a fight for decolonization. While the

⁴ Because *Hijras* often associate themselves with the modern LGBTQIA+ community today, this paper will refer to them as a queer community. Still, it is important to recognize that “queer” and “LGBTQIA+” are postcolonial, Western terms. In precolonial times, there existed no such vocabulary, and *Hijra* was its own category.

⁵ Srijia Sanyal and Abhik Maiti, “A Discordant Harmony—A Critical Evaluation of the Queer Theory from an Indian Perspective,” *International Journal of Linguistics, Literature and Culture* 5, no. 1 (2018): 17.

⁶ Serena Nanda, *Neither Man Nor Woman: The Hijras of India* (Belmont, CA: Wadsworth, 1998), 41.

decolonization framework has existed in Asian and African scholarship since the mid-twentieth century, this research presents its first connection to Indian queer activism, filling a gap in scholarship.

II. *Hijras* in Precolonial Northern India

The prevalence of homosexuality in Hindu texts allowed for a culture of homosexual tolerance in precolonial northern India. For example, the *Kama Sutra*, Indian philosopher Vātsyāyana's third-century BCE text on the art of love, uses the term *tritiya-prakriti*, or third sex, to refer to homosexual men, portraying them as “greatly attached to each other and with complete faith in one another.”⁷ Most people, particularly Westerners, are often blinded by the *Kama Sutra*'s erotic imagery and the free, provocative discussion of sex, overlooking Vātsyāyana's extensive psychological analysis of marriage, power, and sexuality that precolonial Indians held in high regard. The fact that the *Kama Sutra* described homosexual activity, including lesbianism, alongside heterosexual eroticism exemplifies how the existence of non-heteronormative sexualities was common. Perhaps more significantly, the *Kama Sutra*'s depiction of homosexual relationships as rooted in mutual trust suggests an Indian culture of respect or appreciation for homosexual people's forms of intimacy. Furthermore, the Vedas, the oldest Hindu scriptures and the religion's building blocks, also show the same approval and respect for homosexual people as seen in the *Kama Sutra*. Specifically, the *Ayur Shastra*, or Vedic medical texts, delineate the conditions in which homosexual individuals were born based on astrological patterns, proving that Indian science acknowledged their humanity. Many codes in ancient law books, such as the *Artha-sastra*, even protected homosexual people from parental mistreatment and condemnation.⁸ The fact that precolonial India took institutional and legal measures to ensure the protection of homosexual children demonstrates how the overarching governmental and religious systems did not condone intolerance.

Like British colonists used Christianity to establish and enforce their social norms, Hinduism was a cultural and moral guide for many Indians, especially before the rise of Islamic influence. Since Hindu scriptures respected homosexuality, believers of the religion were taught to accept homosexual people. However, Muslim influence on the Indian subcontinent, which started in the early tenth century CE with the Islamic invasions, led to a decline in this acceptance.⁹ Nevertheless, in the thirteenth century—even as extreme interpretations of Islamic law started to punish homosexuality in northern India with flagellation or death—a commentary of the *Kama Sutra* by Yaśodhara called *Jayamangala* portrayed a similar respect for homosexual people centuries after the creation of the original text.¹⁰ He agreed that their relationships were “bound by a deep and trusting friendship,” showing that positive attitudes toward homosexual people persisted despite growing Islamic influence.¹¹

Indian precolonial society's tolerance toward homosexuality allowed the *Hijras*, a homosexual community, to obtain prominent social roles and sustainable economic opportunities. One of the *Hijras*' most prestigious roles in Indian society was the act of blessing

⁷ Vātsyāyana, *The Complete Kama Sutra*, trans. Alain Danielou (Rochester, Vermont: Park Street Press, 1994), 2.9.36.

⁸ Amara Das Wilhelm, *Tritiya-Prakriti: People of the Third Sex: Understanding Homosexuality, Transgender Identity, and Intersex Conditions through Hinduism* (Philadelphia, PA: Xlibris, 2017), 15.

⁹ Wilhelm, *Tritiya-Prakriti*, 115–117.

¹⁰ Alternate spellings of the author's name include “Yashodhar” and “Yashodhara.”

¹¹ Sanyal and Maiti, “A Discordant Harmony,” 22.

and cursing families during births and weddings. These blessing ceremonies often included traditional *Hijra* dances and songs that ensured a child's longevity or a married couple's fertility. Their divine powers recognized by society show how the *Hijra* community was not just tolerated but revered, holding essential positions in precolonial India. Additionally, families would pay the *Hijras* for their services with gifts of cash and other goods, known as *badhai*.¹² While some turned to prostitution and begging to garner more capital, *badhai* allowed *Hijras* to receive a reliable income from an esteemed occupation. Augmenting their religious authority and financial outlets, *Hijras* historically served as respected court servants, tax collectors, and general intermediaries between men and women.¹³

On top of having social respect and sustainable jobs, *Hijras* also obtained political rights. Specifically, Maratha rulers allowed *Hijras* suffering from poverty to collect alms in established regions and small grants of land. Clearly, respect for the *Hijras*, stemming from people's acceptance of their homosexuality, allowed the community to be considered in welfare initiatives.¹⁴ Ultimately, some interpersonal homophobia toward the *Hijra* community existed in precolonial India—exemplified by the parental mistreatment of homosexual children that ancient law books tried to prevent—and the Islamic regime exacerbated this intolerance. However, the institutional oppression of *Hijras* and their homosexuality backed by legal and judicial systems only arrived with English colonialism.

III. Origins of Modern Homophobia in England

Modern homophobia appeared in England during the high Middle Ages (1000 to 1250 CE) in a Christian context. In order to understand the historical development of homophobia in England, it is crucial to investigate European and Christian history from the beginning of the Middle Ages. Specifically, the fall of the Roman Empire in the fifth century CE was followed by a rise in open sexuality. The emerging decentralized feudal states provided better defense from external threats and greater opportunities for economic growth for their populations than the large bureaucracy of the faltering Roman Empire. The relative stability that these small kingdoms fostered created an environment for sexual creativity and fluidity.¹⁵ By the high Middle Ages, homosexuality was prevalent in Europe. In early twelfth-century England, priest and theologian Saint Anselm explained in an attempt to reduce the punishment for homosexuality that “this sin has been so public that hardly anyone has blushed for it, and many, therefore, have plunged into [homosexuality] without realizing its gravity.”¹⁶ Similar assessments to Saint Anselm in places such as France and Rome prove that open sexuality was common among many Christians in Europe, not excluding priests.

However, Saint Anselm's negative categorization of homosexuality as a sin also reflects the emerging homophobia in these Christian regions. In fact, after the Roman Empire fell, which left no major empires in Europe, the church emerged as the defining institution amidst the power vacuum. However, the Holy Roman Empire, which rose to power in the tenth century,

¹² Nanda, *Neither Man Nor Woman: The Hijras of India*, 3–4.

¹³ Wilhelm, *Tritiya-Prakriti*, 14.

¹⁴ Jessica Hinchy, *Governing Gender and Sexuality in Colonial India: The Hijra, c. 1850-1900* (Cambridge: Cambridge University Press, 2020), 32.

¹⁵ David F. Greenberg and Marcia H. Bystryn, “Christian Intolerance of Homosexuality,” *American Journal of Sociology* 88, no. 3 (1982): 531.

¹⁶ Havelock Ellis, *Studies in the Psychology of Sex* (New York: Random House, 1936), 40.

challenged the church's authority, sparking a church-state struggle.¹⁷ Because of this competition for control over Christian populations, many popes of the high Middle Ages, including Leo IX, Nicholas II, and Gregory VII, cracked down on priests' romantic and sexual activity, banning it entirely. Not only did the lack of spouses and children maximize the clergy's loyalty to the church, but it also made them more closely resemble Christ, thus ensuring their moral superiority compared to secular state leaders. This decree requiring celibacy among the clergy, while increasing the church's legitimacy, sexually frustrated many priests. With minimal heterosexual outlets to experience romantic connection, priests often turned to homosexuality, supported by the numerous homophile poems and letters of the twelfth century.¹⁸ To highlight one example, religious leader Baudri of Bourgueil expressed his passionate love to his male partner through his letter "To a Certain Walter" circa 1110: "I will divide my hert and breast with you / I will share with you anyting of mine that can be divided / If you command it, I will share my very soul."¹⁹

Since any form of sexuality defiled the church's purity, Christian reformers condemned homosexual behavior among priests, which culminated in the emergence of universal homophobia in England. In the mid-eleventh century, passionate Christian reformer Saint Peter Damian expressed his disgust with homosexual activity among priests in *The Book of Gomorrah*, requesting Pope Leo IX to impose strict punishments. Damian described the rise of homosexuality as a "cancer of sodomitic impurity...creeping through the clerical order."²⁰ His use of the word "impurity" reflects how Damian's and countless others' indignation toward homosexuality at the time stemmed from their desire to maintain the purity of the clergy during the ongoing church-state struggle. However, reformers' hatred toward homosexual activity among priests slowly morphed into intolerance toward all homosexuality conducted by anyone—not only human epitomes of religious purity like clergymen. To eliminate homosexual behavior, Christian religious figures started to widely enforce homophobic biblical passages, such as Leviticus 18:22 and 20:13 from the Old Testament.²¹ By rooting their homophobia in scriptures sacred to all Christians, church leaders established legitimacy to their prejudice, which allowed for the widespread internalization of homophobia in Christian kingdoms such as England.

Influenced by the church's intolerance, the English parliament and monarchies passed anti-sodomy laws that criminalized homosexuality, thereby institutionalizing homophobia in the kingdom. Since minimal division existed between church and state during the late Middle Ages, a Christian region's justice system often mirrored that of the church.²² Such was true in England. While churches attached strict punishments for homosexuals like being burned alive—arguing

¹⁷ Greenberg and Bystry, "Christian Intolerance of Homosexuality," 535.

¹⁸ Greenberg and Bystry, "Christian Intolerance of Homosexuality," 535–537

¹⁹ Thomas Stehling, *Medieval Latin Poems of Male Love and Friendship* (Garland Publishing, 1984), 47.

²⁰ Peter Damian, *The Book of Gomorrah: And St. Peter Damian's Struggle Against Ecclesiastical Corruption*, trans. Matthew Cullinan Hoffman (New Braunfels, Texas: Ite ad Thomam Books and Media, 2015), 96. While the term "sodomy" by definition refers to anal or oral sex, people in the Middle Ages often used it synonymously with the more modern term "homosexuality."

²¹ Greenberg and Bystry, "Christian Intolerance of Homosexuality," 521.

²² Michael Kirby, "The Sodomy Offence: England's Least Lovely Criminal Law Export?" in *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth*, eds. Corinne Lennox and Matthew Waites (University of London Press, 2013), 62.

that sodomy was against God's will—two 1290 treatises, *The Mirror of Justices* and *Fleta*, similarly declared that sodomy should be punished by death in England. Even though English leaders did not widely enforce anti-sodomy laws during the high Middle Ages, archival records of prosecutions and executions still exist.²³ More significantly, the use of treatises to enforce their intolerance foreshadowed homophobia's manifestation into actual legislation.

When King Henry VIII severed ties with the Roman Catholic Church in the sixteenth century and rebranded the English justice system, he maintained the criminalization of homosexuality, reinforcing it through the first official anti-sodomy law in England, the Buggery Act of 1533. It reads as follows:

For as moche as there is not yet sufficient & condigne punishment appointed & limited by the due course of the lawes of this realme for the detestable & abominable vice of buggeri committed with mankind or beest. It may therefore please the Kings Highnes...that the offenders...shall suffer suche peynes of dethe, and losses, and penalties of their goodes, cattals, dettes, londes, tenements, and heredytamentes...²⁴

Since buggery, another term for sodomy, technically refers to non-procreative forms of intercourse, the vague language of the act did not explicitly make homosexuality illegal and could also be interpreted as targeting sodomy between a man and a woman. However, the roughly 8,900 homosexual men prosecuted, the 400 sentenced to life imprisonment, and the 50 executed from 1806 to 1861 alone proves that the Buggery Act, in practice, disproportionately criminalized homosexuality.²⁵ In fact, the British Library's "LGBTQ Histories" archive unearthed documents reacting to specific cases where homosexual men were killed under the Buggery Act. In "A Doleful Dirge on the Wicked Men," which was a speech shared during their funeral rite, homosexual couple John Doughty and Benjamin Candler were hung in 1823 for committing a crime "too dreadful to reflect upon."²⁶ While the Buggery Act was revoked in 1828, Parliament replaced the law with section 11 of the Criminal Law Amendment of 1885, which prohibited "any acts of gross indecency with male persons" in public and private spaces.²⁷ Unlike the religious syntax of the Buggery Act, the 1885 amendment's secular language, which was a result of the Enlightenment era, further legitimized homophobia by connecting it with natural law and modernity. The Buggery Act and its direct successors would eventually serve as models for colonial homophobic laws, such as S377 in India.²⁸

Years of criminalizing homosexuality through law fostered the internalization of homophobia, particularly among the English elite. In 1765, prominent jurist and politician William Blackstone wrote in his book, *Commentaries on the Laws of England*, that he agreed with the

²³ Greenberg and Bystry, "Christian Intolerance of Homosexuality," 534.

²⁴ "An Acte for the Punyshement of the Vice of Buggerye," in *Actis Made in the Session of this Present Parliament, Holden Upon Prorogation at Westmynster, the XV. Daye of Januarie* (London, 1535), 7-8. <https://www.bl.uk/collection-items/the-buggery-act-1533>.

²⁵ Matt Cook, *A Gay History of Britain: Love and Sex Between Men Since the Middle Ages* (Oxford: Greenwood World, 2007), 109.

²⁶ "A Doleful Dirge on the Wicked Men" (Newark, Nottinghamshire: 1823), 1. <https://www.bl.uk/lgbtq-histories/articles/the-men-killed-under-the-buggery-act>.

²⁷ Robert W. Burnie, *The Criminal Law Amendment Act, 1885: With Introduction, Commentary and Forms of Indictments*. (London: Waterlow & Sons, 1885), 67.

<https://www.bl.uk/collection-items/the-criminal-law-amendment-act-1885>.

²⁸ Kirby, "The Sodomy Offence," 66.

Buggery Act, claiming homosexuality was an “offence of so dark a nature” that “the very mention of [it] is a disgrace to human nature.”²⁹ Blackstone’s use of similar language to the Buggery Act is evidence that the English anti-sodomy laws influenced his homophobia. Moreover, the constant use of homophobic words, such as “pansy,” “catamite,” and “ganymede,” in English nineteenth-century literature and newspapers proves that many prominent men in society, including writers and journalists, shared Blackstone’s internalized homophobia.³⁰ In fact, many of these upper-class men saw homosexuality as a symbol of unruliness and were proponents of homophobic laws since they controlled this disobedience. Others, especially the rising bourgeoisie class of the Industrial Revolution, viewed homosexuality as overindulgent, adopting homophobia to differentiate themselves from the indolent aristocracy, who often engaged in homosexual activity as a pastime.³¹

Ultimately, homophobia originally arose in a Christian context in the high Middle Ages. However, supported by Blackstone’s Enlightenment diction and the emerging slurs in literature, anti-sodomy laws created a new secular culture and language for elites to express their homophobia in eighteenth and nineteenth-century English society. Given this context, English colonial officials, who were almost always upper-class men, entered India with deeply intolerant ideologies.

IV. Anti-*Hijra* Agenda in Colonial India

Initial interactions with *Hijras* during the British East India Company’s rule highlight English colonists’ anti-*Hijra* sentiment, which was fueled by homophobia. Around 1600, Queen Elizabeth I gave a group of merchants a charter, granting the newly formed British East India Company monopolies over English trade and the authority to govern colonized people to accumulate wealth.³² After the East India Company established its rule over India by the mid-eighteenth century, the first accounts of British and *Hijra* interaction surfaced. Around 1780, East India Company merchant and artist James Forbes described his first encounter with *Hijras*:

There were a considerable number of human beings called hermaphrodites in the camp...I was called into a private tent, to a meeting between the surgeon-major and several medical gentlemen of the army, to examine some of these hermaphrodites: my visit was short, and objects disgusting.³³

Modern Asian studies scholar Laurence Preston concluded in his research that the “hermaphrodites” Forbes encountered were indeed actually *Hijras*.³⁴ Forbes’s use of inaccurate and derogatory language reflects the homophobic context of eighteenth-century England. By

²⁹ William Blackstone, *Commentaries on the Laws of England*, ed. David Lemmings and Wilfrid Prest, vol. 4 (Oxford: Oxford University Press, 2016), 215.

³⁰ Tony McEnery and Helen Baker, “The Public Representation of Homosexual Men in Seventeenth-Century England—a Corpus Based View,” *Journal of Historical Sociolinguistics* 3, no. 2 (2017): 202.

³¹ Greenberg and Bystry, “Christian Intolerance of Homosexuality,” 540.

³² Robert W. Strayer and Eric Nelson, *Ways of the World: A Brief Global History with Sources* (Boston: Bedford/St. Martin’s, A Macmillan Education Imprint, 2016), 676–677.

³³ James Forbes, *Oriental Memoirs: A Narrative of Seventeen Years Residence in India*, vol. 1 (London: Richard Bentley, 1834), 359. “Hermaphrodite,” a derogatory term, refers to people with both biological male and female sex organs, more commonly known as intersex.

³⁴ Laurence W. Preston, “A Right to Exist: Eunuchs and the State in Nineteenth-Century India,” *Modern Asian Studies* 21, no. 2 (1987): 373.

viewing *Hijras*' sexual expression as "disgusting" and being unable to remain in a room with them, Forbes displayed how this internalized homophobia translated into anti-*Hijra* sentiment. Additionally, the fact that Forbes's interaction involved the "medical gentlemen of the army" alludes to the many abusive physical tests and experiments that English physicians conducted to scientifically categorize the *Hijra* community's gender and sexuality under East India Company rule.³⁵ Through these examinations, *Hijras* were treated as scientific anomalies rather than human beings. Like Forbes, other British officers shared disgust for the *Hijra* community. However, the East India Company, a mercantile institution, lacked the necessary political and bureaucratic tools of a traditional colonial government, meaning that this anti-*Hijra* thinking was not yet codified into law.

Steps toward institutional anti-*Hijra* legislation arose in northern India after the Indian Rebellion of 1857 forced the Crown to officially seize control of the colony. While many factors led to the widespread revolt in north and central India, grievances from exploited Indians—especially among Hindu and Muslim soldiers that fought for Britain and had to bite the ends off of lubricated cartridges made of pig and cow lard—led to the Indian Mutiny in 1857.³⁶ The weakness of the Company's government—due to rapid territorial expansion and corruption—allowed Indians to carry out a significant attack.³⁷ Although ultimately unsuccessful, the rebellion took extreme violence to subdue. The fact that the British Crown assumed direct control over India, thereby dismantling the East India Company, shows how alarming this revolt was to England. Officials of the North-Western Provinces (NWP), which endured the brunt of the rebellion, worked toward strengthening their colonial administration, legal codes, and enforcement systems.³⁸ To ensure that no such challenge would happen again, colonial officials were increasingly concerned with dominating the deviant communities of indigenous Indian society, including the *Hijras*.³⁹ Before the rebellion, East India Company Englishmen such as Forbes disliked *Hijras* solely because of their internalized homophobia. But, after the Indian Mutiny, the *Hijra* community's unknowable, "deviant" nature—which opposed British Raj colonists' emerging attempts to categorize and control Indian society—provided officials with a more robust justification for their anti-*Hijra* sentiment.

The court cases that criminalized *Hijras* in the 1860s highlight the colonial anxiety in response to the 1857 rebellion and mark the beginning of a British anti-*Hijra* agenda that intended to assuage this panic. In March of 1860, the NWP court charged five *Hijras* with kidnapping and castrating a nine-year-old Indian boy named Gupoo in the case *Government v. Munsa and 4 others*. According to the verdict, which imprisoned the five *Hijras* for ten to fourteen years, a man called Nugoo kidnapped the boy, selling him to "eunuch" Nurm Buksh.⁴⁰ With two other *Hijras* as witnesses, an elder *Hijra*, Munsa, carried out Gupoo's castration.⁴¹ British judges described the child as an "unfortunate victim [who] was subjected to...atrocious

³⁵ Hinchy, *Governing Gender and Sexuality in Colonial India*, 30.

³⁶ The Indian Mutiny of 1857 is another, synonymous term for the Indian Rebellion of 1857.

³⁷ Hinchy, *Governing Gender and Sexuality in Colonial India*, 34.

³⁸ Shane Gannon, "Translating the Hijra: The Symbolic Reconstruction of the British Empire in India" (dissertation, University of Alberta, 2009), 10.

³⁹ Hinchy, *Governing Gender and Sexuality in Colonial India*, 34.

⁴⁰ "Eunuch" is a derogatory English term that refers to a castrated man. They have historically worked as guards for women in Asian courts. Even though *Hijras* are a separate community, all British archives use the term "eunuch" when talking about *Hijras*.

⁴¹ Gannon, "Translating the Hijra," 339.

cruelty,” painting all *Hijras* as violent threats to “respectable Hindoo parents.”⁴² The small number of documented cases criminalizing the *Hijra* community before the mid-1800s demonstrates how *Hijras*, while contested English norms on sexuality and gender, did not initially pose a direct challenge to British authority. However, this post-rebellion case reflects how the colonial panic prompted English officers to take judicial action to begin regulating *Hijras*. Moreover, the fact that the case rested on the circumstantial testimony of two children shows how the English judges cared more about subduing this “insubordinate” community than ensuring justice.⁴³ This one instance committed by a small group of *Hijras* spread false stereotypes about the whole community across Indian society, associating the *Hijra* identity with crime, violence, and depravity. *Government v. Munsa and 4 others* also fueled more anti-*Hijra* sentiment among British colonists. For example, the NWP Secretary Couper wrote that this 1860 case showed that “an evil of the most disgusting character prevailed in these Provinces.”⁴⁴ Ultimately, *Government v. Munsa and 4 others* showed prominent colonial officers, such as the NWP Secretary, that all *Hijras* were a source of colonial anxiety and needed to be more carefully studied and governed. The most significant method of addressing the *Hijra* threat was oppressive, anti-*Hijra* legislation.

British colonial government’s first legislative attempt to control the *Hijras* came through restricting homosexual behavior under S377 of the IPC. In 1860, British colonists officially passed a set of criminal laws, known as the IPC, to govern the Indian population, especially in response to the 1857 rebellion. During this project of legal codification, colonists passed S377, punishing those who engaged in “carnal intercourse against the order of nature” with imprisonment.⁴⁵ Despite S377’s vague and convoluted language, the act, in effect, made homosexuality illegal. S377’s similar language to the Buggery Act—criminalizing private, consensual intercourse—indicates how Englishmen brought their internalized homophobia to their colonial projects. Beyond colonists’ individual disapproval of homosexuality, *Hijras*’ entire identity represented a larger disorder for British colonists in colonial society. Imposing British social norms, which allowed colonists to control the actions of their colonial subjects, was a crucial part of establishing their political and economic rule over India. However, since the *Hijras* defied English heteronormative standards, they fundamentally threatened British sovereignty.⁴⁶ Making matters worse, the public visibility of *Hijras*’ homosexuality, seen most often through their public performances, cross-dressing, and prostitution, made the *Hijras* a greater threat of disrupting English norms and control.⁴⁷ By incarcerating *Hijras* based on their homosexuality, colonists’ hoped that S377 would handle these concerns.

Thereafter, courts attempted to use S377 as legal precedent to punish *Hijras*’ non-conforming gender expression on top of their sexual orientation. For example, in 1884, the Allahabad High Court tried *Hijra* Khairati under S377, claiming that they were a “habitual

⁴² *Government v. Munsa and 4 others*, DNA NWP 10 in *Index to the Decision of the Nizamut Adawlut, North-Western Provinces*, vol. 9 (Agra: Secundra Orphan Press, 1860), 140.

⁴³ Hinchy, *Governing Gender and Sexuality in Colonial India*, 35.

⁴⁴ BL/IOR/P/235/33: Couper to NWP Member of the Legislative Council (February 12, 1861).

⁴⁵ *The Indian Penal Code, Act XLV of 1860* (Madras: Srinivasa, Varadachari & Co, 1893).

⁴⁶ Hinchy, *Governing Gender and Sexuality in Colonial India*, 50.

⁴⁷ Hinchy, *Governing Gender and Sexuality in Colonial India*, 50.

sodomite.”⁴⁸ Judge Dennison, who presided over the case, also remarked that “when [the accused] admitted to the wearing of female garments, Khairati conceded the most important fact as to [their] public habits.”⁴⁹ Judge Dennison essentially claimed that cross-dressing was evidence of Khairati’s “public habit” of homosexuality, reflecting how British colonists did not understand the difference between gender and sexual orientation. Because the British rarely had to deal with thriving, formidable queer communities in England, the *Hijra* problem in their Indian colonial project represented one of the colonists’ first experiences governing people that did not conform to British conceptions of gender and sexuality. S377’s vague language exemplifies colonists’ minimal experience controlling large, cohesive queer communities. Specifically, instead of blatantly criminalizing homosexuality, framers of the section very generally made any intercourse “against the order of nature” illegal. They did not delineate what constituted unnatural sexual activity under the incorrect assumption that heterosexuality was the norm in India as it was in Britain. S377’s overall ineffectiveness meant that Khairati and some other *Hijras* tried under S377 faced minimal punishment.⁵⁰ Nevertheless, S377’s failure to effectively control the *Hijra* threat inspired even more precise laws, beginning the legacy of anti-LGBTQIA+ legislation in India.

Aiming for gradual extermination of the *Hijra* community, colonists established a clearer plan for addressing the *Hijra* threat through the Criminal Tribes Act (CTA) of 1871. Frustrated by the limitations of S377, the NWP agreed that “special legislation” was needed to regulate *Hijras*.⁵¹ Colonists did not wish to use precious land and money to geographically segregate them.⁵² Instead, “extinguishing the number of Eunuchs,” a discourse NWP Secretary R. Simson initiated in a letter to all NWP officials, established the dominant ideology of *Hijra* gradual extermination in 1865.⁵³ Rather than physically massacring the *Hijra* population to eliminate them, colonists used preventative measures to ensure that the *Hijra* identity did not spread and that the community would eventually die off.

Codifying this collective plan for *Hijra* gradual elimination, English lawyer James Fitzjames Stephen created the CTA in 1871—clearly delineating an anti-*Hijra* campaign through Part II, the “eunuch” section. The CTA encouraged police officers to collect “register[s] of the names and residences of all eunuchs,” enforce a “penalty on registered eunuch appearing in female clothes; or dancing in public,” and one “on registered eunuchs keeping boys under sixteen.”⁵⁴ These registers, made standard practice through the CTA, increased *Hijras*’ visibility to the colonial government. Labeling and categorizing the *Hijra* community allowed colonists to keep track of the *Hijras* to regulate and ultimately exterminate them.⁵⁵ For instance, the

⁴⁸ Since personal information on *Hijras*’ pronouns was not recorded in British archives and preferred pronouns for *Hijras* range from “he/him” to “she/her,” this paper uses the gender-neutral pronouns to refer to individual *Hijras*, such as Khairati.

⁴⁹ BL/IOR/P/2208: Report from O. L. Smith, Deputy Inspector-General of Police, Northwestern Provinces and Oudh (NWP&O), to H. B. Webster, Inspector-General of Police, NWP&O (June 26, 1884).

⁵⁰ Gannon, “Translating the Hijra,” 357–358.

⁵¹ BL/IOR/P/438/61: Drummond to NWP Secretary (August 9, 1865).

⁵² Hinchy, *Governing Gender and Sexuality in Colonial India*, 97–98.

⁵³ BL/IOR/P/438/61: Simson to all NWP DC (June 9, 1865).

⁵⁴ *The Criminal Tribes’ Act, 1871 (Act XXVII of 1871), as Modified up to the 1st February, 1897* (Calcutta: Office of the Superintendent of Government Printing, India, 1897).

⁵⁵ Jessica Hinchy, “The Eunuch Archive: Colonial Records of Non-Normative Gender and Sexuality in India,” *Culture, Theory and Critique* 58, no. 2 (2017): 8.

registration of *Hijras*' properties and names encouraged domestic surveillance. This allowed the government to intervene in inheritance practices, which prevented the continuation of a *Hijra* bloodline since a lack of generational money and property hindered the community's survival.⁵⁶ Eliminating the presence of boys under sixteen in *Hijra* households similarly reflected the government's attempt to prevent *Hijra* succession. Additionally, restricting *Hijras*' public performances and cross-dressing represented colonists' efforts to eliminate their cultural practices and the spread of their "immoral qualities" and "dirtiness," stereotypes that British colonists perpetuated through the CTA. Colonial officers limited *Hijras*' liberties and cultural practices through strict policing, which erased future generations of *Hijras* and removed them from "mainstream" society, demonstrating how the CTA supported colonists' plan for *Hijra* gradual extermination.

Reforming S377's shortcomings, the CTA was more effective in suppressing the *Hijra* threat. Colonial letters from 1885 portray the NWP's concern with the accuracy of its yearly census, which recorded the number of "registered eunuchs." Fourteen years after the creation of the CTA, colonists were determined to ensure that *Hijra* numbers were still decreasing.⁵⁷ This continued determination led to tangible results. The population of "registered eunuchs" in the NWP declined from 1,400 in the 1870s to only 207 in 1908.⁵⁸ While these figures do not represent unregistered *Hijras*, adding to their inaccuracy, the general downward trend of the statistics reflects the CTA's effectiveness. In fact, S377 criminalized homosexuality, which colonists hoped would regulate *Hijras*, a homosexual community. However, the implementation of "special legislation" through the CTA—which expressly referred to *Hijras*, criminalized both their gender and sexual expression, and established specific methods for their extermination—proved to be more successful, as exemplified by the significant decrease in *Hijra* numbers over four decades. This comparison should not diminish the fact that both laws drastically degraded the lives of *Hijras*.

While the CTA was more effective than S377, colonists revoked the law in 1911 because of its decline in usefulness due to *Hijras*' resistance to their oppression. For instance, many *Hijras* constantly evaded the police. Others gave false addresses and personal information to officials or concealed their property, preventing the intrusive domestic surveillance that came with registration. Another resistance method was to permanently migrate to another Indian province where the CTA was not enforced.⁵⁹ Perhaps most significantly, *Hijras* did not give up their identities. They continued to engage in their lively performances and practice homosexuality and gender non-conformity in private and even public spaces, thereby directly rebelling against the CTA and S377. While ostracization meant that *Hijras* no longer occupied prestigious roles in Indian society, the continued survival of the *Hijra* community, which frustrated colonial efforts to exterminate them, is a testament to their ingenuity and brave resistance.

However, British colonial institutions and social norms passed colonists' homophobic ideas and anti-*Hijra* stereotypes onto increasingly influential and Anglophile Indian men. The most significant stereotypes perpetuated by British colonists associated *Hijras* as kidnappers and forced castrators, which originates from the 1860 *Government v. Munsa and 4 others* court

⁵⁶ Hinchy, *Governing Gender and Sexuality in Colonial India*, 194.

⁵⁷ BL/IO/P/2460: Webster to NWP&O Secretary (May 22, 1885).

⁵⁸ Hinchy, *Governing Gender and Sexuality in Colonial India*, 246.

⁵⁹ Hinchy, *Governing Gender and Sexuality in Colonial India*, 222.

case. Moreover, more *Hijras* engaged in prostitution, a stigmatized and criminalized profession, during British rule since colonial marginalization meant they lacked their traditional, precolonial economic outlets. Thus, colonists also attached uncleanliness and criminality to the *Hijra* identity.⁶⁰ The CTA exacerbated these stereotypes since its registration policy made *Hijras* and their “deviant” ways more visible to colonial officers and Indian society.

Simultaneously, hoping to gain legitimacy from Englishmen, the rising upper and middle-class of Indian men increasingly sought education through British institutions, where they adopted English thinking and concepts of progress. Indian men’s Anglophilia and British education encouraged them to redefine their notions of gender and sexuality to align with their colonizers.⁶¹ For instance, in a letter to the Government of India in 1889, Delhi lawyer Mahtab Rai raised awareness about the “extremely obscene” practices of *Hijras*, which included “effeminate speech, deportment, and movements;” “immoral and indecent talk;” and the “abominable” crime of sodomy.⁶² In precolonial times, Indian society tolerated, if not celebrated, *Hijras*, valuing their cross-dressing, performances, and homosexuality while also assigning them prestigious powers. Rai’s letter, however, promotes anti-*Hijra* and homophobic sentiment similar to that of English colonists. The fact that many north Indian newspapers, letters, and accounts from prominent Indian men support Rai’s sentiment highlights the sheer impact British colonization and institutions had in dismantling India’s precolonial culture of *Hijra* acceptance.⁶³ Furthermore, Rai’s prominent occupation as a lawyer reflects how the Indian men most susceptible to British intolerant thinking would eventually become or father the leaders of postcolonial India. The persisting homophobic institutions and anti-*Hijra* sentiment in postcolonial Indian society perpetuated by these prominent Indian men expose the harmful legacy of British colonialism for the *Hijra* community.

V. Conclusion

After India gained independence on August 15, 1947, Anglophile Indian leaders, when presented with the task of creating their own government and institutions to regulate society, kept the IPC from the British colonial era, making it the nation’s official set of criminal laws. This meant that S377 remained enforceable in India decades after its independence from Britain. S377 not only oppressed the *Hijra* community in the colonial era, but its continued existence contributed to the criminalization of thousands of *Hijras* and other homosexual people in postcolonial India.

Only in 2018 did the Supreme Court of India reform the British-instated S377 of IPC because of tireless *Hijra* and LGBTQIA+ activism; this change permanently decriminalized homosexuality under *Navtej Singh Johar v. Union of India*.⁶⁴ Although this reform is momentous for the LGBTQIA+ and *Hijra* communities in India, the amount of time it took to overturn the law displays the sheer impact colonists had on the norms of gender and sexuality in Indian society. Even after the colonists left India, no longer able to dictate Indian legislation, lawmakers chose to continue British values, exhibiting lingering intellectual colonialism. This notion—which political philosopher and psychiatrist Frantz Fanon touches on in *The Wretched of the Earth* while discussing African decolonization—“where each person shuts himself up in his own

⁶⁰ Hinchy, “The Eunuch Archive,” 1.

⁶¹ Hinchy, *Governing Gender and Sexuality in Colonial India*, 83.

⁶² NAI/HD/JP 02/1890 110 112: Rai to GGI (November 1, 1889).

⁶³ Hinchy, *Governing Gender and Sexuality in Colonial India*, 87.

⁶⁴ Trivedi, “The Indian in the Closet,” 24.

subjectivity” describes how years of colonial propaganda and brainwashing continue to govern colonized peoples’ thought.⁶⁵ The persistence of colonial thinking has forced many Indians to conform to European ideas, norms, and culture and to view them as superior. A part of decolonization is lifting this veil of intellectual colonialism, allowing Indians to question colonially imposed ideas and laws, like S377, and revalue the precolonial cultural norms that the British forced them to forget. Therefore, the Supreme Court’s 2018 reform is not only an attempt to right their wrongs for the LGBTQIA+ community but is also a decolonization effort.

Nevertheless, *Hijras* suffer from the absence of social security, disproportionately lower access to employment, and inequalities in healthcare. This disparity is reflective of Indian society’s lingering anti-*Hijra* sentiment from the colonial period and the remaining work that needs to be done in India to ensure queer belonging and inclusion.⁶⁶ In fact, the reform of S377 received considerable backlash from anti-LGBTQIA+ campaigners: Rashtriya Swayamsevak Sangh (RSS), a Hindu nationalist group, declared that “same-sex marriages and relations are not in consonance with nature” and that “Indian society has not supported such relations.”⁶⁷ However, if one looks back into precolonial history, the reality is that India has an extensive history of supporting such relations; tradition and natural laws defined in Hinduism upheld LGBTQIA+ rights and intimacy. Precolonial Indians accepted the queer community, but many Indians today fail to see and understand this history untouched by heteronormative British ideology. Only when Indian citizens and the government are able to reclaim their precolonial cultural identity by decolonizing the country and their thinking will the *Hijra* and all Indian queer communities move closer toward complete liberation from anti-LGBTQIA+ sentiment.

⁶⁵ Frantz Fanon, *The Wretched of the Earth* (New York, USA: Grove Press, 2021), 47.

⁶⁶ Sharful Islam Khan, et al., “Living on the Extreme Margin: Social Exclusion of the Transgender Population (*Hijra*) in Bangladesh, *Journal of Health, Population and Nutrition* 27, no. 4 (2009): 442–443.

⁶⁷ Amy Bhatt, “India’s Sodomy Ban, Now Ruled Illegal, Was a British Colonial Legacy” (University of Maryland, Baltimore County, May 19, 2022), 7.
<https://umbc.edu/stories/indias-sodomy-ban-now-ruled-illegal-was-a-british-colonial-legacy>.

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