

The Body on the Threshold: Histories of Rape in Colonial North India

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Abstract

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‘The Body on the Threshold: Histories of Rape in Colonial North India’ analyzes political, judicial, and diplomatic records of sexual violence in the modern Indian provinces of Delhi, Punjab, Haryana, and Uttar Pradesh from roughly 1820 onward. I explore these colonial archives to reappraise the problem of rape in modern India and how it has come to be conceived and misconceived spatially. With the colonial emergence of India’s contemporary legal and penal system, I argue, a new criminal law of rape transformed public space—local roads, forests, village fields and pastures, railway carriages, and town streets—into constitutively dangerous and exclusionary space, about which a perverse cultural and political consensus prevailed that nothing could be done except that women and girls fear and avoid such space when possible. This notorious and longstanding exclusionary injunction upon mobilities and freedoms in modern Indian social life is a gendered common-sense, and structuring of the commons, that I aim to defamiliarize. As a new, ostensibly ‘decolonized’ criminal code with a restructured rape law comes into force in India this year, I offer a cautionary obituary for the law it replaced, and the past India seeks to leave behind.

Bringing a combination of spatial, socio-legal, and micro-historical approaches to bear upon colonial judicial archives, I work tangentially to their central object: the criminal court proceeding.

To explore how the jurispathic incentives of colonial criminal law engendered unsafe public environments, I work to pull the concept of rape out of the silo imposed by these court proceedings, which reflect the epistemic distortions of a regime that narrowly prioritized punishing only brutally violent rape upon victims below the age of consent—setting evidentiary precedents that affected the governing of rape in much of the British Empire. Employing sources such as crime reports, police handbooks, diplomatic letters, and native newspapers, I focus on instances of what might be referred to today as ‘stranger rape’: rape committed in ‘public’, often brazenly, at the margins of political conflicts over sovereign power and direct rule, such as border wars, princely revolts, and cattle-smuggling feuds. I recruit histories of short-distance migration and the public/private circulation of women within the marriage system, among others, to counter assumptions about South Asian women’s inherent immobility and seclusion. I also index emerging procedural and forensic technologies of the colonized Indian body politic—which reinforced an understanding of rape survivors as unreliable, and of most rape accusations as fabricated—to local ideas about public safety and state responsibility, which were often premised on caste-differentiated and retributive ethics of justice. I trace how pre-colonial practices of social exclusion, scapegoating, and outcasting—and the complex dispute-resolution systems that mandated such punishments—were absorbed into an ecology of colonial violence and territorial occupation, attempting to emplace the evolving meaning of rape within broader transformations in politics and social life under colonialism. I argue that the authority to sanction rape—to both punish and prescribe—became foundational to jurisdictional and territorial conflicts between propertied castes, local power-holders, and functionaries of the British Indian colonial state.

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Dedication

to everyone who has ever believed, cared for, and fought for a survivor

Introduction

When society wants to keep a woman safe, it never chooses to make public spaces safe for her...we now propose that what women need in order to maximize their access to public space as citizens is not greater surveillance or protectionism (however well meaning), but the right to take risks...To do this we need to redefine our understanding of violence in relation to public space—to see not sexual assault, but the denial of access to public space as the worst possible outcome for women. Instead of safety, what women would then seek is the right to take risks, for it is only by claiming the right to risk that we can truly claim citizenship.

Shilpa Phadke et al., *Why Loiter?*¹

When I was researching this project at the British Library in the summer of 2021, I took dozens of long solitary walks around London in the dead of night: through the old village graveyard of Walthamstow, the canals in Mile End, the housing estates of Battersea. As far as activities of leisure went, this, to me, was a no-brainer. I hazard that many women from Bombay and Delhi have made a similarly morbid version of the ‘safety’ calculation that I did—only one woman was abducted, raped, and murdered by the police in this city this year? Those odds are *golden*—and divested themselves of the need to give the matter further thought.² Cities are meant to be walked at night.

Many urban women of India have grown up refusing the burden of public vigilance, guiltily relishing the intersection of privileged circumstance and personality deformation that

¹ Shilpa Phadke, Sameera Khan, and Shilpa Ranade, *Why Loiter? Women and Risk on Mumbai Streets* (New Delhi: Penguin Books, 2011), 9-10.

² Becky Morton, “Sarah Everard: How Wayne Couzens Planned Her Murder,” *BBC News*, September 30, 2021, <https://www.bbc.com/news/uk-58746108>.

affords a love of the luxury, rather than the necessity, of being outside. I have always wanted to understand what comes after refusal, since that refusal does not absolve us of the duty to question the justice of the solutions others find for the problem we are fortunate to refuse. In this sense, I was walking neither to be oblivious nor to seek oblivion. I wanted to walk out, as a way to talk out, what I was researching: the specter of random, age-old, inevitable sexual danger which haunts women's public presence back home in India. My perhaps overly precious reasoning was that if this specter had a history, such a history would have a basis in an understanding of India as a particular type of public culture and a particular type of space—and that my reverse-stalking of this specter required not just the time of theory, but the space and movement of theory, even if that space was just the Strand at 3 a.m. and the movement was just me walking. What preoccupied me was my own state of distance and escape—that negative condition of awareness that is both all too aware and yet never observant enough, an insulation that confesses a failure of vigilance—as a position from which to study the spaces and publics of violence against women. What am I doing with space that is more than a room of my own?

When I moved to Delhi later that year to finish up at the National Archives, I joined a club called We Walk at Midnight on an outing across the neighborhood of Munirka on the 16th of December. At 1 a.m., about thirty women, many of them students, met at the steely grey highway bus stop from which Jyoti Singh had been abducted on the same date nine years before.³ We walked the neighborhood for about three hours, visiting other sites of feminist commemoration,

³ Over the past five years, the public discourse surrounding rape in India has centered on the story of Jyoti Singh, a 23-year-old middle-class, middle-caste female physiotherapy intern, who boarded an off-duty charter bus at around 9:30 in the evening with a male friend in South Delhi after watching the movie *Life of Pi* on the 16th of December 2012. The men on this bus beat her friend, gang-raped her, penetrated her with iron rods, and dumped her on the side of the road. She died two days later in a hospital in Singapore, and was initially immortalized by the Indian media as *Nirbhaya*, meaning *Unafraid*—to me, a cruel joke of an epithet.

such as a park that had been buried in cement to stop a sit-in by women protesting the Citizenship Amendment Act in 2019. This slow, serene gang-*flânerie* was a very literal talisman against what precluded us from wandering about normally; as one journalist recently noted in a *New York Times* opinion, “It is the specific horror of gang rape that weighs most heavily on Indian women that I know...When an incident rises to national attention, the kettle of outrage boils over, and women sometimes stage protests, but it passes quickly. All Indian women are victims, each one traumatized, angry, betrayed, exhausted. Many of us think about gang rape more than we care to admit.”⁴

At this stage, with “the evil becoming banal”, it appears that the counter to gangs can only be gangs. I walked alongside my companions as they earnestly stickered streetlamps with the slogan ‘we were here’—graffitiing was too involved—and saved a sticker to keep in my coat pocket. What is ‘all Indian women’, and what does it mean for us to all be victims? The same journalist continues, “Indian women suffer because they are women. Soldiers need to believe that war won’t kill them, that only bad luck will; Indian women need to believe the same about rape, to trust that we will come back to the barracks safe each night, to be able to function at all.”⁵ What we are victimized by, in this telling, is the psychological tax of fearing the worst possible death. This is a turf war, a class war, and safe spaces are barracks. The stakes and the terrain being absolute, so must one’s identification be. Even the men are afraid—some of them, such as Dalit men, always have been—because it is no longer men, but mobs of men, that matter

⁴ Vidya Krishnan, “In India’s Gang Rape Culture, All Women Are Victims,” *International New York Times*, June 6, 2023.

⁵ Krishnan, “In India’s Gang Rape Culture, All Women Are Victims.”

when a woman is being assaulted.⁶ It should not be that to envision a state of no fear, we must first go through being compulsively fearful, making each other feel ever more afraid. The fear of being in public, in each other's presence, and even, in today's India and many Indias past, being seen to *be together*—these are connected to feelings of non-authorization, out-of-placeness, and alienation that span genders and sexualities.⁷ But I do not know if this movement that brought us out to loiter in the streets can keep us together, commit us to a future, or show us how to imagine ourselves in a free state; or if we are ultimately only a herd of cats, each one keeping its own silent, wary, internal vigil.⁸

The most influential lineages of the modern Indian Women's Movement, the anthropologist Srila Roy recently argued, have long been invested in Indian womanhood as a class signifier and basis of collective revolution, and less so in the politics of the self, identity, and self-fashioning.⁹ Under contemporary neoliberalism, when discourses of self-help and -care

⁶ In the postcolonial period, scholars have documented how practices of self-assertion by various aggrieved groups claiming to be exercising their lawful rights as citizens—or taking law into their own hands—have frequently led to the politicization of identities, marking out certain subjects as marginalized, aggrieved, particular, or 'protected'. See Anupama Rao, *The Caste Question: Dalits and the Politics of Modern India* (Berkeley: University of California Press, 2009); and Anupama Rao, ed., *Gender & Caste*, (New Delhi: Kali for Women, 2003).

⁷ See Sonia Faleiro, *The Good Girls: An Ordinary Killing*, First Grove Atlantic hardcover edition (New York: Grove Press, 2021); Rama Srinivasan, *Courting Desire: Litigating for Love in North India*, *The Politics of Marriage and Gender* (New Brunswick, New Jersey: Rutgers University Press, 2020); Perveen Mody, *The Intimate State* (Routledge India, 2008), <https://doi.org/10.4324/9780203874691>; Prem Chowdhry, *Contentious Marriages, Eloping Couples: Gender, Caste, and Patriarchy in Northern India* (Oxford: Oxford University Press, 2007). Many Indian men think of #MeToo as a movement to someday make *all men* feel afraid, to wonder if they are the ones overstepping, out of place, taking up space, doing the wrong thing. The stakes for them, however, are different; they fear not violence committed upon their bodies, but the theft of their property, wealth, and reputation. In this sense, male property rights are directly threatened by stricter laws against domestic and sexual violence.

⁸ Durba Mitra, "Sisterhood Is X: On Feminist Solidarity Then and Now," *South Atlantic Quarterly* 122, no. 3 (July 1, 2023): 431–52, <https://doi.org/10.1215/00382876-10643959>.

⁹ Srila Roy, *Changing the Subject: Feminist and Queer Politics in Neoliberal India*, (Durham: Duke University Press, 2022).

have inexorably become part of the idiom of feminist coalitions for better or worse, the relation between ordinary, personal movement and *andolan*-type movement—that is, social and political movement—in living and existing freely has become a site of tension. Roy has detailed how the coming of age of a newer generation of ‘Indian women’—whose calls for the hanging and castration of rapists suggest, to older activists, “the failure of several decades of feminism in this country”—has pitted the poisonous misogyny of rural and ‘backward’ India against “the carceral feminism of the ordinary millennial”—the subtext of “ordinary” being urban, educated, upper-caste, and middle-class—who embraces retributive and even extrajudicial punishment for acts of rape and authorizes the state to act as a non-state agent in punishing gender-based violence, rather than organizing and banding together and revolting to *end* it.¹⁰ “I’m not asking merely for equality,” the journalist wrote, echoing this tension. “I want retribution. Recompense.”¹¹ She wants the “protection racket of epic proportions” that is society to share the blame and take over the burden. She wants schoolgirls to be taught about Bilkis Bano and Phoolan Devi.¹² She wants monuments built for them, for their ordeal to be marked in public and in history. And yet, there is still only *exit*, whether it is you or your rapist who escapes or is ejected; there is no *end*.

¹⁰ Roy, *Changing the Subject*.

¹¹ Krishnan, “In India’s Gang Rape Culture, All Women Are Victims.”

¹² See Nidhi Shrivastava, “#MeTooIndia, Silence, and 1947 Partition: Interrogating the Bilkis Bano Story,” *South Asian Review* 44, no. 3–4 (October 2, 2023): 303–8, <https://doi.org/10.1080/02759527.2023.2211390>, and Samia Vasa, “2002: A Reading Appeal,” *Differences* 30, no. 3 (December 1, 2019): 34–62, <https://doi.org/10.1215/10407391-7973988> for more on Bilkis Bano and the 2002 Gujarat Riots. Rajeswari Sunder Rajan treats the mythos of Phoolan Devi in *The Scandal of the State: Women, Law, and Citizenship in Postcolonial India*, Next Wave (Durham: Duke University Press, 2003).

1. The problem of rape: a colonial inheritance?

But the times are moving, even if the survivors may not. A sense of “progress” is still asserted by pointing to changes in Indian rape law. In fact, many of the most prominent recent victories claimed by feminists in India against the problem of gender-based violence have been legislative ones. In the case of rape and sexual harassment, the Criminal Law (Amendment) Act of 2013 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 aimed to expand the semantic range of gendered violation, grievance, and victimhood beyond narrow and phallogocentric definitions of rape. The passage of these laws has been co-constitutive with the rising publicity of gang rape, child abuse, domestic/custodial violence, and caste atrocity in national media and politics. No longer will the accusations of history haunt us, our newest regime boasts. A cycle that began long before the gang rape and murder of Jyoti Singh is about to come to some kind of end: India has just replaced its old colonial-era Penal Code wholesale. A “decolonial” criminal code, the *Bhartiya Nyaya Sanhita*, was passed on the 21st of December 2023 and came into force just two weeks ago, on the 1st of July, 2024.¹³

Feminist scholars before me had demonstrated that modern structures of adjudication and punishment for rape still register only the visible blips of failure in a vast, dark expanse of normalized, successful sexual violence.¹⁴ But equally, Indian feminisms have their own deep

¹³ See *Bhartiya Nyaya Sanhita*, 2023, Chapter V: ‘Of Offences Against Woman and Child’. *Gazette of India*, December 25th, 2023. <https://egazette.gov.in/WriteReadData/2023/250883.pdf>.

¹⁴ Flavia Agnes, *Law and Gender Inequality: The Politics of Women’s Rights in India*, Law in India (Delhi: Oxford University Press, 2001); Nivedita Menon, *Recovering Subversion: Feminist Politics beyond the Law* (Urbana, Ill: University of Illinois Press, 2004); Pratiksha Baxi, *Public Secrets of Law:*

attachments to the law, and have premised sexual emancipation upon strategies of legal reform in part because “one of the richest archives for mapping a history of sexuality in India is that of the law, not just the realm of state law and its apparatuses but the adjudications of caste and religious institutions.”¹⁵ Because sexuality is everywhere apparent in the legal archive, the law fell almost automatically into place “as the primary legitimating discourse” of feminism: it was believed in the Indian context that “legal criminalization would socially delegitimize a practice.”¹⁶ As

Rape Trials in India (New Delhi: Oxford University Press, 2014); Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India* (Cambridge, United Kingdom: Cambridge University Press, 2017); Veena Das, “Sexual Violence, Discursive Formations and the State,” *Economic and Political Weekly* 31, no. 35/37 (1996): 2411–23, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/4404561>; Uma Chakravarti, ‘From Fathers to Husbands: Of Love, Death, and Marriage in Northern India.’ in *‘Honour’: Crimes, Paradigms, and Violence against Women*, edited by Lynn Welchman and Sara Hossain. Zed Books, 2005, pp. 308–31; Samia Vasa, ‘2002—A Reading Appeal’, *Differences*, Vol. 30, no. 5 (2019): p. 34-62; Jyoti Atwal and Iris Flessenkämper, eds., *Gender and Violence in Historical and Contemporary Perspectives: Situating India* (London: Routledge India, 2019), <https://doi.org/10.4324/9780429328572>; Poulami Roychowdhury, *Capable Women, Incapable States: Negotiating Violence and Rights in India* (New York, NY: Oxford University Press, 2021); and Rupal Oza, *Semiotics of Rape: Sexual Subjectivity and Violation in Rural India* (Durham: Duke University Press, 2023).

¹⁵ Nair & John, *A Question of Silence?*, 23.

¹⁶ Menon, *Recovering Subversion*, 117. Prabha Kotiswaran has noted that, although they claim powerlessness and a lack of influence, feminists *have* gradually influenced policy and governance in India, and that this tentative domiciliation within the law, an embedding within the values sought to be transformed, cannot entirely escape being accounted for as a factor in the dysfunction of state apparatuses. Prabha Kotiswaran, “A Bittersweet Moment: Indian Governance Feminism and the 2013 Rape Law Reforms,” *Economic and Political Weekly* (June 24, 2017), <https://www-proquest-com.ezproxy.cul.columbia.edu/docview/2153690280/abstract/ACA02E4A36DE4DBCPO/1>. In India, it can be argued that many strands of feminism have claimed neutrality and legitimacy by centering their activism on ‘social service’ and ‘helping’ poorer and more unfortunate women who lack the privileges of knowledge and social cachet. This focus, it can be argued, has always been easier to portray as disinterested, neutral, humanitarian, more strictly *juridical*—especially when, as Sneha Krishnan has noted, the “transcendence of caste and community in performing an unencumbered Indian liberal self has come to be central to the constitution of global-modern citizen subjects.” Krishnan, “Responding to Rape: Feminism and Young Middle-Class Women in India”, 27. See also Swetha S. Ballakrishnen, *Accidental Feminism: Gender Parity and Selective Mobility among India’s Professional Elite* (Princeton, New Jersey: Princeton University Press, 2021); Durba Mitra, “The Report, or, Whatever Happened to Third World Feminist Theory?,” *Signs: Journal of Women in Culture & Society* 48, no. 3 (Spring 2023): 557–84, <https://doi.org/10.1086/723270>.

Nivedita Menon has argued, legislation and robust legal enforcement have been overwhelmingly seen as the primary tool in “the [feminist] attempt to enable women to recognize that they have a right to feel violated even if what they have experienced is not ‘rape’ as it is generally understood [by society].” To gain cognizance under the law, however, is to be presented with no option at all: the only available way to redress these violations is “to criminalize a whole range of behavior which women accept as ‘normal’, but by which they feel humiliated and oppressed, or at the very least, uncomfortable”—on the grounds that such behavior forecloses their ability to participate equally in public life.¹⁷ In other words, the law remains a carceral tool: even if it were to successfully convict and imprison a significant percentage of rapists and harassers, its operating logic remains intact, constraining and confining one population in order to facilitate the rights and freedoms, the flourishing and entitlement, of another. In continuing to function as such in postcolonial India, it reveals that an end to rape cannot feasibly be achieved by a feat of legal reform alone. Our colonial inheritance is not in remission: as the historical geographer Sneha Krishnan argues, “carcerality is not just contained in the *margins* of social life, in prisons, juvenile detention centers, and other explicitly carceral institutions. Rather, carceral logics flourish at the heart of the biopolitical project of making the good life: *abandonment and flourishing are not necessarily spatially separate from each other.*”¹⁸

My fundamental aim for this project, therefore, is to understand what can be learned from the colonial archive of law about the social and political forces that have shaped and arranged public space to represent incalculable gendered risk and deadly sexual danger. Can a legal

¹⁷ Menon, *Recovering Subversion*, 116.

¹⁸ Sneha Krishnan and Laura Antona, “Carceral Domesticities: An Introduction,” *Environment and Planning D: Society and Space* 41, no. 6 (December 1, 2023): 931–39, <https://doi.org/10.1177/02637758231218070>, 934.

history of rape deepen and complicate our estimation of how long women in north India have felt this way about going outside? Can it illuminate our present carceral domesticity as the product of a historically particular legal and spatial regime, in which women's bodies were subjects both of investment and abandonment, and central to colonial projects of intimate discipline either way?¹⁹

My pessimism about the Hindu Right's decolonial veneering of colonial criminal law stems from the discourses that circulated in the immediate aftermath of Jyoti Singh's rape. For all that it caused an international spectacle, sparked mass public demonstrations and protests, and provoked a judicial committee inquiry and amendments to criminal law, her case dealt a significant blow to what little reputation India had as a socially progressive developing nation. In the decade following it, I desultorily followed along as our political and legal system mediated a tide of collective feelings and affective discharges which fueled either demands to hang, skin, behead, and castrate rapists *now, or* equally strident insistence that boys were boys, that it took two hands to clap, and that the victim must be given to her abuser, or else. When I first began researching this project, therefore, my questions about rape were perhaps unsurprisingly questions about revenge—the retribution and recompense which those whose lives are circumscribed by rape, directly or indirectly, claim to be owed. What selective principles produced loudly acclaimed, murderous, retributive violence as a response to some rape cases, and crickets chirping in procedural purgatory for most? I found that, as a condition of its own existence, this system could not question why it is so easy and natural to teach, correct, instruct, or impart political messages in the grammar and idiom of sexual violence, as policy, norm, and everyday accepted practice. Jyoti's rapists, who were sentenced to death in September 2013 and

¹⁹ Sneha Krishnan, "Towards a Historical Geography of Girlhood," *Geography Compass* 18, no. 6 (2024): e12760, <https://doi.org/10.1111/gec3.12760>, 3-4.

hanged in March 2020, were interviewed in jail by the BBC for a documentary, and their lack of remorse and the blame they placed on the victim appeared to confound the public.

Though awareness of rape as a social issue had existed prior to the torture and murder of Jyoti Singh, the fact that her ordeal had taken place in one of the richest areas of India's biggest city, coupled with its immense brutality and sensational treatment, produced a collective discursive shell-shock. It would be hard to argue that any society does not on some general, intrinsic level understand rape for what it 'is', at least in the register of political import: "a technique of terror that is used with impunity to control social mobility, stifle dissent, reassert social control, gain political control, and target 'hated' communities."²⁰ But even the briefest exposure of what Pratiksha Baxi has theorized as the "public secret" inherent in the reality of rape exposed the perceived fragility of that historical and political silence, the need to tread carefully, to maneuver some cover for the most obvious forms of complicity.²¹ Communities and publics across the country—particularly the wealthy, the urban, and the politically influential—were consumed in a performance of shock, disbelief, denial, validation, lament. The same beliefs that outraged the country when Jyoti Singh's rapists avowed them were revealed to be held by the majority of rapists interviewed by the scholar Madhumita Pandey, a former consultant for the controversial BBC documentary, in Delhi's Tihar Jail: these men were "ordinary", not monsters.²² Dirges and elegies for the cultural climate of the nation circulated in an atmosphere

²⁰ Pratiksha Baxi, "Political Apparatus of Rape in India." OUPblog, June 19, 2014. <https://blog.oup.com/2014/06/political-apparatus-of-rape-in-india/>.

²¹ Baxi, "Political Apparatus of Rape in India." p. xxiii. In this work, Baxi explores rape trials in Gujarat through the lens of the 'public secret', a concept first theorised in the work of Michael Taussig: "that which is generally known, but cannot be articulated...knowing is essential to its power, equal to the denial. Not being able to say anything is like testimony to its power."

²² Vidhi Doshi, "A Woman Interviewed 100 Convicted Rapists in India. This Is What She Learned.," *Washington Post*, December 1, 2021,

of grim vindication; the question ‘how could this happen?’ was never more rhetorical; the statement ‘I didn’t know’ was never more defensive. In the international arena, as Baxi writes, “the Delhi protests became a resource for a certain kind of racialized sexual politics, which looped back to a nationalist rhetoric decrying the tarnishing of the image of the country abroad. Indian politicians responded by blaming the media, feminists, and the protests for sensationalizing rape, and producing the crisis now posed to the image of a globalizing economy.”²³ In the conclusion to this work, I will outline why historical reflection facilitates thinking the problem of violence against women outside of this presentist and self-absolving impasse. Here, it seems necessary only to say that this politics of blame is denial at its thickest.

To sum up, in contemporary Indian political discourse, endemic sexual violence has been treated—to make an unpleasant analogy—as a beast with two backs: a renewed influx of toxic Western cultural influences ushered in by 21st-century neoliberalism, unchecked by the inadequacies of a colonial-era rape law that has not materially changed since 1860. As the citizens of India brace themselves to find out what exactly is ‘decolonial’ about their new and improved criminal code, awaiting with bated breath, it seems to be a great year to put its predecessor into “the history books”. With emergent scholarly analyses of the new law a few years away from actualization, this dissertation finds itself serving as a sort of obituary to its ancestor—narrating the time of its birth, who its parents were, and, crucially, what came before and alongside it. If the duty of an epitaph is to praise, not to slander, the dead, it fails with flying colors. But it also aims to confront the received notion that contemporary India’s rape problem

<https://www.washingtonpost.com/news/worldviews/wp/2017/09/11/a-woman-interviewed-100-convicted-rapists-in-india-this-is-what-she-learned/>.

²³ Baxi, “Political Apparatus of Rape in India.”

owes entirely to its encounter with Western modernity and the coloniality of its criminal law. It reframes these encounters to ask how modern discourses of “law and order” mark or unmark commons and public spaces as safe, for which bodies, and for what forms of living, livelihood, and life. At a time of intense contestation over which policy and legal interventions actually keep women safe from sexual violence, which ones infantilize or impose unreasonable responsibility upon them, or which ones cause other cascading forms of social harm, this is a fundamental question for scholarship to address.

Here, I want to first clarify that there are two frames of critique I am not making. First, I am not aiming to reductively disrupt the timeline of contemporary India’s rape problem by proving that this region of northern India has always had a uniquely or distinctly aggressive form of what we would today call a “rape culture”. Second, I am not aiming to critique the coloniality of Indian rape law upon an axiom that is common within upper- and middle-class urban milieus—that a harsher and more diligent incarceration of rapists has either now or would have then created conditions of enduring and substantive justice. Rather, leaving open the very question of rape’s ‘redressability’ by the law, my project relocates the history of sexual violence within a more nebulous horizon of justice: the right to take risks, wander, work, loiter, and exist in public. It is at least in part due to the distinctive treatment of rape in India’s early colonial courts, I argue, that rape continues to be seen in my country as *a crime that only happens in public, but is not a public crime*. Colonial archives of rape have shaped modern Indian assumptions and misconceptions about what ‘real’ rape is, where or why most rape happens—but the passing of a ‘decolonial’ law may have little effect on a perverse but foundational cultural consensus that nothing can be done except that women and girls fear and avoid public space when possible. This longstanding injunction upon mobilities and freedoms in modern Indian

social life, well-recognized as a technique of political and economic exclusion, is a gendered common-sense, and structuring of the commons that I aim to defamiliarize through and on the terrain of history.

2. Violence against women: histories from north India

Anyone seeking to consider how and why a contemporary issue may be illuminated by history must acknowledge that it is in fact their own perception of urgency which may distort or essentialize their analysis. Perhaps a project to understand the history of sexual violence in India cannot but fall into this trap; perhaps there is no clean way out of the “discursive colonization that inheres in the current global rhetoric on sexuality,”²⁴ especially when India’s image in the West has played such a role in raising rape to this level of public notice. A wider question of the relevance of history to rape arises as well. Violence against women has long been framed globally as an unchanging, ahistorical presence; as a universal, indeed a physical, constant; even as natural law. If there is a political benefit to stating that rape is historically ‘real’, or to exercising a kind of strategic essentialism in designating rape a category that is reasonably stable and mostly transhistorically relevant within the gendered exercise of power, it is important to

²⁴ Indrani Chatterjee, “When ‘Sexuality’ Floated Free of Histories in South Asia,” *The Journal of Asian Studies* 71, no. 4 (2012): p. 957,

<https://www.jstor.org.ezproxy.cul.columbia.edu/stable/23357428>.

note the benefit that also accrues to the ‘other side’—that is, to violent patriarchal power—from such an exercise.²⁵

Nevertheless, this is the balance that *The Body on the Threshold* seeks to find. Its archive consists of judicial and political records of sexual violence from the area that surrounds the city of Delhi, namely southern Punjab and Haryana, eastern Rajasthan, and western Uttar Pradesh—all regions presently notorious for the prevalence of public sexual attacks upon women—from roughly the years 1820 to 1920. It focuses on the shifting systems of meaning within which rape was situated through nineteenth-century transformations in the social, cultural, and legal order of this South Asian region. Between the sixteenth and eighteenth centuries, Delhi and its hinterland was the core territory of both the Mughal Empire and a number of its client and successor states, including those of Rajputana, Rohilkhand, and the kingdom of Avadh, all of which were axes of a composite early modern Indo-Persian culture which had transregional links with, most prominently, Central Asia and Iran.²⁶ These states were incorporated by a combination of military conquest and treaty into the holdings of the British East India Company in the late eighteenth and nineteenth century. Most of this region fell under the administrative unit known as the North Western Provinces and Oudh—and later, under the Empire, the United Provinces—while the rest was either part of Punjab Province, or of various small, nominally sovereign, indirectly-ruled princely states.²⁷

²⁵ Gayatri Chakravorty Spivak, ‘Subaltern Studies: Deconstructing Historiography’, in Ranajit Guha and Gayatri Chakravorty Spivak, eds., *Selected Subaltern Studies* (New York: Oxford University Press, 1988), 13.

²⁶ Margrit Pernau, *Ashraf into Middle Classes: Muslims in Nineteenth-Century Delhi* (New Delhi: Oxford University Press, 2013).

²⁷ Mithi Mukherjee, *India in the Shadows of Empire: A Legal and Political History, 1774-1950* (New Delhi: Oxford University Press, 2010).

The segment of time on which I focus marks a moment of historical transition within this region to a regime of British colonial criminal laws, regulations, and precedents, and I chose to focus on this region not simply because it is a national flashpoint for contemporary concerns about women’s public safety, but because many of these territories fell under British rule of law unevenly and belatedly in relation to the rest of the Bengal Presidency, with administrative and legal control hampered by its distance from Calcutta. In these “wild”, “lawless” regions, the rape of Indian women—unlike the pathologized spectacles of widow-burning, dowry-related violence, and infanticide—was not a colonial legal priority. Unlike the preceding and parallel Indian dispute-resolution systems of the time (which I treat in some detail in Chapter 1), colonial law narrowly prioritized punishing—and was largely only able to punish—brutally violent rape upon child victims determined to fall below a low age of consent, setting transnational evidentiary precedents that affected the governing of rape in other parts of the British Empire.²⁸ Between the conquest of Delhi by the East India Company in 1803, and 1929—when nationalist and feminist movements achieved the nominal abolition of child marriage and pushed a demand for complete independence from Britain—a colonial penal code and medico-legal institutions emerged parallel to a sectarian system of customary and personal laws dealing with households and the family.²⁹ The colonial state gradually but inexorably sharpened these distinctions

²⁸ Orna Alyagon Darr, *Plausible Crime Stories: The Legal History of Sexual Offences in Mandate Palestine*, (Cambridge: Cambridge University Press, 2018); Elizabeth Thornberry, *Colonizing Consent: Rape and Governance in South Africa’s Eastern Cape* (New York: Cambridge University Press, 2019).

²⁹ Colonial administrators made great efforts to outsource the management of ‘petty’, private, and customary affairs and backlogged cases to native civic bodies and ‘civil society’. There were attempts by the state to manage various established traditions of collectively litigating and petitioning courts; and experiments with integrating caste assemblies, *panchayats*, local inquest juries, religious courts, and panels of ‘respectable’ natives into the formal legal apparatus. While some of the most ambitious colonial *panchayat* experiments skirted north India, the ideal of local self-government did not. See Denault, “Little Republics or Petty Republics?”, Jaffe, *Ironies of Colonial Governance*; Sharafi, “The Marital Patchwork of Colonial South Asia” and “Hijacking Law”; Raman et al., *Iterations of Law*; Benton, “Colonial Law and Cultural Difference”, Cohn, *Colonialism and Its Forms of Knowledge*; Rohit De and Robert Travers,

between criminal law for public justice and customary law for personal wrong, enabling itself to limit its jurisdiction to exclude matters of moral and social regulation it saw as immaterial to its interests.³⁰

Despite this historic re-inauguration of the public-private boundary, the emergent Hindustani public sphere was dominated by anxieties about the contour and extent of ‘society’, as well as what it meant for society to govern itself and keep ‘its’ women safe.³¹ Citing pre-colonial and customary legal practices, litigants and petitioners both ‘forum shopped’ in different

“Petitioning and Political Cultures in South Asia: Introduction,” *Modern Asian Studies* 53, no. 1 (January 2019): 1–20, <https://doi.org/10.1017/S0026749X18000537>; Ranajit Guha, “Chandra’s Death”, in *A Subaltern Studies Reader, 1986-1995* (Minneapolis: University of Minnesota Press, 1997); Rosalind O’Hanlon, “In the Presence of Witnesses: Petitioning and Judicial ‘Publics’ in Western India, circa 1600–1820,” *Modern Asian Studies* 53, no. 1 (January 2019): 52–88, <https://doi.org/10.1017/S0026749X17000968>; Jeff Redding, *A Secular Need: Islamic Law and State Governance in Contemporary India* (Seattle: University of Washington Press, 2020); M. Kasturi, *Embattled Identities: Rajput Lineages and the Colonial State in Nineteenth-Century North India* (New Delhi: Oxford University Press, 2002); Scott Alan Kugle, “Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia,” *Modern Asian Studies* 35, no. 2 (2001): 257–313, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/313119>.

³⁰ Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi ; Oxford: Oxford University Press, 2000); Tanika Sarkar, “A Prehistory of Rights: The Age of Consent Debate in Colonial Bengal,” *Feminist Studies* 26, no. 3 (2000): 601–22, <https://doi.org/10.2307/3178642>; Durba Ghosh, *Sex and the Family in Colonial India: The Making of Empire*, Cambridge Studies in Indian History and Society 13 (Cambridge: Cambridge University Press, 2006); Pierce and Rao, *Discipline and the Other Body*; Elizabeth Kolsky, “The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805-57,” *The Journal of Asian Studies* 69, no. 4 (2010): 1093–1117, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/40929285>; Padma Anagol, “The Emergence of the Female Criminal in India: Infanticide and Survival under the Raj,” *History Workshop Journal*, no. 53 (2002): 73–93, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/4289774>; Deana Heath, *Colonial Terror: Torture and State Violence in Colonial India* (Oxford: Oxford University Press, 2021).

³¹ Upon a site of generally assumed chaos and ‘disorder’, an overriding arrogation of judicial discretion became important for both varying and stabilizing the objects of legal regulation, and became a crucial plank of the East India Company’s efforts to “reorient the cognitive world of Indian agency” towards a new role for the ‘state’—one that greatly expanded its legal and sovereign claims to represent public order and interest, as well as to base the legitimacy and scope of its violence upon a rule of law that was represented as rational, proportional, civilised, and civilizing. However, massive economic transformation and often-violent colonial expropriation precipitated the breakdown of social structures in ways that neither native elites nor colonial administrators could entirely control. Singha, *A Despotism of Law*, 77.

colonial courts for better outcomes, and engaged in acts of intimidation, coercion, retaliation, vigilantism and other alternative modes of dispute resolution that overtook the judicial process and challenged colonial governance.³² Meanwhile, the consolidated Indian Penal Code that emerged in 1860 radically enclosed the landscape of visibility and redress for sexual violence by legalizing marital rape.³³ The legal regime that anteceded it—the Company Regulations that addressed crimes such as rape prior to 1860—was an intercessory institution that bridged the

³² Lauren Benton, “Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State,” *Comparative Studies in Society and History* 41, no. 3 (1999): 563–88, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/179440>; Rosalind O’Hanlon, “Recovering the Subject Subaltern Studies and Histories of Resistance in Colonial South Asia,” *Modern Asian Studies* 22, no. 1 (1988): 189–224, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/312498>; Rosalind O’Hanlon, “Issues of Masculinity in North Indian History: The Bangash Nawabs of Farrukhabad,” *Indian Journal of Gender Studies* 4, no. 1 (March 1, 1997): 1–19, <https://doi.org/10.1177/097152159700400101>; Leigh Denault, “Little Republics or Petty Republics? The Panchayat, Imperial Sovereignty, and Discourses of Self-Government in British India, ca. 1870–1917,” *Comparative Studies of South Asia, Africa and the Middle East* 38, no. 3 (2018): 402–22, <https://muse-jhu-edu.ezproxy.cul.columbia.edu/pub/4/article/712667>; James Jaffe, *Ironies of Colonial Governance: Law, Custom and Justice in Colonial India*, (Cambridge: Cambridge University Press, 2015); Rohit De and Robert Travers, “Petitioning and Political Cultures in South Asia: Introduction,” *Modern Asian Studies* 53, no. 1 (January 2019): 1–20, <https://doi.org/10.1017/S0026749X18000537>; Nandini Chatterjee, *Negotiating Mughal Law: A Family of Landlords across Three Indian Empires* (Cambridge, United Kingdom ; New York, NY, USA: Cambridge University Press, 2020); Aparna Balachandran et al., eds., *Iterations of Law: Legal Histories from India*, (New Delhi, India: Oxford University Press, 2018). As scholars like have documented, litigants forum-shopped different courts for favorable rulings and interpretations, attempted to revive precolonial traditions of collectively and publicly petitioning the state, and formed a dizzying variety of caste and religious associations to advance collective interests and pronounce private judgements upon community members, often with an explicitly ‘autonomous’ or ‘separatist’ orientation to the colonial state’s regressive administration of customary and personal law. See Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton University Press, 1996), <https://hdl-handle-net.ezproxy.cul.columbia.edu/2027/heb01826.0001.001>; Bhavani Raman, “Civil Address and the Early Colonial Petition in Madras,” *Modern Asian Studies* 53, no. 1 (January 2019): 123–49, <https://doi.org/10.1017/S0026749X17000944>; Benton, “Colonial Law and Cultural Difference”; Mitra Sharafi, “The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda,” *Law and History Review* 28, no. 4 (2010): 979–1009, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/25800902>; Mitra Sharafi, ed., “Hijacking Law,” *Law & Social Inquiry* 42, no. 4 (2017): 1240–47, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/26630849>.

³³ Elizabeth Kolsky, “‘The Body Evidencing the Crime’: Rape on Trial in Colonial India, 1860–1947,” *Gender & History* 22, no. 1 (2010): 109–30, <https://doi.org/10.1111/j.1468-0424.2009.01581.x>. See also Sudhir Chandra, *Enslaved Daughters: Colonialism, Law, and Women’s Rights* (New York: Oxford University Press, 1999).

epistemes within which early modern Indians redressed rape and those within which we still do. Even under this regime, rape had gradually acquired a narrow and ironclad definitional fixity: as a crime committed upon a woman, usually a virgin girl, by a male stranger subjecting her to forcible, nonconsenting or coerced penile penetration *outside, in 'public'*. Colonial legal knowledge held the woman to be lost to her community and kin forever when this crime was committed—as if she were dead.³⁴ The loss of honor, and the harm caused to the woman or her community by its loss, was unable to be legally measured or legally remediated.

This narrow definition of rape held stable precisely by virtue of what was excluded from its purview: legal historian Radhika Singha has documented how the judicial credibility given to male narratives of ‘sudden anger’, or ‘great provocation’ in extenuating the abuse and murder of female dependents by male heads of household. These precedents readmitted the patriarchal prerogative to violently enforce private male sex-right under the aegis of rule of law.³⁵ Various polities willingly “recast” their practices of gender and sexuality into a more compliant “new patriarchy” that did not question male domination but mandated its reform and regulation—and longstanding civic and social institutions came to utilize various arms of the colonial state as “instruments of patriarchal delegation”.³⁶ Many Indian elites responded to negative colonial valuations of the status of Indian women by enforcing a heterosexual, procreative, conjugal norm

³⁴ It appears as a threefold social death—first when the rape is committed, second when it is reported, and third when it is forgiven: since acquittals seem to be seen by Indian publics as less proof of innocence and more proof of permission. Moreover, the question of the victim’s agency in bringing forward the complaint cannot reliably be ascertained: these complaints are usually always represented as having been brought by the woman’s relatives, not the woman herself.

³⁵ Radhika Singha, “Making the Domestic More Domestic: Criminal Law and the ‘Head of the Household’, 1772-1843,” *The Indian Economic & Social History Review* 33, no. 3 (September 1, 1996): 309–43, <https://doi.org/10.1177/001946469603300304>.

³⁶ Kannabiran and Singh, *Challenging the Rule(s) of Law*, 80.

that entrenched gendered subordination, and many communities reacted to their own pathologization by repeatedly asserting and exercising their public right to violate, brutalize, and kill sexual transgressors, especially women, *while also* insisting upon the joy and beauty of communal life.³⁷

Several aspects of the social history of the widespread gendered dispossession that followed have been previously explored: the criminalization of survival, the curtailment of non-normative lifeways and modes of association and affiliation, and the violent constitution of native women of all backgrounds as deviant, legally culpable, untrustworthy, blameworthy objects of scrutiny by the colonial state.³⁸ They have produced many a compelling portrait of

³⁷ Tanika Sarkar, in identifying a crucial 20-year period that reflects a transformation of the meaning of *samaj*, or society, in the colonial Bengali context, hints at how deeply this process could be entangled not simply with the problem of properly using and controlling women, but with what could be effectively classed and publicized as the abusive treatment of a woman. The Tarakeswar Scandal of 1873, in which a young wife was beheaded by her husband for having been seduced (or raped) by a priest, “provided an occasion for all Hindus to ponder on themes that involved the very constitution of Hindu society or public,” with the concept of *samaj*—extended for perhaps the first time from caste or subcaste to ‘nation’—explicitly taking center-stage in these debates. By 1891, however, the Hari Maiti/Phulmoni case—in which a man was tried for having caused the death of his nine-year-old bride by engaging in sexual intercourse with her—attracted public scrutiny less of ‘society’ than of the colonial state, which was held to be interfering in a matter internal to the *samaj* and requiring its judgement alone. As Sarkar puts it: “Clearly, it was the behaviour of the *colonial government* that was the scandal, not the rape and death of a little girl. In the failure of that case to attain the status of a scandal, in the displacement of arguments from the event to themes of colonialism and indigenous patriarchy, lies the distance that measures out the space between a more fluid and open interpretive community of the 1870s and a monolithic nationalist-indigenist perspective at the turn of the century.” See Tanika Sarkar, “Talking about Scandals: Religion, Law and Love in Late Nineteenth Century Bengal,” *Studies in History* 13, no. 1 (February 1, 1997): 63–95, <https://doi.org/10.1177/025764309701300103>; and Tanika Sarkar, “Intimate Violence in Colonial Bengal: A Death, a Trial and a Law, 1889–1891,” *Law and History Review* 38, no. 1 (2020): 177–200, <https://www-jstor-org.ezproxy.cul.columbia.edu/stable/27036856>.

³⁸ An important treatment is Durba Mitra, *Indian Sex Life: Sexuality and the Colonial Origins of Modern Social Thought* (Princeton, New Jersey: Princeton University Press, 2020). Also see Charu Gupta, “Women, Gender and Sexuality: Changing Historiographies of Colonial India—A Bibliographical Essay,” *Studies in People’s History* 7, no. 2 (December 1, 2020): 192–204, <https://doi.org/10.1177/2348448920951548> for a literature summary. This includes Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (Berkeley: University of California Press, 1998); Radhika Singha, “Colonial Law and Infrastructural Power: Reconstructing Community, Locating the Female Subject,” *Studies in History* 19, no. 1 (February 1, 2003): 87–126, <https://doi.org/10.1177/025764300301900105>; Kolsky, “‘The Body Evidencing the Crime,’” Ghosh, *Sex*

what it meant for woman and girls in this period to be ruined, cast out, and exposed to progressively harsher and more dehumanizing forms of colonial state discipline, with historical geography opening “a much-needed dialogue between scholarship on the carceral, and the debate on the home as a site of containment and political potentiality.”³⁹ Social histories of ‘the woman

and the Family in Colonial India; Sarkar, “Talking about Scandals”; Sarkar, “A Prehistory of Rights”; Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women’s Rights* (New York: Cambridge University Press, 2012), <https://doi.org/10.1017/CBO9780511851940>; Julia Anne Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia* (Cambridge: Cambridge University Press, 2018), Mitra Sharafi, “Abortion in South Asia, 1860–1947: A Medico-Legal History,” *Modern Asian Studies* 55, no. 2 (March 2021): 371–428, <https://doi.org/10.1017/S0026749X19000234>; Rao, *The Caste Question*; Ashwini Tambe, *Codes of Misconduct: Regulating Prostitution in Late Colonial Bombay* (Minneapolis: University of Minnesota Press, 2009); Ashwini Tambe, *Defining Girlhood in India: A Transnational History of Sexual Maturity Law*, (Urbana: University of Illinois Press, 2019); Jessica Hinchy, *Governing Gender and Sexuality in Colonial India: The Hijra, c.1850-1900* (Cambridge: Cambridge University Press, 2019); Ishita Pande, *Sex, Law and the Politics of Age: Child Marriage in India, 1891-1937* (Cambridge: Cambridge University Press, 2020); Anagol, “The Emergence of the Female Criminal in India”; Kamala Visweswaran, “‘My Words Were Not Cared for’: Customary Law, Criminality and the ‘Woman Question’ in Late Colonial India,” *Contributions to Indian Sociology* 52, no. 2 (June 1, 2018): 156–85, <https://doi.org/10.1177/0069966718763419>; Eleanor Newbiggin, *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community* (New York: Cambridge University Press, 2013); Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime*, (Oxford: Oxford University Press, 2002); Gupta, *Sexuality, Obscenity, Community*; Charu Gupta, ed., *Gendering Colonial India: Reforms, Print, Caste and Communalism*, (New Delhi: Orient Blackswan, 2012); Charu Gupta, *The Gender of Caste: Representing Dalits in Print*, (Seattle: University of Washington Press, 2016); Chandra, *Enslaved Daughters*; Shefali Chandra, *The Sexual Life of English: Caste and Desire in Modern India* (Durham: Duke University Press, 2012); Prem Chowdhry, *The Veiled Women: Shifting Gender Equations in Rural Haryana, 1880-1990* (New York: Oxford University Press, 1994); Gail Minault, *Secluded Scholars: Women’s Education and Muslim Social Reform in Colonial India*, (New York: Oxford University Press, 1998); Philippa Levine, *Prostitution, Race, and Politics: Policing Venereal Disease in the British Empire* (New York: Routledge, 2003); Ruby Lal, *Coming of Age in Nineteenth-Century India: The Girl-Child and the Art of Playfulness* (Cambridge: Cambridge University Press, 2013).

³⁹ Sneha Krishnan and Laura Antona, “Carceral Domesticities: An Introduction,” *Environment and Planning D: Society and Space* 41, no. 6 (December 1, 2023): 931–39, <https://doi.org/10.1177/02637758231218070>, 932. See also Stephen Legg, *Prostitution and the Ends of Empire: Scale, Governmentalities, and Interwar India* (Durham: Duke University Press, 2014); and Stephen Legg, “Carceral and Colonial Domesticities: Subaltern Case Geographies of a Delhi Rescue Home,” *Environment and Planning: Society and Space* 41, no. 6 (December 1, 2023): 960–77, <https://doi.org/10.1177/02637758231174453>. Here Legg examines a 1940 Rescue Home report which provides details about “the commonplace, quotidian struggles which women and girls faced in colonial Delhi” and outlines a “relationship between forced immobility and willed mobility” which “suggests that

question’ in South Asia have established that the 19th century witnessed an epistemic break that is crucial to our present: the control of female sexuality became one of the primary ways to imagine colonial law and governance, and to theorize the relative ‘moral’ progress of civilizations and societies.⁴⁰ At the same time, however, they frequently allude to rape as if such an object, or its subject, is stable.

Some of the most recent scholarship has attempted to investigate *how* acts of survival were—and are—converted into narratives of sexual transgression in which a victim is always already lost, always already to blame, and thus always already absent from “the archive”. The disciplines generated by colonial structures of knowledge—ethnography, sexology, forensics, medicine, comparative law, and even domestic science and hygiene, among others—have featured extensively in these analyses; as has a sustained scholarly focus on Bengal, the region far downriver from Delhi where the East India Company State first took root. Durba Ghosh has explored early fears of miscegenation in interracial rape and domestic violence cases in eighteenth-century Calcutta, and Mrinalini Sinha’s monograph on the politics of masculinity in the ‘high imperial’ colonial Bengal of the late nineteenth and early twentieth centuries highlighted how colonial law enabled the impunity of white male sexuality.⁴¹ Two legal histories, by Radhika Singha and Elizabeth Kolsky, have explored the legal architecture of the

brothels and rescue homes were not just connected, through the intended transfer of inhabitants, but can be directly compared as carceral domesticities.”

⁴⁰ Durba Mitra, “‘Surplus Woman’: Female Sexuality and the Concept of Endogamy,” *The Journal of Asian Studies* 80, no. 1 (February 2021): 3–26, <https://doi.org/10.1017/S0021911820003666>; Mitra, *Indian Sex Life*. Fueled by Orientalist depictions of a despotic political condition in which households exercised unchecked and chaotic influence over governance, the colonial state portrayed Indian kinship systems as barbaric, consumed by ‘honour’ and ‘jealousy’, and needing to be regulated. The Indian household was imagined not only as a place that was dirty and backward, but also one that was violent, terrorizing, and abnormal.

⁴¹ Sinha, *Colonial Masculinity*; Ghosh, *Sex and the Family in Colonial India*.

Bengal Presidency in relation to the governance of sexual violence, documenting how British ideas about the falsity of rape complaints delegitimized victims and conveyed the message that sexual violence was a nuisance to courts, for all that it violated social standards of personal conduct.⁴² Building on Tanika Sarkar’s seminal analysis of the sexual politics of age-of-consent legislation in late nineteenth-century Bengal, Ishita Pande and Padma Anagol have studied childhood and child abuse in colonial India.⁴³ Sarkar’s microhistory of the cultural furor surrounding the fatal rape of a child bride established that the politics of rape was materially as well as symbolically significant to the politics of empire.⁴⁴

To the colonizer, as Jenny Sharpe argued, rape was an ‘allegory of empire’ that expressed imperial fears and fantasies—particularly during moments of political crisis—as well as Indian ones.⁴⁵ Scholars like Pamela Lothspeich, Charu Gupta, and Pradip Gupta have examined accounts of rape and obscenity in English, Hindi, and Bengali literary and public spheres, and new work on the public politics of overseas indenture in colonial India has similarly revealed that tales of sexual assault on indentured women were a lightning-rod for nationalist movements.⁴⁶ Anupama Rao has studied the rhetoric and commission of sexual violence in the

⁴² Kolsky, *Colonial Justice in British India*; Kolsky, “The Rule of Colonial Indifference”; and Singha, *A Despotism of Law*.

⁴³ Pande, *Sex, Law and the Politics of Age*; and Padma Anagol, “Historicising Child Sexual Abuse in Early Modern and Modern India: Patriarchal Norms, Violence and Agency of Child-Wives and Young Women in the Institution of Child Marriage,” *South Asian Studies* 36, no. 2 (July 2, 2020): 177–89, <https://doi.org/10.1080/02666030.2020.1821515>.

⁴⁴ Sarkar, “A Prehistory of Rights.”

⁴⁵ Jenny Sharpe, *Allegories of Empire: The Figure of Woman in the Colonial Text* (Minneapolis: University of Minnesota Press, 1993).

⁴⁶ Gupta, *Sexuality, Obscenity, Community*; Gupta, *Gendering Colonial India*; Pamela Lothspeich, “Unspeakable Outrages and Unbearable Defilements: Rape Narratives in the Literature of Colonial India,” *Postcolonial Text* 3, no. 1 (April 25, 2007), <https://www.postcolonial.org/index.php/pct/article/view/604>; On indenture, see Radhika Mongia,

constitution of caste publics in the colonial Bombay Presidency, and other studies of this region, like Ashwini Tambe's, have highlighted the sexual violence faced by prostitutes.⁴⁷ Finally, scholars like Durba Mitra and Luna Sabastian have applied political and anthropological theories of endogamy, exogamy, and communal or fraternal violence to perennially emotive histories of abduction in modern India.⁴⁸ While Indian law is a rich archive for mapping the history of sexuality, in short, legal histories that have set out to study higher-profile issues like abortion, infanticide, trafficking, and 'crimes of passion'—often only show us the possible pretexts, prequels, or aftermaths of rape.

Despite the sustained plenitude of scholarship on rape in contemporary India, this indicates to me that there is a historical lacuna in this field.⁴⁹ If a steady, seemingly universal state of sexual subordination and social inferiority has kept violence against women largely

"Gender and the Historiography of Gandhian *Satyagraha* in South Africa," *Gender & History* 18, no. 1 (April 2006): 130–49, <https://doi.org/10.1111/j.1468-0424.2006.00418.x>; and Charu Gupta, "'Innocent' Victims/'Guilty' Migrants: Hindi Public Sphere, Caste and Indentured Women in Colonial North India," *Modern Asian Studies* 49, no. 5 (2015): 1345–1674, <https://www.jstor.org/ezproxy.cul.columbia.edu/stable/24495433>.

⁴⁷ See Gupta, *Gendering Colonial India* for Rao; Tambe, *Codes of Misconduct*.

⁴⁸ Mitra, *Indian Sex Life*; Luna Sabastian, "Women, Violence, Sovereignty: 'Rakshasa' Marriage by Capture in Modern Indian Political Thought," *Modern Intellectual History* 19, no. 3 (September 2022): 757–82, <https://doi.org/10.1017/S1479244321000391>.

⁴⁹ Contemporary sociological and anthropological studies of rape and domestic violence in India argue that the relatively weaker implementational capacity of the postcolonial state provides significant openings for communities to radically mobilize around sexual violence. Oza, *Semiotics of Rape*; Roychowdhury, *Capable Women, Incapable States*; Satish, *Discretion, Discrimination and Rule of Law*; Baxi, *Public Secrets of Law*; Agnes, *Law and Gender Inequality*. Roychowdhury's fieldwork highlighted "the emergence of a messy, entangled consciousness, where people's conceptions of law and justice emerged from ongoing contact with non-state institutions as well as juridical visions of justice, however absent and unattainable. *Their aspirational-strategic subjectivities combined the language of law and legal rights with distrust and tactical acceptance of illegality*. My research provided striking proof of what some have identified as a popular understanding of the Indian state as simultaneously sublime and profane, a site that embodies an ideal of justice but which has become corrupted and thus needful of extralegal action."

unaddressed and invisible to most of history—with only ‘minor’ variations in its content—only certain kinds of acts named, recounted, or cited as rape have become politically useful, representable, or visible as forms of injury and harm, activating demands for justice and redress, in India’s recent colonial past. These records of the scandalous and eventful cannot claim to be representative of the actual presence or prevalence of rape. But this in itself leads to a realization: that just as in reality, so in history, space and time are the same fabric. The histories of violence against women we’re able to write are confined as much by the type of space that is visible as by how far back in time we can see—and what bodies are present there.

To cite just one example I treat in this dissertation: On a cold February day in Allahabad in 1851—the decade immediately prior to the advent of the IPC—a woman named Bhuggea found her young daughter lying grievously injured in a sugarcane field, raped by the farmer who owned the land. Her first move was not to take her to a healer or the district police—instead, she carried her daughter to the door of the rapist’s house, and left her exposed there on its threshold for hours, for their entire village to see. The body on the threshold solved two problems that the other two options would not: first, the rapist, finding it at his door, incriminated himself by fleeing; and second, dozens of witnesses who had seen the child’s body lying barely alive on display were able to furnish the evidence under oath that the victim herself, though she survived, would have been judged incapable of providing in the colonial courts. Focusing on scenes of rape such as this one illuminates the reality, materiality, and spatiality of rape as a boundary whose crossing is constitutive of the historical emergence of public and private spheres in colonial India.

Many social and legal histories stop at this threshold, focusing on the role of customary, civil, and personal law in “normalizing enclosure”, constituting the home as a site of enforced

confinement for women and girls, forcing the making of domestic life in conditions of carcerality and racial capitalism.⁵⁰ Although many scholars do narrate and analyze the sexualization of communal violence (and vice-versa) as a driver for the formation of varied anticolonial and nationalist publics from the 19th century onwards, there has been no dedicated study of rape as an everyday feature of public space under colonialism and a factor in its transformational seclusion, enclosure, and dispossession of women. Such a study could investigate a fundamental question: whether the colonial legal regime India inherited—in which the proof and punishment of rape came to turn on the status, character and respectability of the victim who suffered it—determines, or merely reflects, the dominant cultural assumption that no respectable woman of good character would ever have much reason to be outside, and any woman who does is fair game for sexual predation.

Attempting such a study for north India, I began by looking at two rough “legal eras”. The Company Regulation decades during which the Indian Penal Code was being composed (the 1820s to 1860s), and the post-Ilbert Bill condition of colonial white supremacy, in which the most infamous rapists were white men and their subordinate allies who claimed the right to be tried, and usually exonerated, by a white-only jury: in other words, the height of the political conditions in which the law was intended to be operant, during which it seemed like rape *was* a problem of modernity and whiteness (1880-1920).⁵¹ When I focused on studying those two moments, archives of nineteenth-century colonial criminal laws of rape revealed that public

⁵⁰ Krishnan and Antona, “Carceral Domesticities,” 933.

⁵¹ For more on the development of colonial law in relation to the criminal impunity of subaltern white men, see Elizabeth Kolsky, *Colonial Justice in British India* (New York: Cambridge University Press, 2010); and Mrinalini Sinha, *Colonial Masculinity: The “Manly Englishman” and the “Effeminate Bengali” in the Late Nineteenth Century*, (Manchester, New York: Manchester University Press, 1995).

space was already imagined and experienced by large populations of women as constitutively dangerous and exclusionary space. This gendered experience of everyday life in northern India could not be attributed straightforwardly either to living as a modern or inhabiting a colonized space governed by colonial laws; it owed also to practices of scapegoating, outcasting, retribution, and stigmatization which, while supercharged by colonial discourses and knowledges, had deep non-colonial roots.

3. The body on the threshold: methodology and arguments

My specific contribution in this project is to explore how the jurispathic incentives of the colonial criminal law of rape engendered unsafe public environments. Bringing a combination of spatial, socio-legal, and micro-historical approaches to bear upon colonial judicial archives, I work tangentially to their central object: the criminal court proceeding. In the two halves of my dissertation, I explore the consequences that thin and myopic legal conceptualizations of rape—reflected in the distorted epistemic silo of the colonial courts—had upon two types of public dilemmas or problems. First, I attend closely to instances of extrajudicial contestation over rape committed in ‘public’ at the margins of political conflicts over sovereign power and direct rule, such as border wars, caste rebellions, and cattle-smuggling feuds, where sexual violence was able to flourish as a practice of group-based impunity or retaliation, and reveals itself to have wide-ranging political and structural dimensions. In this half, I argue that the authority to sanction rape—to both punish and prescribe—became foundational to jurisdictional and

territorial conflicts between propertied castes, local power-holders, and functionaries of the British Indian colonial state.

Next, my chapters explore, scene by scene, the hyper-visibility of rape in transitory environments characterized by common public access, proposing that this visibility transformed gendered expectations of safe passage while traveling or working outdoors over a century of colonial occupation. I recruit histories of short-distance migration and the public/private circulation of women within the marriage system, among others, to counter assumptions about South Asian women's inherent immobility and seclusion. I also index emerging procedural and forensic technologies of the colonized Indian body politic—which reinforced an understanding of Indian rape survivors as unreliable, and of most rape cases as fabricated—to local ideas about public safety and state responsibility, which were often premised on caste-differentiated and retributive ethics of justice. I focus on women and girls as victims of rape, although rape is by no means exclusively perpetrated upon women, and I have no intention of implying so.⁵²

For now, my approach to the concepts of 'public', 'public space', and 'commons' relies on their wide signification and general connotation, acknowledging that extant scholarship on

⁵² In the colonial context, scholars have argued that British anxieties about white women as racial standard-bearers are actually motivated by powerful subcurrents of homoerotic fear and desire. These fears resurface in narratives about the violent conquest and pillage of Indian kingdoms; the abasement, savagery, effeminacy, and deviance of Indian men; and the studied absence of direct references to the sexual violation of male bodies, which in Heath's telling was denied and recoded as torture in order to fend off the prospect that British men's bodies, by association, were fragile or violable. According to Heath, since "the binarism of Western civilization and Eastern barbarism is difficult to maintain when the colonizer is an agent of torture and massacre," a discourse of rape that displaced victimhood onto English women rather than Indians made it possible "to project counterinsurgency as the restoration of moral order and the articulation of a feudal hierarchy as a relationship of race." Sara Suleri, *The Rhetoric of English India* (Chicago: University of Chicago Press, 1992); Sinha, *Colonial Masculinity*; Anjali R. Arondekar, *For the Record: On Sexuality and the Colonial Archive in India*, Next Wave (Durham: Duke University Press, 2009); Deana Heath, "Torture, the State, and Sexual Violence against Men in Colonial India," *Radical History Review* 2016, no. 126 (October 1, 2016): 122–33, <https://doi.org/10.1215/01636545-3594469>.

South Asia has yielded many explorations of the “array of ways in which public morality, public interests, the state’s assertion of its role on behalf of the public, and related issues are pursued through the courts and other state institutions, such as the formally-constituted commissions.”⁵³ Future work on this project will address Sandria Freitag’s call for more treatments of “the implicit connection between the detached individual able to judge impartially among public-interest issues, and the claim by the state to act impartially on behalf of the public”—a connection that is only briefly elaborated in Chapter 2. It would also engage with critical theories of precarity, which Tavia Nyong’o has suggested would be ‘transfigured’ by considerations of racial, gendered, and national difference: “To reintroduce difference into theorizations of precarity is to insist...that we do not yet know what a precarious body can do. In particular, we do not yet know how it comes into contact, into assembly, into collective and distributed agency, into “being singular plural” with others.”⁵⁴ For now, I rely on Freitag’s suggestion that we can speak of ‘the public’:

As enacted (by which we may understand not only ‘performance’, but also ‘participation’, even behaviour and clothing as statements);
As envisioned (or what has been called here ‘the *imaginaire*’);
As space, both rhetorical and actual (that is, built environments, pictured and real, which operate ‘in public’ and/or with public access, serving as stages for performing the polity, as well as statements on what constitutes ‘the public’ and who falls within it); [and]
As belief, interpretation, understandings, values, ‘public opinion’ (that is, as concepts understood as motivations for actions, as forms to influence popular conceptualizations, and as expressions of shared views).⁵⁵

⁵³ Sandria B. Freitag, “Postscript: Exploring Aspects of ‘the Public’ from 1991 to 2014,” *South Asia: Journal of South Asian Studies* 38, no. 3 (July 3, 2015): 512–23, <https://doi.org/10.1080/00856401.2015.1052927>: p. 514-17.

⁵⁴ Tavia Nyong’o (2013), ‘Situating precarity between the body and the commons’, *Women & Performance: a journal of feminist theory*, 23:2, 157-161, p. 159

⁵⁵ Freitag, “Postscript.” p. 514-17. See also Pamela Price, “Acting in Public versus Forming a Public: Conflict Processing and Political Mobilization in Nineteenth Century South India”, in Keith E. Yandell and John J. Paul, *Religion and Public Culture: Encounters and Identities in Modern South India* (London:

In my initial search in the archive, I was confident of being able to rely on violence *around* rape that, as it became the violence *of* rape, makes rape visible as an object of historical inquiry. By studying the use of rape as a political instrument, I hoped to explore particular domains of violence as the irreducible bases of social power that secure and legitimate seemingly ‘non-violent’ modes of association and exchange between social groups. I looked for evidence that the prevalence of rape affected women’s presence in public life—that any stride towards the growing mobility of women in colonial society was checked and diminished by concerns about rape. Finally, to counter the problems of repetition and abandonment, of the curtailing of existence, I chose to give each case I narrated *space*; I let them sprawl, I let their social worlds unfold fully, to the extent I could.

The public danger of rape in modern life has typically been framed as a danger arising especially in deserted spaces, but what is clear from my research is that this was by no means always the case: more often than a ‘he-said she-said’, there is a chorus of testimony to attest that the space in which rape was committed was a common space, a peopled space, which precarious women existed in and used because there was no other choice or mode of subsistence, existence, survival, or being. Some kinds of female bodies were meant to be there because they had to be there, performing basic labour or social tasks—and yet never achieved authorization to be there, or went there entirely on their own terms, with assurance of dignity, social recognition and bodily integrity. And that idea—that some female bodies are ‘in common’, no one bothers protecting them, and anyone may partake without consequence if he calculates right—is the fundamental charge of irreligion, primitivity, uncivilization that colonial rule levies at the ruled.

Routledge, 2013), <https://doi.org/10.4324/9781315027579>. See also the special issue of *South Asia: Journal of South Asian Studies*, ‘Aspects of “the Public” in Colonial South Asia’, Vol. 14, no. 1 (1991), edited by Sandria B. Freitag.

One criterion of choice that I felt was important was to focus on cases that position the victim on the threshold not just of physical but of social death. I revisit and critique Ranajit Guha's influential microhistory of gendered violence, 'Chandra's Death', by focusing on the Chandras who ostensibly survived, although they were often held to have died, socially, essentially, discursively.⁵⁶ Dropped like hot potatoes into the margin between state and society, and many of them come close—but they do not die.⁵⁷ Cases that deviated in whatever way from the assumption that the victim was always and already dead in every sense that counted were therefore a matter of interest, allowing me to refocus on the role that caste and community action historically played in access to courts and influence upon outcome. I was able to explore how litigants alleging rape 'smothered' their testimonies to position themselves as both abject and innocent *and* capable and threatening, given that they embodied collective claims and stakes which were visible in complex, unpredictable political alliances. If rape was regularly represented as an experience a victim couldn't come back from, what is documented here is the oft-interesting ordeal of attempts to bring people back in nevertheless—to catch them on the brink, when they can still be pulled, and honorable social ties are not dissolved, as they often are the moment one crosses a threshold—illustrating who closes around who to offer protection, and who is left exposed and vanished.

⁵⁶ Ranajit Guha, "Chandra's Death", in *A Subaltern Studies Reader, 1986-1995* (Minneapolis: University of Minnesota Press, 1997).

⁵⁷ The actual physical death of women in the archive is like a reliable boundary marker: a thing we know shows up in colonial records. We have husbands as killers, relatives as killers, women dead from abortion, and deaths of child brides from forced sex (which was never called rape). Murder as one of the first acts to stick up in colonial records of crime from the earliest days on, as signifying a lack of law and security in life.

A second and related criterion of my archival search was to explore the legal archive in a way that rejected colonial classifications of violence; to assume that rape would show up most ‘colorfully’ in cases where it was not actually rape that was being prosecuted. I contrasted such cases, which turned out to be relatively numerous, with the hyper-monotony of surface-information that appeared for rape prosecutions in standard court settings, such as the Nizamut Adalat in the decades before the IPC set in, during which the archival appearance of rape in compressed seriality reflected a crisis in imperial adjudication: an unshrinkable civil and criminal backlog.

Finally, I set out to not write the social history of a particular group—to give a particular character to the identity of the rape victim as a way to distinguish their experiences from other forms of social violence against women in colonial north India. For one thing, the partial and minuscule view of rape in the disinterested colonial archive—the rape that shows up, that appears as rape—distances both victims and perpetrators from ‘real’ social life, purporting to offer nothing but female body parts harvested from conditions of exposure, unsafety, impunity, entitlement. Rather than attempting to compensate for this, I have tried to acknowledge that there is no social history of this group because they are not a group: they are an un-grouping, a flotsam of social precarity and state abandonment. This ungrouping is embraced to suggest extent and extensiveness, to narrate the un-bounding of rape as a technique of social violence, and to reframe the modern ‘freedom problem’ of safe mobility within the ancient ‘freedom problem’ of subsistence, through the everywoman figure of the traveler, the beggar, the gleaner and harvester.

‘The Body on the Threshold’ makes three contributions to South Asian history and gender studies, as currently conceived. First, it theorizes rape as a misogynistic social calculus of

illicit conduct. While the colonial legal definition of rape centered non-marital sexual contact, obvious violence, and the impossibility of consent, the absence of any uniform moral or social prescription against nonconsensual sex in colonial India reveals that rape is best understood in this context differently—as an act intended to challenge, skirt, or evade other legal and social strictures through the violent sexual imposition of patriarchal relations of caste, class, property, and race. To study rape is to study shifting dynamics of sexist collusion and collaboration across other markers of social difference. Courts applying colonial law within the rapidly transforming Indian social landscape often could not account for the brazenness and irrationality of rapists’ manner of committing rape—which helped encourage disbelief that most rape really was rape. Nor could they wholly admit extant male prerogatives of seeking recourse for crimes against women to whom they had a possessive relation. Colonial legal records therefore give an impression of landscapes and public spaces inhabited by a kind of bipolar masculinity: dishonorable men, rapists, and men pursuing their honour, retaliators. These actors’ intentions could not be contained within or evaluated by the new standards of rational self-interested legal personhood that upheld criminal law. At the same time, colonial rule had little political incentive to prosecute rape extensively and impartially: despite claiming that the rule of law had superseded the rule of men, it sought precisely to base its governance upon hierarchies of masculinity, excluding many from fitness to rule.

My project thus treats cases of rape not just as criminal acts subject to legal dispute, but as consequences of a wider struggle to contain absolute male sex-right within the bounds of the colonial sexual contract. These cases were a means themselves of refounding, relocating, or redistributing disputes both legal and social—particularly disputes about hierarchy and cooperation between and among men—and were uniquely successful in their self-absolution on

these grounds. As South Asian criminal legal regimes were reconstituted around the twin problems of bodily evidence and native mendacity, I show that the political complexities and aggravating circumstances of grudges, old enmities, territorialism, and other local impunities that shaped the commission of rape were largely dismissed from colonial criminal records, and almost never positively impacted rape's punishment. Colonial administrators, princes, elites, and state functionaries debated the political responses appropriate to sexual violence, and the legal verdicts awarded for rape, on terms almost wholly unrelated to the actual prevalence of sexual violence, but intimately related to the favorable balance of power among men. Committing rape, especially as a form of continuing or relocating dispute, thus constituted a reliably 'under-punishable', risk-discounted technique of violence upon Indian women and girls, bringing high trade-offs in social damage.

When the transparently politicized apparatus of discipline and punishment that presents its most farcical face in contemporary rape prosecutions was a nascent feature of British colonization—and modern penal institutions such as jails were unusual and new—I present evidence that north Indian subjects sometimes violently contested not only the punishment of rape by incarceration, but the political instrumentalization of rape itself, rendering rape both visible and central to historical records of the conflicts between South Asian communities and states. My work's second contribution, refocusing on the role that caste and community action historically played in access to courts *and* in rights to safely use public space or a commons, is to conceive of the recourse-seeking agencies of rape victims through the prism of the organized abandonment and exposure they often faced at the hands of the state and socially dominant communities. Provisionally, I dub this abandonment 'dismemberment', in the sense both of

being objectified and reduced to body parts by colonial evidentiary procedures as well as being ejected or cut off from social protections.

As a counterpoint to imposed narratives of dismemberment, I also analyze practices of punitive self-harm: a way of carrying on a social dispute by harming oneself or one's dependents to either imbricate, frame, or place cosmic blame upon an enemy party. After a rape trial in a colonial court, honour and chastity, the lost marks of truth and the signs of a truthful character, leave behind simply an Indian woman, who is a liar, and inherently suspect by dint of her presence outside. To counter this disgrace, not only did some subjects resort to punitive self-harm to compel legal attention to and redress for rape-related grievances, but the extrajudicial retaliatory actions that communities undertook when their interests were aligned with punishing rape could also be interpreted as undermining the right of the survivor to a conviction of her rapist via formal legal adjudication. There were many moments when subjects blamed interpersonal violence on the colonial state and its negative conception of responsibility. But British legal ignorance of indigenous social understandings of illicit sex and structures of group complicity in sexual violence changed the paradigm within which rape could be claimed, believed, and redressed. The ability to articulate the positive moral or ethical content of traditions emphasizing collective conduct became more and more difficult, precipitating a default to conceptions of gendered responsibility as avoidant, prohibitive, and collective responsibility as reactive, defensive, retributive. This transformed the stakes of maintaining and protecting female chastity, cementing the imperative to seclude respectable women from public life.

Finally, and most incompletely, I offer a pre-history of the emergence of a public climate of sexual agoraphobia in postcolonial India. Agoraphobia is commonly understood to be a fear of or anxiety about going outside; the agora can also be understood to denote a space of public

participation and gathering, a landscape central to social and economic life. Some theorists have spoken about political hostility to mobs, anarchy, or rule by ‘the people’ as ‘political agoraphobia’.⁵⁸ I theorize the colonial aggravation of north Indian *sexual* agoraphobia, detailing social and legal discourses and structures designed to govern and enclose female bodies by creating conditions of sexual unsafety via the fear of being subjected to rape when one is outside the home. I argue that by the mid-nineteenth century, colonial law and policy had engendered a new regime of female public exclusion—a resurrected logic of *pardah*, or seclusion—in a transitioning political climate in which practicing seclusion granted women much less independent political power outside of internal status and respect within their community. Today, political demands in India to ease women’s anxiety about their safety in public spaces—usually by reshaping their built environment and cleansing them of undesirable social elements—are widespread. I give such demands a history: although rape is known today to be primarily committed by women’s own kith and kin, I argue that this reality was and is effaced, and the

⁵⁸ I derived this description of the concept I am trying to theorize from David Graeber, “There Never Was a West,” The Anarchist Library, accessed June 5, 2024, <https://theanarchistlibrary.org/library/david-graeber-there-never-was-a-west>. Graeber writes: “Francis Dupuis-Deri (2002) has coined the term “political agoraphobia” to refer to the suspicion of public deliberation and decision-making that runs through the Western tradition, just as much in the works of Constant, Sieyès, or Madison as in Plato or Aristotle. I would add that even the most impressive accomplishments of the liberal state, its most genuinely democratic elements—for instance, its guarantees on freedom of speech and freedom of assembly—are premised on such agoraphobia. It is only once it becomes absolutely clear that public speech and assembly is no longer itself the medium of political decision-making, but at best an attempt to criticize, influence, or make suggestions to political decision-makers, that they can be treated as sacrosanct. Critically, this agoraphobia is not just shared by politicians and professional journalists, but in large measure by the public itself. The reasons, I think, are not far to seek. While liberal democracies lack anything resembling the Athenian agora, they certainly do not lack equivalents to Roman circuses. The ugly mirror phenomenon, by which ruling elites encourage forms of popular participation that continually remind the public just how much they are unfit to rule, seems, in many modern states, to have been brought to a condition of unprecedented perfection.” See also Graeber, “On Cosmopolitanism and (Vernacular) Democratic Creativity: Or, There Never Was a West”, in Pnina Werbner, *Anthropology and the New Cosmopolitanism: Rooted, Feminist and Vernacular Perspectives* (London: Bloomsbury, 2009), <http://ebookcentral.proquest.com/lib/columbia/detail.action?docID=452588>.

threat of rape projected onto ‘strangers’, in ways which are powerfully co-productive with sexually oppressive endogamous logics of caste purity that are particular to north India.

4. Defining rape in colonial India

Pratiksha Baxi, who embedded in a Gujarati court in the 1990s to investigate rape trials from a sociolegal perspective, recalls that her experience was often fraught: “Researching rape itself was unsafe, attracting the charge of indecency, sexist comments, and even sexual harassment.”⁵⁹ The immense emotional power of the idea that the past was a glorious place for women—whose imprint I analyze in the conclusion—would probably make a historical approach to the study of rape even more unpalatable to a national discourse so deeply invested in blaming the modern. For a study of rape is not some abstract evaluation of women’s historical status—it is *violence*. As one who works in the past and immerses myself in it, I, too, would like very much to remain in a past, however distant, that is safe for me as a woman—blurred and haloed, void of the terror, disappointment, and alienation women feel now, every day, on the street. But this is not possible.

Attempts to bound a historical study of rape—especially temporally—become daunting because of how pervasive yet absent this object might be. Rare are the occasions that it has served any dominant power in the subcontinent to permit the free articulation of the harm of sexual violence by allowing a subject upon whose body such violence is committed to leave any

⁵⁹ Baxi, *Public Secrets of Law*, p. xxxv.

more than a trace of personal presence. But there is also a problem here of the political moment and milieu in which I write. Present-day India seems to me to be undergoing a *post-agency-evaluation moment*. If, for a few decades, legal precedents and social movements sought to clear the way for women and gender minorities to exercise individual choice and consent while claiming sexual and political rights, the backlash to those gains has consisted of individual choice being superseded in public discourse by other affiliations and considerations, particularly community- and identity-based ones.⁶⁰ Thus, it is consensual marriage to the wrong person that can be effectively interpellated as rape—or as something having violent and suspicious intent—as opposed to non-consensual forced sex with someone in one’s kin or communal circles. Such a moment is a call to question the globally hegemonic contemporary understanding of rape, especially in formal legal systems derived from Anglo-American common law, which broadly defines rape as (usually only penetrative) sex in the absence of consent—consent being the ultimate seal upon legitimate sexual relations in the present.⁶¹

⁶⁰ Oza, *Semiotics of Rape*; Srinivasan, *Courting Desire*; Mody, *The Intimate State*; Chowdhry, *Contentious Marriages, Eloping Couples*.

⁶¹ The term ‘consent’ resonates with liberal political traditions of contract, in which individual free agents are imagined to enter into volitional relations that carry obligations and responsibilities. Contractarian relations are assumed paradigmatic in both private and public social relationships; the contract model provides the means for judging whether relationships can be considered just or unjust. “The political fiction of property in the person,” Carole Pateman claims, has conflated personhood with property and assumes that “there are no limits on the property in the person that can be contracted out.” Carole Pateman, *The Sexual Contract* (Stanford, Calif: Stanford University Press, 1988). Scholars of Atlantic slavery, global plantations, master-servant law, and indenture, however, have problematized the historical origins of consent, demonstrating that the concept arises initially as a category of *abjection*, a mode of *extraction*. Radhika Mongia, *Indian Migration and Empire: A Colonial Genealogy of the Modern State* (Durham: Duke University Press, 2018); Prabhu P. Mohapatra, “‘Restoring the Family’: Wife Murders and the Making of a Sexual Contract for Indian Immigrant Labour in the British Caribbean Colonies, 1860-1920,” *Studies in History* 11, no. 2 (August 1, 1995): 227–60, <https://doi.org/10.1177/025764309501100203>; Samita Sen, *Women and Labour in Late Colonial India: The Bengal Jute Industry*, electronic resource (Cambridge ; New York: Cambridge University Press, 1999), <http://www.columbia.edu/cgi-bin/cul/resolve?clio14204083.001>; Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997); Sharon Block, *Rape and Sexual Power in Early America*, electronic resource

This formulation, which was also the hallmark of the Indian Penal Code, has taken on the status of a universal in the global movement for women's rights because it assumes that consent is relevant, recognizable, and applicable everywhere, though this hinges on the continued relevance of the now rapidly-fraying regime of modern transnational liberal governmentality that underpins both the legitimacy and the transportability of concepts such as 'due process', 'rule of law', 'justice', and rights in general. Since this assumption about consent is untrue, India's present is seized by intense contestation over the connections between sexual consent, unwanted sex, force, coercion, criminalization, and survival.⁶² It is clear that the sexualization of consent transforms its meaning and significance, and that this transformation is highly relevant to the contemporary exercise of political and social power. However, *neither sex nor consent* are stable categories that possess relevance across time and place, including within discourses pertaining to the harm of rape, the subject injured or aggrieved by rape, or the punishments appropriate to rape.⁶³

(Chapel Hill: University of North Carolina Press, 2006), <http://www.columbia.edu/cgi-bin/cul/resolve?clio14159234.001>; Hershini Bhana Young, *Illegible Will: Coercive Spectacles of Labor in South Africa and the Diaspora* (Durham: Duke University Press, 2017); Thornberry, *Colonizing Consent*.

⁶² As Roychowdhury has pointed out in her sociology of domestic violence in contemporary Bengal: "While the women I met brought localized definitions of harm, consent, and compensation to their legal ventures...the political economy of legal institutions informed survivors' beliefs and actions. *Strikingly, survivors did not have static visions of harm. They quickly adapted their views in relation to the institutional messages that surrounded them.*" *Capable Women, Incapable States*.

⁶³ 'Consent' of this contractarian genealogy is still questionable in its applicability to generalized, everyday Indian understandings of rape. But more broadly, the descriptive adequacy of consent for something as excessive and polymorphous as sexuality is lacking at best. Sexuality emerges in intersubjective interaction, and a person's intentionality must be understood as both embodied and as having a temporal modality. Moreover, the actions and sensations of the body, and the body itself, are experienced as coterminous with and thus constitutive of the self, rather than something the self experiences from a distance. Rape is therefore not something separate from a 'self' that has been straightforwardly stolen and used unwillingly (as a contract model might assume), but as something that violently transforms, that alters subjectivity. Contract models, however, often refuse to accept the reinterpretation of a bodily, subjective event. Similarly, contractual thinking (even of genealogies other

The ‘gender-mainstreamed’ approaches to law and policy that preceded the Bhartiya Nyaya Sanhita addressed gender-based violence in terms that characterized it as an inevitable outcome of sexual difference, reifying sexuality as the locus of injury and harm.⁶⁴ Section 63 of the new 2023 law, however, forbore to make rape law gender-neutral, and still holds that rape can only be committed upon women and girls, never on boys, men, or gender-nonconforming people. Nevertheless, it makes a game attempt at an expansive definition of rape: it decenters penile penetration, holding that rape can occur when the vagina, urethra, or anus are penetrated either by foreign objects or other genital and body parts, including being touched by the mouth. It specifies consent to be “unequivocal voluntary agreement”, and lays out a number of compounding circumstances that aggravate the severity of rape sentencing, such as whether a

than the one above) precludes the possibility of marital rape in many juridical understandings. See Linda Alcoff, *Rape and Resistance: Understanding the Complexities of Sexual Violation* (Cambridge, UK: Polity Press, 2018).

⁶⁴ For Flavia Agnes, a replacement of ‘rape’ by ‘sexual assault’ recognizes that other objects than a penis can be used to hurt and degrade people, and encourages punishment to be determined by the degree of ‘injury’ done to the woman—but the necessity of legal recognition remains unproblematized. In this configuration, the absolutism of the criminal is privileged over the parleys of the civil and social: women’s experiences are read and recognized exclusively when they employ rights-based language—and rights-based language is always and already a form of legal speech, set into a binary opposite a presumed social silence, with an automatically assumed end purpose that is carceral. Recent scholarship by Mrinal Satish and Pratiksha Baxi on contemporary rape trials and the effectiveness of sentencing processes for sexual crimes has revealed many feminist victories to be paper tigers; nothing seems to change on the ground. Agnes and Menon, among others, have noted that in India, women’s campaigns within civil society have expressed the unique harm of rape largely *only* in *sexual terms*, as a violation of bodily integrity, by challenging prevalent ideas about sexual consent and attempting to vitiate the need for evidentiary corroboration of sexual assault to a legal standard of beyond a reasonable doubt. In these campaigns, it is often assumed that such violence is first and foremost sexual; that the fact that violence is sexual “radically alters qualitatively the terror and pain of the victim”; and that sexuality, sited in the physical body, is the truest and deepest expression of selfhood. The ‘sexual’ character of the act is what makes it an act of power and domination; in some interpretations this can even slide into a MacKinnonesque formulation, that the hierarchical and violent relationship between men and women *is* sex. In the long run, Menon argues, this approach has favored “the reinstatement of such dominant norms as honour and chastity through the rape trial, even when the verdict is favorable, that is, when conviction has been secured.” Menon, *Recovering Subversion*; Baxi, *Public Secrets of Law*; Agnes, *Law and Gender Inequality*; Satish, *Discretion, Discrimination and the Rule of Law*.

caregiving dynamic or formal power imbalance is present, whether the survivor and perpetrator are related, and whether the act was premeditated or committed repeatedly or *en masse*.⁶⁵ In this sense, and interestingly for my purposes, it disaggregates the variety of situations that could once hope only to fall under the narrow purview of rape under Section 375 of the Indian Penal Code, which acknowledged nothing of compounding circumstances and took minor age and obvious, bloody violence as the only sure-fire proofs, rather than particular aggravators, of the crime of rape.

That narrow purview reflects the extent to which the archive of law—in the case of the Indian state, a repository of statutes, digests, reports, and case precedents—is meant to decide what rape is, or even if rape *is*. Restricting one’s archive to the law in studying rape precipitates one of the critical paradoxes of feminist history-writing: the attempt to imagine a form of reading

⁶⁵ 63. A man is said to commit “rape” if he— (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:— (i) against her will; (ii) without her consent; (iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt; (iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; (v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent; (vi) with or without her consent, when she is under eighteen years of age; (vii) when she is unable to communicate consent. Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora. Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exception 1.—A medical procedure or intervention shall not constitute rape. Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape. See The Bhartiya Nyaya Sanhita, 2023, *Gazette of India*, December 25th, 2023. <https://egazette.gov.in/WriteReadData/2023/250883.pdf>.

sources that holds the allure of ‘recovery’ against its impossibility.⁶⁶ Black feminist scholarship, for instance, demonstrates how historical sources that ostensibly contain nothing of ‘woman’ or ‘sex’ are nonetheless saturated with a “libidinal investment in violence”, a “traffic between fact, fantasy, desire”, that forecloses access to the stories and experiences of certain kinds of actors—the enslaved, the dispossessed, the marginalized, the nonhuman, the hidden—except in terms that violently replicate their incommensurability with the discipline of history.⁶⁷ Legal history in particular, as Renisa Mawani recently argued, is a condensed site of epistemological and political anxiety that is still relatively unchallenged in exemplifying such violence. Many legal historians studying colonialism have turned to alternative archives (such as travel writing, photographs, or oral histories), but have not critiqued law’s *own* archive: “the ways that law conceives of, appropriates, and assimilates some knowledges as pertinent to legality while dismissing others as extraneous and nonexistent.”⁶⁸

In the Indian colonial archive, perhaps the most pertinent of these assimilated knowledges—as I explore—were those which positioned young Indian women and girls as

⁶⁶ See Arondekar, *For the Record*.

⁶⁷ As Hartman puts it: “the stories that exist are not *about them*, but rather about the violence, excess, mendacity, and reason that seized hold of their lives, transformed them into commodities and corpses, and identified them with names tossed-off as insults and crass jokes. The archive is, in this case, a death sentence, a tomb, a display of the violated body, an inventory of property, a medical treatise on gonorrhoea, a few lines about a whore’s life, an asterisk in the grand narrative of history.” In such a situation, she asks, “How does one revisit the scene of subjection without replicating the grammar of violence?” Saidiya Hartman, “Venus in Two Acts,” *Small Axe* 12, no. 2 (2008): 1–14, <https://www-proquest-com.ezproxy.cul.columbia.edu/docview/195789319/abstract/FFEE6878DECD4CB9PQ/1>.

⁶⁸ As Renisa Mawani points out, while movements like subaltern and postcolonial studies have questioned what suffices as evidence and what counts as history, all the while foregrounding the epistemic and political limits of both, the discipline of law has remained curiously impermeable to such critiques. Law’s authority, albeit shaky and uncertain, is founded on the proliferation of documents and documentation that renders law not merely proximate or similar to the archive but *as* the archive. Renisa Mawani, “Law’s Archive,” *Annual Review of Law and Social Science* 8, no. Volume 8, 2012 (December 1, 2012): 337–65, <https://doi.org/10.1146/annurev-lawsocsci-102811-173900>.

“simultaneously always in their childhood and lacking the sexual innocence to ever count as children”—knowledge that allowed allegations of rape to be blamed on the survivor and dismissed.⁶⁹ Prior scholarship on the global spread of age-of-consent legislation has already done much to historicize the meaning of statutory rape, and through it, to warn against easy and essentialized definitions of consent as the natural antonym of rape.⁷⁰ Other category or status-based understandings of illicit sexuality also displace consent by affirming that violence produces effects on other persons besides the victim: crimes against individual women are always and also crimes against the others that they are in relation with, such as their families, children, communities. In conditions of extreme inequality and constraint, status may also protect against spurious professions of consent—if a person is motivated to protect their assailant, as many often are out of sympathy or out of a familial or other form of prior

⁶⁹ Sneha Krishnan, “Towards a Historical Geography of Girlhood,” *Geography Compass* 18, no. 6 (2024): e12760, <https://doi.org/10.1111/gec3.12760>, 5.

⁷⁰ Subjects of Anglo-American empire learned to defend themselves in court by claiming or denying consent—the extent to which courts recognized that consent as valid determined their value as legal subjects. Scholars have documented the extension of the concept of consent to sexual norms in colonized society, including to practices of intimate self-regulation around activities such as marriage. While ‘sexual consent’ in colonial India was initially defined by colonial authorities as a mere “physical capacity to sustain intercourse without grave damage”, and “scrubbed bare of any associations with mental compatibility, will, or desire”, a notion of ‘personal’ or ‘intelligent’ consent began to emerge toward the end of the 19th century as women approached the courts to nullify marriages they contracted as children. As theories of climate, culture, and race were evoked to rationalize different, often lower, ages of consent in the tropical colonies, age of consent legislation was also pegged to international social crusades for the ‘protection’ of women and children. While the scholarship on colonial age of consent legislation reveals much about a global concatenation of meaning around the age-stratified regulation of sex in the late 19th and early 20th centuries, consent as we understand it *today* was not hegemonic or even particularly central to the types of governance, regulation, scrutiny, and control that these age of consent laws sought to achieve, much less to the various colonized societies that such laws targeted. Customary, personal, or religious stipulations of status, such as the age of marriage, were intertwined in highly complex ways with the age of consent, leading Pande, among others, to question whether current scholarly understandings of consent are too reliant on the idiom of ‘colonial Western law’, and whether wildly variant understandings of consent may even be reasonably put together in a unitary field of analysis at the historical moment at which this concept first proliferates. Pande, *Sex, Law and the Politics of Age*; Sarkar, “A Prehistory of Rights”; Levine, *Prostitution, Race, and Politics*; Tambe, *Codes of Misconduct*.

relationship, or sheer economic dependency. And yet this seems to show that even when we posit status-based understandings of rape against contractarian relations, presentism still grounds all analysis of rape in consent—a moment of having individual choice taken away, one way or another.

As Elizabeth Thornberry has demonstrated in her study of consent in colonial South Africa, the history of rape “is not the story of changing responses to a constant problem, but, in large part, of redefinition of the problem itself.”⁷¹ Thornberry’s definition of rape is one that raises productive questions. For her, it is the violent, sexual, bodily denial and destruction of another person’s sexually specific intersubjective being. In other words, it is sex in which the desires, demands, and choices of one participant override and obliterate those of another, thus denying or reconstituting their personhood, however personhood is understood in their context. Rape has an appraisive value; to call an act “rape” is to single it out from categories of both licit (such as, for example, ‘marital’) and illicit (such as ‘adulterous’) sex. The naming of rape frequently triggers struggles over rubrics of culpability, impunity, innocence, victimhood, guilt, and shame. As a kind of ace card of gendered symbology, the concept is seemingly constantly available as a metaphor for the political questions of a given time.

Thornberry’s definition—among many others—still leaves ‘sex’ unquestioned. I will cheerfully admit that I have not yet encountered a definition of sex that satisfies the numerous critiques and cautionary protocols of the concept. Sex, the act, appears to me to be a performance that involves bodies and body parts considered within a context to evoke or express sensations of desire and excitement in one or some of the participants, although that desire may not be affectionate or intimate, but a desire to dominate or control someone, to position them in relation

⁷¹ Thornberry, *Colonizing Consent*.

to the self, or even to dissolve or destroy them entirely. Where it exists as a distinct linguistic concept, sex is most densely concentrated discursively in assessments about the meaning of various physical features, dispositions, and acts with regard to pleasure, desire, reproductive function, social reproduction, and social boundaries.⁷² Sex can take as its preoccupation the content of various sexual practices, the gender identity of the participants, the subject of desire, or combinations of all three.⁷³ The present state of discourse on sex and sexuality, however, including in India, is such that women's sexuality carries an entirely negative content, and seems to slide inexorably into a sexualized notion of defenselessness.⁷⁴ As a form of attack which imposes sexual difference along the lines of a socially-recognized capacity to effect violence, rape engenders certain bodies by reducing them to itself, to a lack or a wound: it is one particularly powerful instance of multiple modes by which various cultures create 'woman' as 'body', 'property', 'thing', or 'nothing'.⁷⁵ As such, reading this 'sexual' definition of rape unproblematically into historical sources does not 'recover' women, complicate gender, or make space for female agency—rape simply stands in for a gendered category of subject bodies that are already erased by processes of gendering. For me, therefore, the thorniest question is whether rape is sex at all, or something else. Separating rape from sex is about making a gamble on the nature of the connections between pleasure and pain, between subjection and choice, and

⁷² For examples of historical and social contexts where it does not, see Afsaneh Najmabadi, *Professing Selves: Transsexuality and Same-Sex Desire in Contemporary Iran* (Durham: Duke University Press, 2014), and Khaled El-Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800: Khaled El-Rouayheb* (Chicago: University of Chicago Press, 2005).

⁷³ Judith Butler, *Bodies That Matter: On the Discursive Limits of "Sex"* (New York: Routledge, 1993).

⁷⁴ Agnes, *Law and Gender Inequality*; Menon, *Recovering Subversion*.

⁷⁵ Sharon Marcus, "Fighting bodies, fighting words: a theory and politics of rape prevention", in Judith Butler and Joan Wallach Scott, eds., *Feminists Theorize the Political* (New York: Routledge, 1992), 397.

between political violence and desire.⁷⁶ I assume that both rape and sex are completely ordinary and ubiquitous, and that any attempts to draw physical boundaries or lines between these acts are extremely hard to justify or systematize; there will always be an exception. Rape appears in some discourses as violent, violative, a denial, a dismissal, a destruction—and yet at other times it is depicted as pleasurable, restorative, corrective, necessary.

Rape and sex must therefore be defined not simply as crimes, events, or discrete occurrences, but as forms of political conduct that attract negative or positive assessments. By conduct, I mean acts that broadly reveal the content of personhood and confirm identity, status, or membership in a social group. Particularly in historical contexts in which a modern notion of selfhood—private, interior, psychological subjectivity—is not adequately translatable, detectable, or applicable, conduct stands for behaviors whose social evaluation constitutes a person's existence as a subject. Conduct is becoming by doing; acts that are one's becoming; an embodied practice of correct and forbidden, pleasant and unpleasant, permitted and tolerated, obligatory or taboo, and even of appearance and countenance as witnessed by others, that builds up into a person and integrates them into their social and political reality.⁷⁷ I have settled upon this working definition of the harm of rape in the everyday conditions of British colonialism:

⁷⁶ Hartman writes: “seduction professed that power and protection were acquired through surrender. To reiterate the tautology, the dominated exert influence over the dominant by virtue of their weakness, and therefore more formal protections against despotism or guarantors of equality are redundant, if not unnecessary. The insinuation that the dominated were mutually invested in their subjugation recast violence in the ambiguous guise of affection and declared hegemony rather than domination the ruling term of order.” *Scenes of Seduction*.

⁷⁷ See Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton, N.J.: Princeton University Press, c2005); Afsaneh Najmabadi, “BEYOND THE AMERICAS: Are Gender and Sexuality Useful Categories of Historical Analysis?,” *Journal of Women's History* 18, no. 1 (Spring 2006): 11-21,233; Indrani Chatterjee, ed., *Unfamiliar Relations: Family and History in South Asia* (New Brunswick, N.J: Rutgers University Press, 2004); and Indrani Chatterjee, *Gender, Slavery and Law in Colonial India* (Delhi ; Oxford: Oxford University Press, 2002).

first, that if intra-caste, monogamous, conjugal sexuality reproduces life and value, rape instrumentalizes the male penis not to confer life, but to inflict death and obliterate value; and second, that rape is a phenomenon of the ‘outside’, which takes a woman from the domestic and social ‘inside’ and ejects her. The principle of enforced endogamy that Ambedkar theorized as a source of caste-based violence is skewed in the application of that violence to bodies as a gendering process: the woman is disposable to the community, but the man can get incorporated back.⁷⁸ It would seem to follow from the woman’s disposability that the public guarantee of or investment in her security is the first and easiest thing to discard at a time of social transformation. The fact that girls and women who were presumed to be the most innocent, the most ‘salvageable’, were the ones to have their cases show up in the archive reflects that they, too, had fallen under the risk of being female in public.

In short, I am more interested in conduct that is called rape as opposed to what it actually is. It is this expansive sense, encompassing these definitions, that I refer to when I use ‘rape’, working to be mindful that not everything that is called rape in a given historical context can necessarily be described as either violent or sexual⁷⁹. Thornberry has noted that the question of who has the ability to agree to—or refuse—sex is intertwined with the question of who has the

⁷⁸ See B. R. Ambedkar, “Castes in India”, in Sharmila Rege, *Against the Madness of Manu: B.R. Ambedkar’s Writings on Brahmanical Patriarchy* (New Delhi: Navayana Pub, 2013). See also Mitra, “‘Surplus Woman.’”

⁷⁹ There is more historical work to be done on what violence itself is and what function it performs. Gyan Pandey has noted that the history of violence “has been treated in the historiography of modern India as *aberration* and as *absence*: aberration in the sense that violence is seen as something removed from the general run of Indian history: a distorted form, an exceptional moment, not the ‘real’ history of India at all. Violence also appears as an absence...because historical discourse has been able to capture and represent the moment of violence only with great difficulty. The ‘history’ of violence is, therefore, almost always about context—about everything that happens around violence. The violence itself is taken as ‘known’. Its contours and character are simply assumed; its forms need no investigation.” Gyanendra Pandey, “In Defense of the Fragment: Writing about Hindu-Muslim Riots in India Today,” *Representations*, no. 37 (1992): 27–55, <https://doi.org/10.2307/2928653>.

legitimate right to claim membership in a group, to seek the protection and support of a collective, and to exercise political power. In this vein, my final problematic in defining my approach to rape is that of *explicability and excess*: violence and its motivations are as polymorphous as desire. Rape does not have to have a particular purpose or point in order to be studied as rape, and yet explorations in this direction return us to what the point of studying rape, if there is any, is.⁸⁰ Queer and psychoanalytic readings of rape, especially mass rape and organized rape, call our attention to “the socially and psychically destabilizing quality of jouissance”, contend that sexuality is not in excess of, but central to, acts of aggression, and insist that the pleasure of rape cannot be understood as proceeding “exclusively in the service of reinforcing group identities, cementing subject identifications, and decimating the other.”⁸¹ Again, one finds oneself asking if there is only necessarily minor variation, necessarily incomplete explanation. Can rape tell us anything about anything other than itself, given its own supposed ‘enormity’, and indeed, ‘normity’?

⁸⁰ As Samia Vasa recently put it, is feminist scholarship on sexual violence in fact *missing fun*—the sometimes gratuitous, carnivalesque fun experienced by perpetrators, collaborators, and complicit societies as they rape and kill others? Vasa, “2002” and Samia Vasa, “On Not Being Able to End Rape” (Georgia, Emory University, 2021), <https://www-proquest-com.ezproxy.cul.columbia.edu/docview/2572658110?accountid=10226&parentSessionId=2ZBZv1KastUk4hI%2FFWO8M1ib9uZkJtD%2BJNq5vK7cSLo%3D&sourcetype=Dissertations%20&%20Theses>.

⁸¹ Vasa, “2002.”

5. Chapter outline

My first chapter employs military and diplomatic history to explore the early nineteenth-century politics of rape. In 1823, the East India Company's British agent in Delhi, Sir David Ochterlony, wrote a series of dispatches to Calcutta documenting a year-long military affray between two neighboring Company-allied princely states, Bharatpur and Ferozepur. This minor war occasioned hundreds of casualties on both sides, and reignited rivalry between a prince and a *nawab* who had poached each other's territories for the past decade. It arose from a feud between two border communities over a cowherd's sexual assault of an eleven-year-old Meo Rajput girl. Upon being prevented from killing the rapist to avenge their loss of caste status, her kin assembled in thousands and rampaged through the countryside in rebellion, burning dozens of villages and laying land to waste. In this chapter, I explore the written exchanges between the princes, the Resident, and their agents—which touch on topics such as the care of subjects, political obligation, corruption, and the expenditure of 'moral advantage' by the raped girl's kin—to trace the relationships between moral ecology, diplomacy, and violence, and between state, sovereign, and village. When the transparently politicized apparatus of discipline and punishment that presents its most farcical face in contemporary rape prosecutions was a nascent feature of British colonization—and modern penal institutions such as jails were unusual and new—I present evidence that north Indian subjects sometimes violently contested not only the punishment of rape by incarceration, but the political instrumentalization of rape itself, rendering rape both visible and central to historical records of the conflicts between South Asian communities and states. These arguments are broadened and elaborated in my second chapter, which studies the extension and application of the Company Regulation system of criminal

justice to the newly annexed Ceded and Conquered Provinces of north India, including Delhi and its rural surrounds, from 1803 onward.

My third chapter chronicles the emergence of the Indian Penal Code in 1860 and the preceding legal systems that influenced its approach to rape. I argue that from the 1850s onward, criminal courts, medical manuals, judicial administration reports, and investigation rulebooks constructed a ‘textbook’ model of a rape case that appeared in the record hundreds of times over. It always contained the following features: a young girl under ten, working alone in the fields or jungle, is attacked at seeming random by a local disreputable character; she cries and fights as she is raped, attracting the attention of witnesses; she is found bleeding out in the open, and her injuries are attested by midwives or surgeons; regardless of his defence, the rapist is sentenced to seven years’ rigorous imprisonment. I study this scenario as ‘the case of the case’, a form of hyper-precedentedness that makes it difficult for courts and judges to even perceive or acknowledge rape otherwise. Looking elsewhere in the colonial criminal archive, I try to disrupt this legal form by closely reading criminal cases which were *not* prosecuted as rape, but which show rape to be a form of social punishment as much as a legal crime. Using a notable 1854 case of culpable homicide involving cattle theft, police intimidation, and corrective rape, I try to explore how the state frequently instrumentalized rape at the local level, subsuming it into the imperative to punish banditry and smuggling in the countryside.

In my fourth chapter, I explore how India’s multiracial early-twentieth-century Railways workforce behaved and organized itself like a dominant caste entitled to prey upon female passengers within its authoritative domain, and colluded across racial lines to manipulate the railways environment in ways that facilitated the easy commission of gang rape. In this period, concerns about the guardianship of passenger women, echoing global trans-imperial anxieties

about sex trafficking, domestic slavery, and prostitution, manifested themselves in the presence of segregated compartments for *pardahnashins* and female waiting rooms at train platforms. I argue, however, that these protectionist architectures and discourses, saturated with racialized hierarchies of respectability and chaperonage, deflected attention from a far more primary problem: a culture of sexual assault that was signature to the predatory enforcement practices of the imperial railways workforce. I lay forth a thirty-year archive of rape cases, spanning 1893 to 1924, which shows that it was the very personnel that held responsibility over these protective spaces who were most likely to deploy them against women.

My fifth chapter contends with the connections between rape, disability, and vagrancy in a Punjabi town bordered by British military barracks, and offers new perspectives on the everyday violence of colonial occupation and settlement. It delves into a thick archival file detailing the case of Sardara Begum, an elderly homeless woman who suffered from mental illness and survived by begging near the cantonment hospital of a military fort in Ferozepur, Punjab. In 1901, she was subjected to brutal and repeated gang-rapes by a company of drunk British soldiers, Burchell and Linehan, in the presence of no less than six Indian bystanders. Nevertheless, and despite their being tried in civil and not military courts, her assailants were acquitted and allowed to remain enlisted in the army. Extending an analysis of the connections that I sketch in my fourth chapter between media publicity, the colonial abuse of power in institutional environments like the railways, the police colony, and the cantonment, and women's access to public space, I explore the factors that led the Viceroy of India, Lord Curzon, to describe the case as "discreditable in its incidents, discreditable in the steps taken to bring the guilty party to justice, and discreditable in its results." I focus my narrative on legal and administrative discourses of containment that unwittingly though accurately characterized British

soldiers as brazen and perverted lawbreakers who required permanent incarceration within their barracks, lest they be unleashed upon the Indian landscape and cause the government embarrassment.

There are several aspects of this dissertation that I hope to investigate further in the future. The colonial spaces and situations that I have analyzed in these chapters include borders in the age of princely indirect rule, homelessness in the occupied cantonment town, and travel in colonial railways space. I envision adding investigations of custodial and police violence, modern communal boundary-making and administration, and discussions of rape in the Hindi- and Urdu-language press to everyday discourses of rape in colonial India. The role of police in committing, condoning, and minimizing rape is a crucial narrative that links colonial history with the rise of radical feminist movements in postcolonial India, such as the movement sparked by the Mathura case in the 1970s. A more sustained attention to sources from Indian-language presses, as scholars from Francesca Orsini to Charu Gupta have shown, would extend the project's archive beyond the state and bring more of rape's symbolic dimension to the fore. One source I regret not having time to write a chapter about is a 1949 Ministry of States file from Punjab which chronicles the lynching of a Sikh police officer by a mob that accused him of raping a Hindu girl. It was forwarded all the way up to the Minister, Sardar Patel, because the case was liable to impact Punjab's integration into India—suggesting that the communally charged threat of rape shadowed not just the Partition of India, but the everyday integration of states and local administrations with the emerging Indian republic in its aftermath. Aside from its lack of attention to the sexual assault of men, cases where consensual adultery was successfully reframed as a charge of rape in court, and instances of marital rape, the project in its current state lacks a sustained analysis of women's labour in India—including the literature on the sexual

controversies of overseas indenture and other kinds of industrial migration—or of land relations and processes of primitive accumulation that endangered the commons and precipitated certain kinds of precarity in public space. It could also stand to more regularly critique the caste logics that constituted the common sense of colonial ethnography rather than reproducing them.

If research is an activity, not an output, I perhaps only barely met the criteria of a researcher. I can only accurately describe my activities as those of a loiterer: taking pictures and bookmarking them for later; lingering only briefly and never at a stretch; immediately heading outside. Anjali Arondekar has argued for scholarship to “proffer a different sight line for the consumption of archives, of times past”: to read archives in a way “that bypasses lineages of reproduction or value, of loss or absence” and imagine a relationship to them “that is about loitering, stalling, digressing, and defamiliarizing the very process of writing history. What I want to think about, tout court, is ‘timepass.’”⁸² This would be a generous way to put it in my case. My skimming and skating perusal of the archive was fundamentally marked, as I am, by the subjective criteria and economy of attention that elevate only some notorious cases of rape above other media noise of violence in our modern world. I did not inhabit the archive, and I did not inhabit the experiences the archive’s subjects are recorded to have undergone. When I went outside, I shook off the history and memory of rape by ignoring social expectations of conjugal monogamy and throwing myself headlong into experiencing its archival cousins, fornication and adultery. Given the times, it was a liberation not only to be outside, but to be free with others in public, and it was there that I wished to linger.

⁸² Anjali R. Arondekar, *Abundance: Sexuality’s History* (Durham: Duke University Press, 2023), 68. “The Indian colloquialism ‘timepass’ [n] “encompasses a range of meanings, from killing time to engaging in casual (often sexual) activities that defy time’s value. To do or invite timepass is to unmoor oneself from the value chain, from the weight of time, to surrender (for better or worse) to the process; all that matters is that time passes and we along with it.”

Chapter 1: The Raja, the Rapist, and the Resident

What was it to suffer rape in north India in the aftermath of British conquest? At the level of individual embodied experience, this question is difficult to answer. Extant colonial records from this period generally withhold even the names of those who survived such ordeals, to say nothing of their own words—leaving one to confront the now-classic temptation to speculate what subjects of violence felt, saw, heard, or did—and most crucially, how they understood what happened to them—across a chasm of temporal and contextual remove.⁸³ At the level of political and social struggle, however, from the vantage of the collective to which a victim belonged—the subject of rape, plural—I hope to show that such a question is not an unproductive one, though historical accounts may obscure individuals. My attempt to answer risks contriving, perhaps, the “small drama and fine detail of social existence” in the particular community whose troubles I relate: a community that sought a voice in colonial archives sparingly, defiantly, to disclaim its subjection to states in general, whether colonial or not.⁸⁴ Nevertheless, the presence of that

⁸³ See Charu Gupta, “Writing Sex and Sexuality: Archives of Colonial North India,” *Journal of Women’s History* 23, no. 4 (Winter 2011): 12-35, 221, <https://doi.org/10.1353/jowh.2011.0050>; Indrani Chatterjee, “When ‘Sexuality’ Floated Free of Histories in South Asia,” *The Journal of Asian Studies* 71, no. 4 (2012): 945–62, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/23357428>; Anjali R. Arondekar, *For the Record: On Sexuality and the Colonial Archive in India*, Next Wave (Durham: Duke University Press, 2009); Saidiya Hartman, “Venus in Two Acts,” *Small Axe* 12, no. 2 (2008): 1–14, <https://www-proquest-com.ezproxy.cul.columbia.edu/docview/195789319/abstract/FFEE6878DECD4CB9PQ/1>; Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America*, Race and American Culture (New York: Oxford University Press, 1997).

⁸⁴ See Ranajit Guha, “The Small Voice of History”, in Ranajit Guha, *The Small Voice of History: Collected Essays* (Bangalore: Distributed by Orient Blackswan, c2009). See also *Dominance without Hegemony: History and Power in Colonial India*, Convergences (Cambridge, MA: Harvard University Press, 1997); *A Subaltern Studies Reader, 1986-1995* (Minneapolis: University of Minnesota Press, 1997).

voice—here, demanding that rape be punished by public lynching and execution, or a mass rebellion will ensue—illustrates the political non-futility of the question, no matter how grudgingly such voices arose or were admitted before the Company state. My purpose in dislocating my answer to this question, thus, is to draw attention to the broad range of events, discourses, and protagonists that might reveal what it was to suffer rape. This chapter is premised on the capacity of small histories to comprehensively unfurl the social world within which an act of rape triggered a cascade of collective consequences.⁸⁵ I hope to demonstrate from the bottom up how thoroughly the drama of rape is entangled with wider conflicts and ongoing encounters that are thought to more properly constitute the realm of “the political”—and how, still, such entanglements have remained an understudy to the history of violence in South Asia.⁸⁶

For what follows, I will utilize early-nineteenth-century diplomatic letters recounting a case of rape near Delhi that developed into a wide-ranging political opportunity—a freewheeling scrimmage on both “the borderline between law and morals” and the borders between multiple polities, jurisdictions, and states.⁸⁷ The letters that comprise my material—titled “*Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12 year old girl from the village of Jokohar*”—are translations

⁸⁵ Guha, “The Small Voice”. See also Gyan Pandey, “A View of the Observable: A Positivist ‘Understanding’ of Agrarian Society and Political Protest in Colonial India 1,” *The Journal of Peasant Studies* 7, no. 3 (April 1, 1980): 375–83, <https://doi.org/10.1080/03066158008438111>.

⁸⁶ Prathama Banerjee, *Elementary Aspects of the Political: Histories from the Global South*, Theory in Forms (Durham: Duke University Press, 2020); Gyanendra Pandey, “In Defense of the Fragment: Writing about Hindu-Muslim Riots in India Today,” *Representations*, no. 37 (1992): 27–55, <https://doi.org/10.2307/2928653>; Gyanendra Pandey, *Remembering Partition: Violence, Nationalism and History in India* (Cambridge: Cambridge University Press, 2001), <http://ebookcentral.proquest.com/lib/columbia/detail.action?docID=202133>.

⁸⁷ M. Arkoun, “Insaaf”, in P. J. Bearman et al., eds., *Encyclopaedia of Islam*, Second Edition Online (Leiden: Brill, 2012). http://dx.doi.org.ezproxy.cul.columbia.edu/10.1163/1573-3912_islam_SIM_3575.

into English from Persian originals that were often not preserved by the East India Company state. Since this is a significant handicap to the precise identification of terms and concepts, as well as to the detection of colonial misreading within Persianate conventions and practices of interstate diplomacy, much remains conjecture.⁸⁸ Despite such limitations, however, these materials—from a period between conquest and legislation, in which boundaries between the political, the legal, and the military are blurred both in archive and actuality—offer an account of rape that is situated in significantly different political discourses than those which can be glimpsed in the disinterested synopses of criminal proceedings in regions over which the Company had already established its own direct control. In these letters, rape—an everyday crime involving ordinary subjects—entered the realm of high politics, provoking traditionally gendered structures of feeling and action from a wide field of agents. Each of these agents operated in a world which “sharply differentiated between and differently valued men’s and women’s identities; [in which] patrimonial power [was] a strong and enduring feature of local as well as regional and imperial political systems...and [in which] pre-colonial indigenous as well as Western imperial states both employed elite military identities to recruit local support, and used gender relations and the department of women as a test of civilized values.”⁸⁹

In this world, my archive reveals, the English label of ‘rape’ began to attach to sexual acts considered morally heinous—but the satisfactory redressal of such acts had long been a

⁸⁸ See Dominic Vendell, “Transacting Politics in the Maratha Empire: An Agreement between Friends, 1795,” November 26, 2021, <https://doi.org/10.1163/15685209-12341554>, for an exploration of how Persian and Persianate forms of writing “shaped goal-directed practices and procedures in law, administration, and politics” across South Asia (828).

⁸⁹ Rosalind O’Hanlon has systematically outlined the values and social structures animating the north Indian political field in and prior to this period. See Rosalind O’Hanlon, “Issues of Masculinity in North Indian History: The Bangash Nawabs of Farrukhabad,” *Indian Journal of Gender Studies* 4, no. 1 (March 1, 1997): 1–19, <https://doi.org/10.1177/097152159700400101>.

direct obligation upon powers that claimed the authority to govern territory, and claim obedience from its inhabitants, in northern India. I document the myriad of problems this obligation posed to the British colonial project of indirect rule in view of an equal and opposing emergent reality: that rape, as an ostensibly ‘internal’, domestic, and discretionary responsibility of the East India Company’s local client rulers, could also offer an exceptionally useful means of *disputing other conflicts otherwise*, as the range of conventional political tactics freely available to Indian princes and governors underwent a profound shrinkage in an age of increasingly restrictive subsidiary alliances with British imperial power.⁹⁰ Although such dispute-conflating opportunism could be observed in the choices of all actors involved, making a bargaining-chip of punishing rape could nevertheless provoke not just moral admonition from the post-Mughal elites the Company expected to govern these territories in its stead, but a groundswell of violent mass action and protest from communities that expected their affairs and wishes to hold political priority because of their dominant status.

I argue that this account of rape exposes and exemplifies the disruptions that Company rule posed to prevailing local norms of judicial dispute resolution: colonial conquest had produced an unstable holding pattern within which no actor on the ground could authoritatively assume responsibility for regulating and governing interpersonal violence or illicit sex. If the category of ‘rape’, which intimated both, still remained indistinct and undefined legally, my material suggests that it could nevertheless mobilize organized violence conceptually: as a referent for societal outrage, ruination, or universal social evil; as a locus of publicity and

⁹⁰ For an overview of subsidiary treaties, see R. Travers, “A British Empire by Treaty in Eighteenth-Century India.” In *Empire by Treaty: Negotiating European Expansion, 1600-1900*, ed. S. Belmessous (Oxford: Oxford University Press, 2018): 132-62; M.H. Fisher, “Diplomacy in India, 1526-1858.” In *Britain’s Oceanic World: Atlantic and Indian Ocean Worlds, c. 1550-1850*, ed. H.V. Bowen, E. Mancke, and J.G. Reid, (Cambridge: Cambridge University Press, 2012): 249-81.

incitement, an accusation of moral dereliction and mismanagement, and a stamp of illegitimacy which implied that ‘the law’ no longer applied to the actions of men of honour. ‘Rape’ heralded polarization within the new administrative reality of British indirect rule, signifying a deadlock that enabled illicit sex and interpersonal violence to spiral into political violence: in this case, a multi-year caste rebellion, embedded in traditions which I will associate with the popular concept of *insaaf*, or equitable justice.⁹¹ In the aftermath of a single and fateful episode of sexual assault, thus, I narrate the resurrection of a powerful and perennial political fissure: between *what was legal* and *what was just*.

The extent of this fissure under colonial rule was most evident in the intensity of organized popular resistance that impressed this record of rape upon the East India Company’s political and diplomatic archive. Prior to British conquest, scholars have argued that eighteenth-century Indian regimes had “had no place for popular representation” and “no formal ability to take into consideration the opinion of the governed” outside a framework of petitions, personal appeals, and pleas to the royal dispensation: prevailing discourses of sovereignty lacked conceptual mechanisms for legitimating political violence or popular political protest, regardless of its reason.⁹² Yet at the same time, the interpenetration of Mughal-influenced state bureaucracies and local landholding elites meant that state-society relations were a paradox of

⁹¹ In South Asia, an Indo-Persian concept of *insaaf* (equity justice) combines notions of morality, affect, and socio-political equilibrium—the idea of a social golden mean in which every person knows their place. This concept appears in a genre of advice texts known as mirrors for princes (in the Islamic context), but by the 19th century had spread to indigenous polities and is still commonly used on the street. See Masud, Muhammad Khalid, “Anglo-Muhammadan law”; Lange, Christian, “Capital punishment”; and Chatterjee, Nandini, “Courts of law, Mughal”. In Marc Gaborieau et al., eds., *The Encyclopaedia of Islam: Three*, 3rd ed. (Leiden: Brill, 2007).

⁹² Abhishek Kaicker, *The King and the People: Sovereignty and Popular Politics in Mughal Delhi* (New York: Oxford University Press, 2020): 150.

antagonism and co-imbrication. The scholar Farhat Hasan has argued that these relations are best viewed through a model of “mutually empowering interactions”. In ordinary situations of crime and conflict, in which north Indian states relied heavily on their own socially-embedded character to enforce order through locally-mediated settlements, typically “both parties became more powerful” when the state acted through the community, as “the bearers of particular interests received authoritative support, while the state broadened its social acceptance and legitimacy.”⁹³ Whether by moral or actual coercion, local communities “actively negotiated with issues of state incompetence and excess, legitimate authority, corruption in bureaucracy, notions of justice, rightful claims over the ruler and the ruling classes, and the state claims over the subjects.”⁹⁴ As British power spread across northern India, both popular and elite expectations continued to uphold the state, particularly as it was symbolized by the Mughal Emperor of Delhi, as an anchor and arbiter of shared moral norms that could be compelled to deliver substantive justice—rendering these responsibilities also incumbent upon the Company, the putative guardian and protector of the Emperor, in his stead.⁹⁵

The events I narrate, however, demonstrate the ruptures with the past that undermined this edifice of political and administrative continuity in the expectations of the ruled. My attempt to make the case for the novel political instrumentality of rape at this juncture—seized upon by both ruler and ruled to formulate claims over lost land, reverse the diminishing of their influence, and engage in diplomatic and actual battles in pursuit of territorial gain—is intended not simply

⁹³ Farhat Hasan, *Paper, Performance, and the State: Social Change and Political Culture in Mughal India* (New York: Cambridge University Press, 2021): 3.

⁹⁴ Hasan, *Paper, Performance, and the State*, p. 71.

⁹⁵ See Swapna Liddle, *The Broken Script: Delhi under the East India Company and the Fall of the Mughal Dynasty 1803-1857* (Delhi: Speaking Tiger, 2022).

to furnish yet another historical example of the harms of gendered violence being hijacked to service other grievances and interests: contemporary examples in South Asia alone, after all, are as abundant as rain. In addition, suggesting that histories of sexual violence before legal codification and beyond the evolution of colonial courts can also throw new light on the relations between competing nodes of political power in the ever-encroaching shadow of the Company state, I join the study of rape to “new diplomatic history”, which calls for more scholarly attention to “the ways in which social, symbolic, aesthetic, and material concerns shaped the traditional elements of diplomacy” in the political theatres of European empire.⁹⁶

In this chapter, I will situate rape along a continuum of illicit conduct within a political society structured as a hierarchical network of bonds, privileges, obligations, alliances, friendships, loyalties, and betrayals, out of which practices of rulership and governance grew.⁹⁷ Drawing from discussions about the crime of rape itself as well as negotiations over its aftermath, I structure my analysis of what it was to suffer rape in conquered India through three concepts which mobilized political conflict and action within this network. Starting with *jati*, or caste, I introduce the community that appeared as a grievant in my source material, and the special leave to dispense and deliver justice, or *insaaf*, that they asserted against the Company and its Indian clients. I explore how statements about rape by British officials involved in this particular case afford a new vantage-point into the rifts in understanding that made north Indian society opaque to colonial administrators. Despite the Company’s by-then systematic penetration

⁹⁶ Vendell, “Transacting Politics in the Maratha Empire”, 829.

⁹⁷ Mana Kia, “Moral Refinement and Manhood in Persian” in *Civilizing Emotions: Concepts in Nineteenth Century Asia and Europe* (Oxford: Oxford University Press, 2015); and “Adab as Literary Form and Social Conduct: Reading the Gulistan in Late Mughal India,” 2014, <https://doi.org/10.7916/D85D8QH5>.

of local networks of information-gathering and diplomatic brokerage, and the sophisticated counter-assessments its allied Indian counterparts developed to address and inform this new paramount power in terms of mutual political coherency, the Company's Resident failed to grasp the social stakes of the conflict at hand, and the importance of delivering on his obligation to settle it through consultation, by affirming and enforcing local legal consensus.⁹⁸ I document the efforts of local rulers to impress upon him the necessity and scope of a correct approach to dispute-resolution through a series of moral rebukes premised upon late-Mughal notions of noble conduct, or *adab*: "a particular moral imagination according to which the social was made intelligible."⁹⁹ These diplomatic interactions reveal that conflicts between states, as well as between state and society, were made more volatile by imperial reformulations of sovereignty and paramountcy. Intent on asserting the Company's sole right to mediate disputes between peoples and states, and characterizing the punitive and compensatory actions of both rulers and ruled as irregular and illegitimate in an undifferentiated sweep, the Resident revealed through his letters that his adherence to customary norms of political intercourse and negotiation was performative and nominal. This wilfully-maintained gulf between the Company's paramount power and its sense of its own obligation—premiered, I show, on the essential illegitimacy of 'Eastern' peoples' popular political assertion—is explored as demonstrating the ultimate cynicism of colonialism's interventions in the internal or 'domestic' governance of its client princely states. That cynicism—the ultimate impossibility of drawing a clear line between the domestic and the diplomatic, particularly in a border area where kin ties transcended competing jurisdictions—elicited a corresponding lack of trust from local princes, who were made to know

⁹⁸ Vendell, "Transacting Politics in the Maratha Empire", 828.

⁹⁹ Kia, "Adab as Ethics of Literary Form", 282.

that they could not reliably expect the Company to back their political decisions or heed their counsel by virtue of allegiance, service, or social intimacy with its highest representatives.

Ultimately, this gulf assumes wider significance. Even as the enormity and outrage of rape was claimed to be universally legible, and was frequently and robustly invoked in these exchanges, colonial administrators signalled through their orders and actions that they had effectively abandoned the state's responsibility to be the guarantor of north Indians' shared normative order. This now-forgotten "armed clash" over "abduction and rape" in the rural outskirts of Delhi subtended the princely obligation to dispense justice and punishment with profound uncertainty about the place of ethical reasoning and obligation in the new imperial administration. Because colonial administrators contended that princely regimes lacked rational and formal mechanisms of law, particularly in their sovereign relationships to each other, the grounds upon which their subjects' conduct could be represented to the Company as legal intercession or illegal retribution were beholden, and ultimately reduced, to political expediency.

To understand what it was to suffer rape, in summary, I aim to sketch out networks of power, territory, and jurisdiction that produced incentives to politicize rape in colonial India, and indeed to carry out politics more broadly through the domestic, harnessing the potentiality of illicit sexual conduct to reignite cycles of violence. Focusing on paradoxical characterizations of rape as a crime both 'universally' recognized to be heinous and uniquely provocative of caste-based retribution, I will read the concepts of *jati*, *insaaf*, and *adab* together as a complex and heavily-mediated colonial encounter between conflicting incarnations of justice as equity: equity both in the generic sense of 'fairness' and 'proportion', and in the broad common-law sense of the inadequacy of extant legal structures to a particular judicial context.¹⁰⁰ By studying similar

¹⁰⁰ "Rather than representing windows through which to access the tensional world of colonial epistemologies, or the indigenous societies in the past, this strategy explores colonial accounts as a means

encounters in South Asia, scholarship on law and state power is producing an increasingly detailed picture of how legal pluralism functioned both as a concept and a practice, particularly by utilizing documentary sources that are not easily pigeonholed as legal; I join this effort. In addition, I explore the role of women, as a social and political class, in mobilizing communities across borders and jurisdictions in the aftermath of rape.

In and of itself, this hundred-and-fifty-page bundle of letters makes one thing clear. When the transparently politicized apparatus of discipline and punishment that presents its most farcical face in contemporary rape prosecutions was a nascent feature of British colonization—and modern penal institutions such as jails were unusual and new—we have evidence that north Indian subjects sometimes violently contested not only the punishment of rape by procedural trial and incarceration, but the political instrumentalization of rape itself, rendering rape both visible and central to historical records of the conflicts between South Asian communities and states.

of gaining access to historical *encounters*...In this sense, colonial accounts represent intercultural objects and a variety of effective interactions and encounters between Europeans and non-Europeans in the field, from peaceful exchanges to violent confrontations.” Ricardo Roque and Kim A. Wagner, eds., *Engaging Colonial Knowledge: Reading European Archives in World History* (New York: Palgrave Macmillan, 2012): 19.

1.1: The Meo rebellion of 1822

*From these papers, his Lordship in Council will perceive that the feud in question originated upwards of 18 months ago, in a gross and brutal outrage to which a young woman of the Nawab's Territory was subjected by a villager of the Bhurtpore State. **This appears undeniable, and indeed is on all hands undenied.** It will be seen also, that when called on for satisfaction **the officers of the Bhurtpore Government screened the Criminal from the punishment which both the Mahomedan, and Hindoostanee and indeed every system of Law deserving the name, awards for the heinous crime of rape.** It will be noticed also, that it is plausibly insinuated, that this conduct on the part of the Bhurtpore Officers was occasioned by a bribe from the people of the village to which the Criminal belonged.*

David Ochterlony, Resident of Malwa and Rajputana, to the Governor General
18th Sept 1823, Nuseerabad¹⁰¹

In 1823, the East India Company's veteran Resident in Delhi, Sir David Ochterlony, wrote a series of dispatches to Governor General Hastings in Calcutta documenting a year-long military affray between two neighboring EIC-allied kingdoms, Bharatpur and Ferozepur, which were located in an overlap zone between the environs of Delhi and what is now eastern Rajasthan, in a linguistic and cultural region known as Mewat. This minor war destroyed multiple villages, occasioned hundreds of casualties on both sides, and reignited a longstanding rivalry between two native princely clients of the EIC: the *nawab* of Ferozepur, Ahmad Bakhsh Khan, and the Bharatpur *rajah*, Randhir Singh, who had harried and poached each other's territories for almost two decades.

The conflict began as a feud between two well-armed border communities over the sexual assault of an unnamed twelve-year-old "damsel" of the Meo clan of *zamindars*, or

¹⁰¹ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", *Records of the Board of Commissioners of the Affairs of India*, IOR/F/4/924/25916, July 1822-September 1825.

landholders—after whom Mewat is named—in Firozpur in April of 1822.¹⁰² The girl, who was on her way from the village of Jokohar in Firozpur to visit relatives across the border in Bharatpur, had been decoyed into the jungle, violently sexually assaulted, and left nearly dead by a group of men from a neighboring village named Choornagaon on the Bharatpur side. When rescued and healed, she identified one of her attackers as Imaum Bux, son of Dhanna (the culprits were later allegedly identified by Ochterlony’s own informants as ‘cowherds’, Imaum Bux perhaps amongst them). He was seized by the people of his own village and handed to Bharatpur’s *faujdar*, a state official who administered the prince’s army and handled rural police duties. A tangled series of disagreements then arose—over criminal jurisdiction, type and leniency of punishment, and collective responsibility—between the people of both villages, the *faujdar*, and multiple kin-and-lineage-based corporate courts of elders known as *panchayats*. These disagreements were compounded by historical mistrust: with its causes multiple and well-documented in the Meos’ own caste histories, a longstanding enmity between the rulers of Bharatpur—and the Jat clans from which they hailed—and the Meos is known to have persisted into at least the late colonial period.

That summer, the kingdom of Bharatpur itself was in a precarious position owing to succession disputes, with its rulers acutely aware that the current British Resident—the keenly interventionist Ochterlony—was interested in finding an excuse to intercede in its internal

¹⁰² The Meos, who largely practice Islam and claim the status of caste Rajputs, have drawn significant scholarly attention. Examples of ethnographic work upon this community include colonial accounts William Crooke’s *Tribes And Castes of the North-western Provinces And Oudh* (Calcutta: Office of the Superintendent of Government Printing, 1906); and more modern scholarship includes Shail Mayaram, *Resisting Regimes: Myth, Memory and the Shaping of a Muslim Identity* (Delhi: Oxford University Press, 2000); Raymond Jamous and Nora Scott, *Kinship and Rituals among the Meo of Northern India: Locating Sibling Relationship*, (Oxford: Oxford University Press, 2003); Erin P. Moore, *Gender, Law, and Resistance in India* (Tucson: University of Arizona Press, 1998).

politics. The kingdom's ruler Randhir Singh could not contest these intrusions directly, as he was bound by treaty to acknowledge the political rights of the Resident.¹⁰³ He was impatient, however, to regain land lost during British incursions against the Maratha Confederacy in 1805—land that had been farmed out to Ahmed Bakhsh Khan, a British ally, following the Company's victory—and willing to discount the risk. To this end, he strategically provoked violence between the two border villages by stationing troops to protect his own subjects while the case was still being negotiated; then, he refused to punish the original rapist until he was compensated for the retaliatory loss and plunder of his own villages. For their own part, the Meos gleefully took this bait: upon being denied the right to kill the perpetrator to avenge their loss of status—by a Jat dispensation, no less—the raped girl's extended kin, drawn from Bharatpur, the rest of Mewat, and several areas under direct British rule, including Agra, assembled in an army of thousands and rampaged through the countryside in rebellion, burning dozens of villages. This created a welcome excuse for both native rulers to levy armies against each other in a bid to capture territory, which in turn necessitated the Company's frustrated, and inconclusive, mediation.

Nothing more was heard of the original victim—it would have been very likely to have been mentioned by the Resident Ochterlony if she was killed or punished, and there is no evidence to suggest that she was. The incident vanished from imperial view within a year and a half, in October 1823, when Ahmad Bakhsh Khan was harshly reprimanded both for appearing to encourage his Meo *zamindars*, or landholders, to act extrajudicially, and for retaliating with his own troop deployment to Bharatpur's aggressions rather than waiting for the British to

¹⁰³ For more details, see K. N. Panikkar, *British Diplomacy in North India: A Study of the Delhi Residency, 1803-1857* (New Delhi: Associated Pub. House, 1968).

intervene—and when Randhir Singh, blind and on the verge of death, appeared to agree under pressure from Ochterlony to subject the rapist to a “rigorous and bonafide” interim imprisonment in Bharatpur’s capital, barring him from ever returning home.¹⁰⁴ The armies withdrew in the wait for a British verdict, and succession disputes following the *rajah*’s death—in which Ochterlony was deeply involved, and which culminated three years later in Bharatpur’s conquest—drove the event into obscurity.¹⁰⁵ But the exchanges between the rival princes, the Resident, and their agents and retainers—which touch on topics such as the care of subjects, ‘caste honor’, official corruption, political obligation, and the expenditure of moral ‘advantage’ by the raped girl’s kin—represent a mine of information about the interactions of legality, morality, and violence in this period, prior to the substantive extension of a formal system of colonial law into the north Indian hinterland. Ochterlony’s *harkara*, or informant, noted that the feud was by no means over despite a Company intervention: “The Nawab’s *zamindars* say, ‘The Nawab and the Rajah may come to some compromise, but *nothing except the blood of the original offender will satisfy us.*’”¹⁰⁶ Most tantalizingly, the Resident hinted in his other letters that the Meo victim’s *female*

¹⁰⁴ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, 24th October 1823.

¹⁰⁵ Sir William Stevenson Meyer; Sir Richard Burn, James Sutherland Cotton, & Sir Herbert Hope Risley, *The Imperial Gazetteer of India* (Oxford, Clarendon Press, 1908-1931) Volume VIII: 78.

¹⁰⁶ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, September 21st, 1823. C.A. Bayly comprehensively describes the early modern and colonial system of *harkaras*, newswriters and admitted spies in *Empire and Information: Intelligence-Gathering and Social Communication in India, 1780-1870* (Cambridge: Cambridge University Press, 1996): p. 59-73. For Mughal information-gathering, see Michael H. Fisher, “The Office of Akhbār Nawīs: The Transition from Mughal to British Forms,” *Modern Asian Studies* 27, no. 1 (1993): 45–82, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/312878>. See also Kavita Saraswathi Datla, “The Origins of Indirect Rule in India: Hyderabad and the British Imperial Order,” *Law and History Review* 33, no. 2 (2015): 321–50, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/43670778>.

kinfolk had also traveled the countryside in her support—moving across borders from village to village, mustering and inciting Meo men and their allies. They invoked caste justice—the right of *zamindars* to kill a lowly cowherd—to enact a gendered critique of the state: British ‘rule of law’ was too weak to keep the roads as safe as they had once been, seeming to point to this security being a crucial test of the obligation of the rulers to the ruled.

1.2: “Every system of law deserving of the name”

The first excerpt of Ochterlony’s letters quoted at the beginning of this paper ascribes three determining features to the concept of rape being discussed. First, the occurrence of something translated as rape was “on all hands undenied”, and not contested by any of the political actors in this episode: the evidentiary standards that we mandate of formal rape accusations today, and to the development of rape law within the colonial Indian legal system, are never once applied to the case under discussion in these letters.¹⁰⁷ Second, it was stated that Bharatpur’s legal system failed to function as it should have—triggering anarchy and war—because the offender’s village paid a ‘bribe’ to shield him from the consequences of having committed rape. Third, Ochterlony vociferously contended that every system of law worthy of being acknowledged as such prescribed the same punishment for rape—but he never *named* this punishment, and in fact continued to be vague on the matter throughout, before finally relaying

¹⁰⁷ Elizabeth Kolsky, “The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805-57,” *The Journal of Asian Studies* 69, no. 4 (2010): 1093–1117, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/40929285>.

the Company's firm opposition to the capital punishment the Meos desired. These features resolve, in fact, into a rape narrative that is unpleasantly familiar to contemporary Indian eyes: outrage, followed by corruption, followed by bombastic but ineffective compromise—the characteristic plot tropes of modern extralegal and extrajudicial punishment.¹⁰⁸ How, exactly two hundred years later, is this so?

Here, it is perhaps useful to review what is known about systems of redress for sexual violence under pre-colonial regimes that preceded British rule in South Asia. Scholarship on northern India holds that rape is indistinctly legible in this period both as a concept and a crime: although it was condemnable and punishable, it lacked definite existence as a separate legal category within 'lumpy', uneven, overlapping circles of customary, confessional, and state-imposed law.¹⁰⁹ This did not, however, mean that sexuality went unsurveilled. Communities that undertook steps to suppress social immorality were frequently validated and supported by formal ruling structures, which progressively saw such intervention as a duty of pastoral care.¹¹⁰ By the end of the eighteenth century, the social order of princely Rajputana was in the process of being reshaped—caste boundaries hardened with the aid of state-supported segregation, and sexual

¹⁰⁸ See Rupal Oza, *Semiotics of Rape: Sexual Subjectivity and Violation in Rural India* (Durham: Duke University Press, 2023); Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (New Delhi: Oxford University Press, 2014).

¹⁰⁹ Nandini Chatterjee, *Negotiating Mughal Law: A Family of Landlords across Three Indian Empires* (New York: Cambridge University Press, 2020).

¹¹⁰ See Indrani Chatterjee, "Pastoral Care, the Reconstitution of Pastoral Power and the Creation of Disobedient Subjects under Colonialism," in *South Asian Governmentalities: Michel Foucault and the Question of Postcolonial Orderings*, ed. Deana Heath and Stephen Legg, South Asia in the Social Sciences (Cambridge: Cambridge University Press, 2018), 58–80, <https://doi.org/10.1017/9781108571982.003>; Nandita Prasad Sahai, *Politics of Patronage and Protest: The State, Society, and Artisans in Early Modern Rajasthan* (New Delhi: Oxford University Press, 2006); and Divya Cherian, "Stolen Skin and Children Thrown: Governing Sex and Abortion in Early Modern South Asia," *Modern Asian Studies* 55, no. 5 (September 2021): 1461–1509, <https://doi.org/10.1017/S0026749X21000226>.

chastity more formally and tightly policed—by an emerging merchant and Brahmin elite.¹¹¹ Expanding state bureaucracies began also to impose limits to the variability and influence of local custom upon legal dispute resolution. In parts of Rajputana and the western Indian Peshwai, where scholars have closely examined this intensified attention paid by statelike institutions to imposing interpersonal and social discipline upon their subjects, an alternative official taxonomy of intimate relations and their consequences emerged—particularly for elite women of high caste.¹¹² In her analysis of the legal records of the Rathor-ruled state of Marwar, for instance, Divya Cherian observed that illicit sex was often denoted by a type of theft known as *chaamchori*, “the stealing of skin”. Women were generally not held legally culpable by the state for this crime: even as they were seen as vulnerable and disposed to immoral conduct, they were also believed incapable of actually resisting illicit advances of any kind.¹¹³ Such illicit acts, then, typically attracted attention when they resulted either in abortions or in grievous injury or death

¹¹¹ Divya Cherian, *Merchants of Virtue: Hindus, Muslims, and Untouchables in Eighteenth-Century South Asia*, (Oakland, California: University of California Press, 2022).

¹¹² Uma Chakravarti, ed., *Gendering Caste through a Feminist Lens* (New Delhi: Sage Publications, 2018); Rosalind O’Hanlon, “Caste and Its Histories in Colonial India: A Reappraisal,” *Modern Asian Studies* 51, no. 2 (2017): 432–61, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/26358259>; Rosalind O’Hanlon, “Contested Conjunctures: Brahman Communities and ‘Early Modernity’ in India,” *The American Historical Review* 118, no. 3 (2013): 765–87, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/23426243>; Sahai, *Politics of Patronage and Protest*; Cherian, *Merchants of Virtue*. These taxonomies—while occasionally claiming to interpret scriptures such as the *dharmashastras* and the *sharia*—mostly combined customary precedents and existing practices (distinct to each community, and regulated as such) into operant legal logics that did not necessarily manifest as fully realized prescriptive codes of law.

¹¹³ Even as the impact of such discipline was uneven along lines of caste and gender, the consent of women, and consent in general, was largely irrelevant to ideas about permitted, tolerated, and forbidden types of marriage and intimate association, as well as to designations of licit and illicit sex acts. As Kecia Ali has noted of classical understandings of *zina* in Islamic law: “concerns about consent in sex acts were secondary to concerns about the moral-legal status of those sex acts.” In other words, and in sharp contrast to our contemporary situation, consent was not a key “moral-legal concern.” See Kecia Ali, “Concubinage and Consent,” *International Journal of Middle East Studies* 49, no. 1 (2017): 148–52, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/26333924>.

for a woman or child: women's willing or unwilling participation was immaterial, imprisonment was negligible, and punishment was monetary, typically in the form of fines levied upon the men involved.

Cherian's analysis is important not simply for what it tells us about rape—questioning whether forced sex mattered enough in this legal imagination to merit a separate category of misconduct—but for what it tells us about pre-colonial stances toward the personhood of women and the subject of injury or harm. State institutions often took little notice of those who physically experienced intimate violence: while men bore fines for misconduct, women likely bore punishments such as humiliation, censure, outcasting, and boycott that were administered socially. The control of sex and sexuality was a means for the state to connect itself with networks of property relations, systems of social credit, and the standing or reputation of powerful communities—all of which were presaged on the proper control and protection of household dependents.¹¹⁴ These concerns are also reflected in changing mores of elite conduct, which attempted to decenter martial skill as an indicator of social status. Although eighteenth-century states did not ever achieve a monopoly on the use of legitimate force, displays of interpersonal violence—particularly “valorized and combative ideas of community honor”—were increasingly repudiated in public discourse as disorderly and disloyal: norms of manliness

¹¹⁴ “The desire to increase revenues was a centripetal force that drew royal appointees towards interference in disputes even as it attracted those who were ‘forum-shopping’. On the other hand, the early modern state usually lacked the understanding or capacity to manage complex disputes. It therefore often profited from them by exacting fees for installing worthies into positions of community authority and power. The center of political gravity was shifting downward to the more rooted levels of the system. The system of rule remained essentially horizontal and relied on local intermediate groups.” Sumit Guha, *Beyond Caste: Identity and Power in South Asia, Past and Present*, Brill's Indological Library, volume 44 (Leiden: Brill, 2013): 7

focused on forms of imperial service characterized by “social restraints, bodily discipline, cultivation of skills, attentiveness to social etiquette, and self-cultivation”.¹¹⁵

From the vantage of formal judicial structures, however, both illicit sex and interpersonal violence were conceptually apprehended through widely acknowledged boundaries on their eradication. These behaviors could not be ended, but only regulated and managed, their outlets accommodated. Ordinary homes and households, for instance—particularly ones considered respectable—continued to be largely off-bounds to public and ruling authority, and constituted a world that was governed by legitimate private violence and barricaded against official interference.¹¹⁶ On a conceptual level, this intimate boundary also acknowledged “the presence of an emotional realm marked by intensity and excess”. Increasing official repugnance for public displays of violence did not translate into a repudiation of “intense and deep emotions”, their ability to be provoked, or their need to be expressed: particularly on matters of *izzat*, one’s standing and recognition within a community, or *hurmat*, a quality of honor associated with the *namus*, or chastity, of a household’s women.¹¹⁷ The fact that metaphors of illicit sex and interpersonal violence were popularly invoked as rhetorical strategies to highlight the sensorial and bodily experience of state oppression under the Mughals and their princely successors indicates that, when they functioned as it was thought they ought to, pre-colonial states both contained and sustained household honor—making it visible and citable through policies of

¹¹⁵ Hasan, *Paper, Performance and the State*, 64.

¹¹⁶ Kaicker, *The King and the People*, 158.

¹¹⁷ Hasan, *Paper, Performance and the State*, 64; Kaicker, *The King and the People*, 158. See also Margrit Pernau, *Emotions and Modernity in Colonial India: From Balance to Fervor* (New Delhi: Oxford University Press, 2019).

contingent accommodation, a sense of flexibility in encirclement.¹¹⁸ Communities that possessed *izzat* and *hurmat* could mobilize wider currents of political grievance upon the affective charge of these two important loci of the moral imagination: illicit sex—as a violation of *hurmat*—and interpersonal violence—as the retaliation that could restore *izzat*. The boundary between the ‘community matter’ and the affair of state could also therefore stretch and overlap, creating a living, shifting terrain of moral property and propriety across household, community, and state upon which outbreaks of what the British called ‘violent affrays’ could be legitimized by reference to a shared normative understanding of what was honorable and right.¹¹⁹

By the time period in which the events I describe took place, however, this understanding had begun to splinter. All actors in the affair could agree that the crime that had transpired was rape, and agree that it was heinous—but its British observers could only request the Company’s intervention and redress by claiming the absence or inadequacy of local law in the matter of sexual violence. These claims represented a society that was saturated with diverse conceptions of the legal—and indeed, of legitimate violence—as an ungoverned lack, requiring aggressive pacification: “a free-for-all, in which goons of various sizes settled matters by force, the rest being mopped up by some form of *kadijustiz*.”¹²⁰ In unpacking this misrepresentation, the task at

¹¹⁸ “The word *dāi’ra*, which exists in Arabic, Persian as well as Hindi/Urdu, encompasses a range of meanings related to space and its encirclement. Derived from the Arabic root d-vav-r, it is part of one of those highly fecund word constellations which make Arabic such an evocative language; related words range from geometric to maritime and administrative. *Dāi’ra* itself, in all three languages, can be a circle, but its meaning also extends to other encircled spaces, such as a camp or monastery, and to spaces circumscribed in the abstract, that is, jurisdiction. In the thirteenth century, the historian Al-Juzjani, patronized by the Delhi Sultan Nasir al-Din, had placed Delhi at the center of the *dāi’ra* of Islam.¹⁷ It is this semantic range – encompassing physical, social, architectural and legally defined space – that makes *dāi’ra* a useful conceptual tool for thinking of the zone of entrenchment and operations represented by Map 1.1.” Chatterjee, *Negotiating Mughal Law*, 49.

¹¹⁹ Hasan, *Paper, Performance and the State*, 67.

¹²⁰ Chatterjee, *Negotiating Mughal Law*, 39.

hand is to understand why and how ‘rape’ appeared at this moment as an insurgent political category of outrage—and a vehicle for dominant communities to advance alternative, autonomous formulations of justice.

For this understanding, it is necessary to attempt to reconstruct what might have happened before this singular incident attained enough importance to find mention in a political dispatch to Calcutta. What harm did the crime committed represent in this context? What social violations did it constitute, and why did existing mechanisms of redressal fail to deliver an appropriate solution to the girl, her family, and eventually the Meos at large? Finally, why did it matter so much that this community was dissatisfied? I do so first by presenting *jati*, or caste, as the dominant operating logic of the Meos’ social world, and the *panchayat* as its giver of *insaaf*, or justice. Moving on to Nawab Ahmed Bakhsh Khan—the pettier prince and primary narrator of the Meos’ actions; Randhir Singh—their apathetic antagonist; and Resident David Ochterlony, the paramount power-broker in the region, I unravel the layers of contradicting motives that set these nobles at odds with each other, focusing on their invocations of *adab* to articulate political choices as honorable, imperative, or morally necessary. Throughout, I also highlight the vast bifurcation between those who speak and those who are being spoken for: the peasants and the potentates, the *aam* and the *khaas*.¹²¹ Ochterlony and the princes constituted the former—and as the latter, the Meos’ perspectives would have been archivally invisible unless relayed through them. Even as the small details of clashes, reversals, and atrocities between Jat and Meo were

¹²¹ Abhishek Kaicker’s description of this distinction is relevant: “the idea of “The People” is an act of imagination that imposes a fictitious unity on heterogeneous and fragmented collectivities in order to grant legitimacy to a political projection. Yet the category has been a foundational one in the intellectual traditions of the Islamic world, whether construed as “the common” (*‘āmm*, *‘awāmm*) who are contrasted with “the special” (*khāss*), or as “God’s creation” (*khalq-i Allāh*), the “flock” (*ra‘iyat*) entrusted to the pastoral care of the ruler. *The King and the People*, 9.

scoped out and diligently couriered back from Nagaon and Jokohar to the nobility by *harkaras* and spies, the motivations of the people who fought are therefore vulnerable to misrepresentation. As the historian Abhishek Kaicker puts it, however: “Given that those encompassed in the category of ‘the people’ have left us almost no trace of themselves in their own words, even the most selective, vague, hostile, generic, brief, and contradictory statements on their doings offer a chance to reconstruct, howsoever imaginatively, the originary act of popular assertion that shook the observer enough to record it.”¹²²

With Ahmad Bakhsh Khan, a personal friend of Ochterlony, as that shaken narrator, I hope to show how the gang-rape in Bharatpur telescopes into one crisis the Meos’ long-term transition in social status and standing from *zamindars*, or landowners, to bandits, and reveals such transformations—which were replicated among many quasi-dominant caste groups in the Hindustani hinterland—to be a gradual accretion of incidents, of damaging precedents, of withdrawals and abandonments by the state. Ultimately, despite their longstanding hostility to it, the Meos’ horizon of action was constrained by the wider social transformations colonial power had wrought. Although—unlike the treaty-handicapped princes—the Meos eschewed the route of petitioning the Company state for the retroactive legitimation of their actions, the very existence of my source material is an important demonstration of the fact that communal entitlements could no longer be upheld entirely either by citations of ‘tradition’, or by a community wielding force, under the new regime. Ahmad Bakhsh’s uneasy translations between princes and people reveal subjects who, despite apprising the state of their undeterred intent to pursue blood vengeance, confirm that the insurgent in South Asian history frequently did not seek to destroy signs of sociopolitical authority, but appropriated, preserved, and discarded them

¹²² Kaicker, *The King and the People*, 13.

creatively. The presence of Meo women on the roads and within the rebellion demonstrates that the structuring principle of ‘subaltern’ presence and existence—as equally aware of what is subordinate to it as what dominates it—is the potential of symbolic inversion to advance political critiques beyond the bounds of kin and caste.¹²³

1.3: *Jati*: caste, community, and rape

Mewat—which itself stretched across several kingdoms including Bharatpur, Alwar and Ferozpur as well as parts of the Gurgaon district in Company territory—was not simply named after the Meos; it was also a region dominated, if unevenly, by them.¹²⁴ Claiming descent from high-status, martial Rajput lineages, the Meos were *zamindars*: a village-owning “supralocal

¹²³ Rosalind O’Hanlon, “Recovering the Subject Subaltern Studies and Histories of Resistance in Colonial South Asia,” *Modern Asian Studies* 22, no. 1 (1988): 189–224, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/312498>. William Pinch has advanced a related argument about the role of emotions in the Indian War of 1857: while the war can be understood “as a proto-nationalist expression of a “felt” patriotism couched in terms of *fear*—fear of the loss of caste and religion—the initial, decisive explosion of violence at Meerut had, ironically, little to do with patriotism, caste, and religion. Rather, it had everything to do with gender and humiliation, or rather a fear of humiliation in terms of gender inversion.” William R Pinch, “Women, Gender, Emotions: Rethinking Meerut in 1857,” *Nehru Memorial Museum and Library Occasional Paper: History and Society* 83 (2015): 42.

¹²⁴ “The Meos, also known as the Meowattees or Mewatis, are a large and internally varied caste group. In some colonial tracts and gazetteers, ‘Meos’ were the Hindu people of the caste, and ‘Mewatis’ were the Muslims. The majority of this caste group are, however, Sunni Muslim, and speak Mewati, a composite of Rajasthani and Brajhasha. For much of the 19th century British observers considered the Meos ‘Mussalmans in name’, citing their lack of familiarity with regular Islamic prayers and the *Kalima*, their tendency to celebrate Holi, Diwali and Dussehra, as well as their reliance on Brahmins (a group of bookkeeping genealogists known as the Jagga) to fix auspicious marriage dates.” Raymond Jamous and Nora Scott, *Kinship and Rituals among the Meo of Northern India: Locating Sibling Relationship*, (Oxford: Oxford University Press, 2003): 25.

gentry” organized into *biradaris*, or brotherhoods, based on fictive and symbolic kinship ties that legitimated practical relationships of power.¹²⁵ They held land in over three thousand villages, roughly a third of Mewat’s area, were also present in large numbers in the districts of Aligarh, Agra, Bareilly, and Bulandshahr in the Company’s Ceded and Conquered Provinces, and traditionally relied on both animal husbandry and banditry to supplement their agricultural income.¹²⁶

By their own telling, the Meos converted to Islam in the time of the Ghurids in the 9th century AD and were subjected politically to Delhi in the early Sultanate period; indeed, the *nawab* Ahmad Bakhsh Khan’s capital Ferozepur was claimed to have been founded by the Delhi Sultan Firoz Shah Tughluq (r. 1351-1388 CE) as a military outpost to control the unruly Mewatis—suggesting that the Meos’ relationship to imperial rule had been a fractious one for centuries.¹²⁷ The Meos had also generally been enemies of the Mughals in the era prior to British conquest. The Meo leader Hasan Khan Mewati fought in alliance with the Rajput leader Rana Sanga against the Emperor Babur; and a Meo oral narrative, *panch pahar ki ladai*, describes

¹²⁵ Guha, *Beyond Caste*, 16.

¹²⁶ Shail Mayaram, *Resisting Regimes: Myth, Memory and the Shaping of a Muslim Identity* (Delhi ; Oxford: Oxford University Press, 2000), 4. The Meos claimed as ancestors the Tunwars from Delhi, Jadaons from Mathura, Kacchwahas from Jaipur, and Chauhans from Ajmer. The region of Mewat grew wheat, barley, jowar, bajra, and mustard, and had two harvest seasons, *rabi* (March-April) and *kharif* (September-October). William Crooke, *The Tribes and Castes of the North-Western Provinces and Oudh* (Calcutta: Office of the Superintendent of Government Printing, 1906): 489.

¹²⁷ William Wilson Hunter et al., *Imperial Gazetteer of India*, vol. 16 (Oxford: Clarendon Press, 1908), <https://dsal-uchicago-edu.ezproxy.cul.columbia.edu/reference/gazetteer/>: 100. In the British view, plunder made the Meos agnostic and opportunistic regardless of their professed religion: “they have shown little respect for Hindu shrines or temples; and when the sanctity of a threatened place has been urged, the retort has been—*Tum to deo; ham Meo*—‘You may be a god, but I am a Meo.’” Crooke, *The Tribes and Castes of the North-Western Provinces and Oudh*, 489.

wars between the Mughals and Meos in the 17th century, othering the former as ‘Turks’.¹²⁸

Owing to their long presence in and identification with Mewat, the Meos also did not recognize the superiority of local *ashraf* communities such as Sayyids, Shaikhs, and Pathans that would otherwise rank higher than them in prestige.¹²⁹ Disdain was especially reserved for communities that were allies of the Mughals: thus the *ashraf* Khanzadas were mocked as *ghair mulki*, or foreigners, who were *siyasi*, or state-supporting.¹³⁰

The Meos were divided into 13 *pals* or clans, and fifty-two *gotras* or lineages. These *pals*, derived from a word meaning “to look after” or “take care of”, provide a window into the Meos’ traditional understanding of territory, boundary, and sovereignty—which will prove important to clarifying how they conceived of their own legal jurisdiction as a dominant *jati*. The territorial consolidation of the *pal* is claimed to have arisen in the context of Akbar’s reign, in the second half of the sixteenth century. Different Meo clans, quarrelling over land, realized that infighting made them vulnerable to state power and external enemies. In a meeting of representatives, they collectively divided the Mewat region amongst twelve clans by population. This act unified them against outside authority and put a stop to internecine feuds.¹³¹ Each *pal* also stood for and constituted a territorial segment of the region of Mewat, and was itself divided into *thamas* or brother villages, in which each male member of the caste descended from the

¹²⁸ Saints venerated by the Meos, such as Baba Lal Das, resisted local Mughal administrators and vassals. Notably, a previous Nawab of Ferozepur was humbled by the 16th-century Sufi Shah Chokha when the saint’s disciples ate a buffalo belonging to the Nawab: “the latter comes to arrest him, but the saint manifests his powers, giving the Nawab a vision of his palace in flames; and so he falls at the saint’s feet.” Mayaram, *Resisting Regimes*, 40.

¹²⁹ Jamous and Scott, *Kinship and Rituals among the Meo of Northern India*, 17.

¹³⁰ Mayaram, *Resisting Regimes*, 40.

¹³¹ The thirteenth *pal* received a small territory later. Jamous and Scott, *Kinship and Rituals among the Meo of Northern India*, 81.

same ancestor (frequently a god or mythological hero, such as Krishna or Arjuna).¹³² These fictive lineages signaled entitlements within what Malavika Kasturi has called “a Kshatriya-centered ideology”: simplistically put, the capacity and right to fight for and with honor.¹³³ The Meo *chaudhri*, or headman, of each village occupied his position by right of inheritance. However, no clan leader or headman could claim to be the *chaudhri* of Mewat as a whole, since the institution of the *pal* was not subservient to or reliant upon royal authority.¹³⁴ Although the *pals* had eventually lost formal political control of their traditional territory under colonial and princely domination, the difficulty of access and the tight-knit organization of Meo villages—each one surrounded by its *thamas*, collectively comprising a *pal* with its own *panchayat*—meant that they were able to continue governing themselves intensively at the inter-village level.¹³⁵

Describing a variety of similar groups in the rural subcontinent, C. A. Bayly noted:

“Their power derived as much from their status as lords, warriors and protectors of the village shrines as from any simple notion of proprietorship. And in the same way their livelihood

¹³² Mayaram, *Resisting Regimes*, 30, 255-6.

¹³³ Malavika Kasturi, *Embattled Identities: Rajput Lineages and the Colonial State in Nineteenth-Century North India* (New Delhi ; Oxford: Oxford University Press, 2002), 5.

¹³⁴ A myth associated with the Balot *pal*, originating from Garh Dhamina, a village near Delhi and just outside the traditional territory of Mewat, illustrates the consequences of breaking this rule: the village *chaudhari*, Koka Rana, allied with the emperor of Delhi and subjected the entire territory of Mewat to his rule, empowering members only of his own clan. The other clans, unable to operate as bandits any longer, conspired to attack him: since his village was located outside Mewat, they disguised themselves as members of a *baraat*, or wedding procession, in order to approach Garh Dhamina, where they destroyed its wells, its lineages, and its altars, and forced the Balot *pal* to disperse. In Jamous’ words: “This story teems with information. The *chaudhri* of a *pal* wants to be the leader of all the Meo. To accomplish this, he imposes his own power and gets it legitimized by an outside authority. His village is located just outside the Mewat area. *It is as though the only imaginable way for a man on the inside to dominate a region was to place his capital outside so as to surround and occupy the land.* The opposition would come from the twelve other *pal*.” Jamous and Scott, *Kinship and Rituals among the Meo of Northern India*, 100.

¹³⁵ Erin P. Moore, *Gender, Law, and Resistance in India* (Tucson: University of Arizona Press, 1998), 69.

derived from military service and their rights over local service and artisan communities.”¹³⁶ Since Meos were of a superior *jati*, and founders of their own villages, they claimed an eminent right to land and service that did not have to be externally validated by royal authority. Notably, and as a reflection of their disdain for the *ashraf*, the Meos regarded *qazis* or Islamic jurists—who were typically educated Sayyids claiming descent from the Prophet—as service castes, or *kamin jati*. The anthropologist Frederic Jamous observed that *kazis* in a contemporary Meo village lived in the same quarter as the service castes and shared the same cemetery, possibly indicating that caste laws transcended Islamic precepts in this local context.¹³⁷ At the local level, then, Mewat was a world in which self and other were understood in terms of *jati*, not religious community, and in which a history of hostile confrontation with regional branches of imperial power crucially shaped attitudes to the law. In short, *zamindar* clans like the Meos, simultaneously disreputable and dominant, were exemplary of why, from the Company’s beginning, “the British viewed as dangerous the potentially centrifugal tendencies of a political culture in which the geographical and social orientations of caste and kinship overlapped with and contradicted fluid territorial boundaries.”¹³⁸

The assault of a young girl by a man from a neighboring village likely generated shockwaves within this episteme; it would have constituted a double boundary-violation,

¹³⁶ C. A. Bayly, *Indian Society and the Making of the British Empire* (Cambridge: Cambridge University Press, 1995), 148. Any Meo with land was expected to patronize these castes, allocate them a portion of the harvest, and receive ritual services in return (while also offering a small ceremonial fee in cash or kind). Some of these castes were of middling status—such as barbers, butchers, goldsmiths and potters—while others were low-ranking—such as washermen, leatherworkers, bards, and sweepers.

¹³⁷ Jamous and Scott, *Kinship and Rituals among the Meo of Northern India*, 33.

¹³⁸ Malavika Kasturi, *Embattled Identities, Rajput Lineages and the Colonial State in Nineteenth Century North India* Oxford University Press, 2002, p. 67.

transgressing both territorial borders as well as prohibitions against incest.¹³⁹ Though her home village Jokohar was in the Beechor district of Ferozepur, the girl had been traveling on a main road across Bharatpur when men from Choornagaon (which the letters later shorten to Nagaon) assaulted her. A June 1822 letter from Nawab Ahmed Bakhsh Khan to Ochterlony outlined the reaction:

This occurrence becoming known, all of the same cast with the girl, feel that their honour is wounded by the outrage, and say that *formerly under the weakest Rulers the safe passage from one village to another of their wives and daughters was never interrupted, and that it is under the just control of the British Government, that they have first suffered such outrage, that they have cause to me for redress, having thrown down their turbans, made forcible appeal, to the Panchayets of Sonah, Noah, Puliwul & Hutteen, and other places in the Honourable Company's Territories, that their women also go from village to village lamenting in consequence of which the inhabitants of these places feeling that as being of the same cast, they participate in the loss of honour, have all taken part with the complainants. If you, they say to me, will effect redress of this grievous wrong, it is all we wish, if not blows and bloodshed will ensue.*¹⁴⁰

This excerpt outlines the consequences of failing to see the dominant *jati* as a whole unit, a translocal entity the boundaries of which were threatened in full by this violation. Like more formal Hindustani state structures of this period, the *pal* structure is a family business: it sustains its members within “a matrix of emotional and material resources”, including “reputation”, that each member must work hard to accumulate and improve.¹⁴¹ Under precolonial regimes, groups like the Meos derived rank, status, and prestige not simply from military or mercenary service, but from extensive systems of familial and social alliance-making that were coterminous with

¹³⁹ See Prem Chowdhry, “Enforcing Cultural Codes: Gender and Violence in Northern India,” *Economic and Political Weekly* 32, no. 19 (1997): 1019–28, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/4405393>.

¹⁴⁰ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, June 24th, 1822.

¹⁴¹ Chatterjee, *Negotiating Mughal Law*, 23-24.

state diplomacy, as they enabled the extension of territorial influence.¹⁴² Over and above the prohibition on marrying within a *gotra*, Meos also did not marry within their own *pal*. Prohibitions on intermarriage could also signal political fallout: the Meos stopped exchanging brides with the Khanzadas due to their marriage alliances with the Mughals as well as their seclusion of women, a practice the Meos did not observe.¹⁴³ Religious and conventional rules for marriage were likewise observed strategically rather than consistently: families were erratic in their observance of dowry and occasionally sold their daughters instead, often to repay debts.¹⁴⁴ One popular saying went: *Meo beti jab de, jab okhali bhar rupaya rakhvaale*: “the Meo will not marry off his daughter until he gets a mortar full of silver.”¹⁴⁵ In a mercenary, mercantile world, Meo women were bearers of both material and symbolic value—and the political shifts underway in early colonial Rajputana cemented that value.

Following the gradual conquest and ‘pacification’ of north India by the Company, defeated native armies were disbanded, and a military labor market that served as a robust engine of caste mobility and status-acquisition was destroyed. One tremendous consequence of this, Rosalind O’Hanlon has argued, was a stifling of socioeconomic opportunity and a subsequent

¹⁴² Indrani Chatterjee, ed., *Unfamiliar Relations: Family and History in South Asia* (New Brunswick, N.J: Rutgers University Press, 2004), 23.

¹⁴³ Mayaram, *Resisting Regimes*, 40. Meos were held not to ‘seclude’ their women; they assigned them to work in the fields as well as at home. The Punjab glossary describes Meo women’s attire thus: “Women wear a *lahnga*, drawers of coarse cloth, which is called *sunardi* or *lungi*. It is tied round the loins by a string, and is unbecoming. Scanty stays (*angia*) are used to support the breasts—leaving the back and chest exposed. A jacket, with sleeves only 3 or 4 inches long, is also worn; and on the head a small scarf. Decency consists in covering the loins, not in veiling the face or breast” (84).

¹⁴⁴ Crooke, *The Tribes and Castes of the North-Western Provinces and Oudh*, 489.

¹⁴⁵ Crooke, *The Tribes and Castes of the North-Western Provinces and Oudh*, 493. Descriptions from the 1890s indicate that the Meos were estimated to consider two hundred rupees a respectable sum of money to spend on a marriage.

hardening of caste boundaries: ambitious polities were now compelled to center marriage and lineage, even more so than before, as the arena of status and exclusivity.¹⁴⁶ At the same time, the exchange of women had always been a public matter: since weddings were regarded as an occasion to reaffirm ties between *pals*, within villages, and across *jatis*, all the inhabitants of a Meo village were expected, regardless of *jati*, to contribute to the expenses as part of the Meo bride's family, with records of contributions being kept to ensure reciprocity.¹⁴⁷ Complementary to this shared burden of managing and regulating women's sexuality and labor, Meo men were held by the *jati* to particular norms of chivalry. One oral legend recounts how, when the emperor Akbar abducted a beautiful Meo woman for his harem, the Meo man who was sent to Delhi to bring her back was obligated to marry her because he had touched her while effecting his rescue (he managed to evade the authorities as a bandit for ten years before finally being captured and executed). This mythic expectation stands in particularly extreme contrast to the conduct of perpetrators of roadside gang rape, and gives some sense of the exactingness of custom in the proper treatment of women and dependents.¹⁴⁸ To the British, however, the very fact that the Meos were known to marry women from subordinate castes and raise the children of those unions as members of the *jati* caused them to be classified as a 'highly composite' caste, making their claims to high status, at least by imperial logic, questionable and ultimately invalid.¹⁴⁹ If the

¹⁴⁶ O'Hanlon, "Issues of Masculinity in North Indian History", 17.

¹⁴⁷ Other castes were invited to most rites of passage, and would eat together at feasts with rules for food purity enforced by a Brahmin cook. Mayaram, *Resisting Regimes*, 259.

¹⁴⁸ Jamous and Scott, *Kinship and Rituals among the Meo of Northern India*, 19.

¹⁴⁹ H. A. Rose, *A Glossary of the Tribes and Castes of the Punjab and North-West Frontier Province : Based on the Census Report for the Punjab, 1883, by the Late Sir Denzil Ibbetson and the Census Report for the Punjab, 1892, by Sir Edward Maclagan and Compiled by H. A. Rose* (Patiala: Languages Dept. Punjab, 1970): 79. Thus while some Meos had Rajput surnames such as Chauhan or Gehlot, they also had the surnames of subordinate castes such as Gujar, Kori, and Nai. One colonial scholar, A. Lyall, wrote: "It is a Cave of Adullam that has stood open for centuries. With them a captured woman is solemnly

star of the Meos, though never steady, was waning under Company rule, it was because the crucial entwinement of *jatis* at the village level within structures of obligation and affiliation was negatively overwritten by a colonial language of biological kinship, which saw such structures as indicative of a wanton mixing that meant the *jati* could not possess a true sense of honor, or even accurately gauge the magnitude of a social violation.

However, it was precisely outrage at illicit mixing, and the wide-ranging reach of the category of incest, that cast the actions of a local rapist—a man likely known to his victim, since she identified him—as heinous enough to deserve obliteration. Here, the inhabitants of each village were “theoretically related to one another”—“cross-caste ties in a village experienced through fictional kinship [were] specially valued”, casting all the members of the same generation as “classificatory” siblings regardless of caste, and enjoining the male members of the generation to protect the honor of each *behen*, or sister.¹⁵⁰ In fact, as Prem Chowdhury has noted in her study of contemporary Haryanvi society, “*caste groups such as Jats expressly forbid marriage into any village which shares even a border with the natal village, or in which other clans of one’s village are well represented...its infringement [marriage prohibition] impinges upon notions of morality and falls within the category of incest.*”¹⁵¹ Unsecluded dominant-caste women, given that they worked in the fields, could therefore be considered vulnerable not just to

admitted by a form of adoption into one circle of affinity, in order that she may be lawfully married into another, a fiction which looks very like the survival of a custom that may once have been universal among all classes at a more elastic stage of their growth; for it enables the circles of affinity within a tribe to increase and multiply their numbers without a break, while at the same time it satisfies the conditions of a lawful intermarriage.” Crooke, *The Tribes and Castes of the North-Western Provinces and Oudh*, 487.

¹⁵⁰ Chowdhry, “Enforcing Cultural Codes”, 1021.

¹⁵¹ Chowdhry, “Enforcing Cultural Codes”, 1021.

assaults by men of other *jatis*, but to breakages in the very fabric of sociality.¹⁵² Upon receiving news that a cowherd from a neighboring village had raped a young unmarried ‘Rajput’ girl, Bharatpur’s Jat rulers would have well understood the severity of the illicit sexual connection instigated by their subjects.

1.4: *Insaaf*: violence, corruption, and the people’s justice

Initially, at least, matters moved quickly: on the very day she was ferried by cot to her original destination, her relatives’ village, the girl had identified one of her four attackers, Imaum Bux, although the other three had covered their faces and remained undetected. At this point, however, the people of Choornagaon, who had seized their fellow villager, committed what would come to be seen as an unforgivable misstep: rather than deliver Imaum Bux directly to Jokohar’s Meo *zamindars*, they handed him to the *faujdar* of Bharatpur on their own side of the border.

Meanwhile the *nawab* in Firozpur, apprised of the incident, wrote: “I was deeply grieved to learn from the above petition, that an outrage had been sustained so repugnant to all human custom as well as divine Law.”¹⁵³ Hoping to lower tensions, he asked his *zamindars* “that

¹⁵² Chowdhry, “Enforcing Cultural Codes”, 1022.

¹⁵³ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, Ahmed Bakhsh Khan to David Ochterlony, June 24th, 1822.

satisfactory proof of the criminality alleged against Imaum Bux should first be adduced”. They retorted that his guilt had already been “well ascertained” by the girl’s accusation.

They added, that there was *no hope of redress from the Faujdar*, as the Choornagaon zamindars said, that *they had requested him to restore the culprit to them, that they might deliver him up to the complainants, but that in consequence of a bribe, he had received of 500 rupees, he would not comply*. They further said, that they consented to wait for eight or nine days in obedience to my injunctions to see what the Faujdar would do but, that with reference to the *violent sensation* existing among the whole of their cast and Brethren, *they could not be responsible for consequences beyond that period*. With this they departed.¹⁵⁴

The Meos’ communication that the *faujdar* had received a five-hundred-rupee bribe to resolve the rape case is a particularly interesting feature of this interaction. That the *nawab* relayed the Meos’ stated intention to fight a war of retaliation on the border villages of Bharatpur without comment—indicative of a widespread normalization of what Divya Cherian, documenting pre-colonial approaches to sexual violence in Rajputana, has called “the role of localized community in adjudication”—is another, which I shall discuss first.¹⁵⁵ Under Mughal and post-Mughal princely regimes, local lineages of ‘*zamindars*’—which I have shown to be a diverse and expansive category of power-holders—laid claim to bundled, nested, accretive structures of rights and entitlements, sometimes by citing the tenets of *sharia*. In the environs of Delhi, *sharia* was neither ‘Islamic law’ nor ‘custom’, but “a body of norms without any reference to specific doctrines, but more often simply in adjectival form and in the sense of ‘legal’ or ‘valid’; for example, when describing the validity of transactions or testimonies

¹⁵⁴ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, Ahmed Bakhsh Khan to David Ochterlony, June 24th, 1822.

¹⁵⁵ Cherian, “Governing Sex and Abortion”, 20. “There is no doubt about the fact that the legal order was diverse and multi-agential. We know from extant sources that there were in the localities corporate merchant bodies (*mahājans*), caste-based groups (*panches*), urban corporate institutions (*nagarsheths*), community heads, and *muhalla* elites and locality chiefs (*mīr-i-muhalla*), mediating and resolving conflicts, with powers of adjudication and punitive sanctions.” Hasan, *Paper, Performance and the State*, 42.

recorded”.¹⁵⁶ In this normative framework of *sharia*—which could also be synonymous with *vajabi*, meaning something ‘correct’ or ‘legitimate’—the primary feature of ‘law’ was “a specialized language used by common people...to record, assert and dispute claims, to articulate popular expectations of the state, of peers and of betters, and...to make striking statements of self-description.”¹⁵⁷ If *sharia* broadly described what was acceptable within the given normative order, the state sometimes stood for a common space of mediation and negotiation where justice as well as power could be obtained—but also sometimes simply stood as a distant entity to be summarily notified of *zamindars*’ intent, as this missive demonstrates.¹⁵⁸

The early British dispensation in India, however, had a different understanding of Islamic law entirely, incorporating the expert opinions of Islamic jurists into trials of native subjects by Company-appointed judges in British-style courts, and creating a provisional system

¹⁵⁶ “My protagonists expected there to be systematic bodies of rules that could determine their entitlements; but this ‘law’ of theirs was that specific mixture that their social and geographical location exposed them to. There is no indication that they saw themselves as engaging with an eclectic system – Islamic law in parts and not in others – it appears that they saw it all as ‘law’.” Chatterjee, *Negotiating Mughal Law*, 38-40.

¹⁵⁷ Chatterjee, *Negotiating Mughal Law*, 4. “Our protagonists and the material they have left behind also force us to rethink the category of law as extending beyond an autonomous body of rules and procedure, and resituate it along a conceptual and coercive spectrum extending from state policy on the one hand to formal academic jurisprudence on the other, littered with un-academic manuals and pragmatic users in between. This spectrum was naturally negotiated by the heroes of my story through the use of several tribunals, languages and, when needed, force” (9).

¹⁵⁸ The normative order was both shared and contested; described in the Mughal sources vaguely as *sharia*, it was the ambiguity and the malleability in the order that permitted both the dominant and the dominated social groups to selectively appropriate it to protect and enhance their material and symbolic interests. Tied to customary practices, the *sharia* was locally understood as a shared order, a space within which the social actors — the elite and the common people alike — negotiated with each other to defend their interests and aspirations.” Called *vajabi* or “legitimate”, in Rajasthan, and *sharia* in Mughal domains. Hasan, *Paper, Performance and the State*, 115.

of ‘Anglo-Muhammadan law’.¹⁵⁹ This court system, first begun in Bengal, did not apply to the inhabitants of princely states in the Delhi region at this period; but their own local understanding of *sharia*—as a core standard of ‘legality’ and ‘rightness’ that could be laid claim to by ordinary subjects in their own language and own interest—would have likely been illegible to British conceptions of Islamic law, and actions taken under it questionably legal to Company observers. I argue here that Meo expectations of justice cannot be apprehended simply between the divergences and congruencies of *sharia* and Anglo-Muhammadan law, however, and that other legal assemblages played an important role in shaping organized action for justice, which I translate in this context as *insaaf*, or equity, at the level of the individual harmed, and *adalat*, justice proper, for the community.¹⁶⁰ I also hope to show that despite the *nawab* designating the crime “repugnant to all human custom as well as divine Law”, few universal referents anchored any shared understanding of what was lawful under British rule. Now, by lacking distinct statutory definition, rape tested the robustness of the “normative cosmopolitanism” that supposedly undergirded the plural legal structure: the diverse and contextual moral resources, drawn upon in law, that purportedly united to make rape recognizable as a heinous crime within any law worth the name.¹⁶¹ In this instance, it was clear that on the ground, the outrage following the case was founded on the caste status of the victim and perpetrator, and that the punishment

¹⁵⁹ See Scott Alan Kugle, “Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia,” *Modern Asian Studies* 35, no. 2 (2001): 257–313, <https://www.jstor.org/ezproxy.cul.columbia.edu/stable/313119>.

¹⁶⁰ See Mana Kia, “Moral Refinement and Manhood in Persian,” in *Civilizing Emotions: Concepts in Nineteenth Century Asia and Europe*, ed. Margrit Pernau et al. (Oxford: Oxford University Press, 2015), <https://doi.org/10.1093/acprof:oso/9780198745532.003.0008>.

¹⁶¹ Farhat Hasan has argued that “social actors and caste and community groups defended their interests and resisted state excesses not by undermining the shared norms and values, but by manipulating them, and by exploiting their silences and ambiguities.” *Paper, Performance and the State*, 57.

demanded for it was collective, targeting the lives and possessions of hundreds more than the rapists themselves for their complicity in the insult to Meo honor.

The British had doubts not only over the validity of the legal claims I have described, but also the willingness and ability of Mewat's inhabitants to adhere to any law even by their own understanding of it. By the mid-eighteenth century, the Delhi region already appeared in imperial Mughal chronicles as a "violent social landscape."¹⁶² Abhishek Kaicker, documenting instances of popular revolt in early modern Delhi, writes: "So routine and scripted was such violence that commentators described its outbreak in purely formulaic terms: a dispute on the street would begin with a verbal exchange, escalate to kicks and blows, until finally swords were unsheathed...such conflict was shaped by longstanding structures of family, kin, clan, and lineage, which together constituted society across the realm."¹⁶³ Such antecedents had developed into an emergent colonial consensus that the north Indian countryside was lawless, vulnerable to affrays, banditry, and plunder, and incapable of self-governing without despotic intervention. Nevertheless, it is clear that by stating their next course of action to the Resident, the Meos intended to establish that such an action was just: that colonial legality was rejected, not all law.

The Meos would have considered themselves an honorable community; entitled to exist above the necessity of contact with state-centered judicial processes, "which existed, after all, to discipline the common masses", or those without other means of recourse to justice within a

¹⁶² Kaicker, *The King and the People*, 158.

¹⁶³ Kaicker argues that the later Mughal Emperor Aurangzeb's increasingly bureaucratized imposition of *sharia* law in judicial disputes can "be seen as stimulating the development of a popular politics in Delhi (and elsewhere) by empowering even humble folk to act upon their interpretation of justice according to the law, which was not infrequently at variance with the opinions of the learned doctors who served the imperial establishment." *The King and the People*, 147-8.

political economy of honor and status.¹⁶⁴ Their insistence on internally legitimated community sovereignty, their view of *ashraf* jurists as a service caste, and their strong tradition of resistance to external authority meant that the ultimate arbiter of human affairs was widely accepted to be the caste *panchayat*. An overwhelming expectation existed that the Meo *panchayat* would serve as the primary forum for a criminal dispute. Thus, the *nawab* himself wrote to the *faujdar* in Bharatpur that “it behoved him as constituted local authority to have compelled the Choornagaon zamindars to repair to Jokohar for the purpose of satisfying the Panchayet of the latter by delivering up the Criminal, by which means the dispute would have terminated; that instead of this procedure he had received the offender from the Choornagaon people, and had given him refuge, craftily framing excuses for delay; that the *zamindars* were ripe for discord and that *when that was the case, the power of a King even, was insufficient to restrain them.*”¹⁶⁵

Panchayat justice both intersects with and diverges from Islamic legal principles, which broadly tend to center the individual legal person over the corporate group (the legal person may, for instance, contract and arrange her own obligations, inscribing herself into networks of *haqq*, or mutual claims, rights and duties). As one contemporary observer of the Meos has documented, *panchayats* define justice as “fulfilling one’s duty to others as defined by men. Through the speech of the elders, the ideals of Meo men are stated as ‘customary law’ that defines appropriate behavior, powers in marriage and divorce, control over children, property ownership, and inheritance... Women are generally not invited to the *panchayat* either as community members or as arbiters; they are represented by male relatives.” The scholar’s informants justified the

¹⁶⁴ Kaicker, *The King and the People*, 167.

¹⁶⁵ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, Ahmed Bakhsh Khan to David Ochterlony, June 24th, 1822.

absence of women from *panchayat* processes by invoking the Islamic rule that two women's testimony was equal to that of a single man.¹⁶⁶

Contemporary ethnographic accounts—which could provide some insight into how the dispute might have been handled had the Nagaon villagers conducted things as usual—suggest that intra-village *panchayats* are relatively informal or contingent affairs. An aggrieved party garners the attention of village elders, typically their own highest-ranking relatives, and the *panchayat* is convened in the village either of the defendant or the accuser. While invitations are issued, there is no formal process, other than the threat of a social boycott or a case filed in a higher court, for ensuring the attendance of any involved party. Regardless of attendance, however, proceedings continue: the facts of the case are typically not discussed, as they are assumed known (villagers with relevant information would have testified to elders in private beforehand). The disputants generally do not speak for themselves: they choose a well-spoken or influential relative to present their case. Oaths are administered only as tests of innocence—something that may explain why the Jokohar villagers aggressively asserted that the rape was proved merely by the accusation: “There is a village saying that if you lie to the *panchayat* you are a fool, and if you don't lie to the state court you are a fool.”¹⁶⁷ Decisions are reached collectively: the *chaudhri* consults other men and asks that a consensus is reached. Above all, “the purpose of the *panchayat* is usually not to elicit new information but to design a solution that will satisfy the parties and the community.”¹⁶⁸ This principle is another that is shared with

¹⁶⁶ Moore, *Gender, Law, and Resistance in India*, 38-42.

¹⁶⁷ Moore, *Gender, Law, and Resistance in India*, 70.

¹⁶⁸ Moore, *Gender, Law, and Resistance in India*, 70.

Islamic law, especially the concept of *tazir*, or discretionary resolution and punishment.¹⁶⁹ If an intra-village *panchayat* breaks down or fails to design a solution, each set of disputants mobilize their brother villages and call on wider and wider circles of connection within the *pal* and the Meo community at large to intervene. Once a particular party is identified as responsible for violating the law, punishments can “range from fines, orders to give obligatory village feasts, rubbing one’s nose in the dust before the aggrieved party or even the entire gathering or touching their feet, shaving of head, drinking or dipping one’s nose in the urine of one or more persons.”¹⁷⁰ Negotiations over the consequences for the Meo girl’s rapists and their abettors might have been proposed in fora such as this, between the caste panchayat and representatives of the Bharatpur villagers, if those villagers had promptly delivered the culprit.

With the *faujdar* already involved, however, as the one with custody of the rapist, the options and outcomes available became more complex. Litigants and petitioners in early colonial India often ‘forum shopped’ not just for better legal outcomes but also in order to uphold a normative order under threat. Their decisions, as I have tried to argue, were shaped both by ideas about popular mobilization before the law and by commitments to a substantive role for *jati* and community in delivering justice.¹⁷¹ As one scholar put it, “arguments invoking kin obligation,

¹⁶⁹ See Kugle, “Framed, Blamed and Renamed”. “That the administrative work of justice was therefore something more than the simple enforcement of law is evident in the writings of an eighteenth-century chronicler, whose description of “legal injunctions and the investigation of disputes” (*ahkām-i shar‘ī wa tanqīh-i qazāyā*) was sensitively rendered by a contemporary translator as “distributive justice.” Kaicker, *The King and the People*, 149.

¹⁷⁰ Chowdhry, “Enforcing Cultural Codes”, 1024.

¹⁷¹ See Chatterjee, *Negotiating Mughal Law*; See also Rohit De and Robert Travers, “Petitioning and Political Cultures in South Asia: Introduction,” *Modern Asian Studies* 53, no. 1 (January 2019): 1–20, <https://doi.org/10.1017/S0026749X18000537>; Bhavani Raman, “Civil Address and the Early Colonial Petition in Madras,” *Modern Asian Studies* 53, no. 1 (January 2019): 123–49, <https://doi.org/10.1017/S0026749X17000944>.

equity, and social justice carried weight in non-formal forums of law such as the *matha* or village community as they could not in the state court, where formal property rights were transcendent.”¹⁷² Yet, since such ‘non-state’ judgements did often did not apply to intra-communal disputes, and colonial courts enforced the judgements of caste and religious courts unevenly, many social groups and constituencies had incentives to attempt to ‘hijack’ the working of state law when local law was hostile to their interest.

The villagers of Bharatpur had a particular inducement to have the state involved because it provided a tip of the scales in their favor to counter the Meos’ own; namely, their high caste rank. As agricultural pastoralists and part-time bandits, some of the other major caste groups the Meos interacted and competed with in these regions were the Jats (a *jati* which included the ruling lineage of Bharatpur), the Minas, the Ahirs, and the Gujars (who were wandering pastoralists). At guess, Imaum Bux, the sole identified perpetrator of the rape, might have been a Gujar or a Jat. Both possibilities explain some elements of the recalcitrance of Choornagaon to kowtow to any demands from the Meos beyond fine payment: Jats, of course, might have expected some impunity from the Bharatpur administration for the very fact of belonging to the same, dominant, caste. They were major landowners in Bharatpur, holding one fourth of its total area, many in *inam* grants.¹⁷³ Gujars, itinerant as they were, might have been more distantly or otherwise differently incorporated into the systems of village-level collective responsibility that

¹⁷² Aparna Balachandran et al., eds., *Iterations of Law: Legal Histories from India*, (New Delhi: Oxford University Press, 2018).

¹⁷³ William Wilson Hunter et al., *Imperial Gazetteer of India* (Oxford: Clarendon Press, 1908), <https://dsal-uchicago-edu.ezproxy.cul.columbia.edu/reference/gazetteer/>, Vol 8, 80.

are documented for this region.¹⁷⁴ One subset of Gujars, the Laurs, also supplied wet nurses to the ruling Sinsinwar Jat dispensation, and so enjoyed a relatively high social status.¹⁷⁵

Getting the *faujdar* involved, therefore, likely could not have been because a case of rape was subject to any special procedural considerations, but because ongoing social transformations had expanded the state's role "in representing interests that transcended narrow, community-based norms", particularly during episodes of caste atrocity and violence.¹⁷⁶ Even in such situations, state bureaucracies in the region would rely significantly, if not wholly, on *panchayats* for law enforcement as well as adjudication: "Crime such as theft, murder, and [illicit sex]...could also involve an inquiry among local notables and the questioning of those who claimed to be witnesses...A large number of orders simply ask local officers to do what is *uvājabī* (loosely, 'correct')...local or supra-local caste councils, the office of the governor of the *pargana*, and the city magistrate were local nodes of authority with overlapping jurisdictions, particularly in disputes over property and custom."¹⁷⁷ When it came to what was 'correct', however, the role of money in the judicial process proved to be a snare from multiple legal perspectives. Long before this series of affrays, money had to an extent become "the salve

¹⁷⁴ See Gagan Preet Singh, "Property's Guardians, People's Terror: Police Avoidance in Colonial North India," *Radical History Review* 2020, no. 137 (May 1, 2020): 54–74, <https://doi.org/10.1215/01636545-8092774>, and "The Strange Science: Tracking and Detection in the Late Nineteenth-Century Punjab", in Ian Burney and Christopher Hamlin, *Global Forensic Cultures: Making Fact and Justice in the Modern Era* (Baltimore, Maryland: Johns Hopkins University Press, 2019), for more on how villages tracked down stolen goods in nearby rural Punjab.

¹⁷⁵ William Wilson Hunter et al., *Imperial Gazetteer of India* (Oxford: Clarendon Press, 1908), <https://dsal-uchicago-edu.ezproxy.cul.columbia.edu/reference/gazetteer/>, Vol 8, 80.

¹⁷⁶ "As more and more upwardly mobile people — merchants, artisans, service gentry, wage laborers, enterprising peasants, and zamindars — needed to interact with each other across their community and caste divides, the search for common legal institutions, it seems, prompted the instantiation of the state in trans-local, supra-communal spaces." Farhat Hasan, *Paper Performance and the State*, 62.

¹⁷⁷ Cherian, "Stolen Skin and Children Thrown", 20.

healing social ruptures caused by injury as well the glue sealing social and political bonds. The regime of fines, cesses for state recognition of marriages and remarriages, and payments of dowries and bridewealth in cash kept capital on the move.”¹⁷⁸ Cherian, for instance, has found only one instance of the state bureaucracy of nearby Marwar condemning a culprit to death for *chaamchori*. And yet, despite this, although the practice of police extracting fines as punishment for sexual crimes had been well-established in kingdoms like Marwar for at least a century prior, such a solution was read in this episode as a clear case of corruption.¹⁷⁹

The “bribe” that the Meo *zamindars* claimed the *faujdar* of Bharatpur had received from the people of the rapist’s village was a tremendous sum: one that no cowherd could have paid alone and that no village would have consented to pay casually.¹⁸⁰ It is also true that on the imperial level, extant Mughal institutions discouraged fine extraction: the Hanafi school of Sunni jurisprudence that informed the application of *sharia* in South Asia especially did not authorize the reduction of punishments falling under the category of *hudud*—such as *zina*, or adultery—by

¹⁷⁸ Cherian, “Stolen Skin and Children Thrown”, 5. She elaborates: “The commutation of crime into cash alludes to the expiatory powers of money, the payment of a monetary fine restoring ruptured social bonds and seen as causing suffering upon the guilty that was commensurate with the gravity of the crime. Expiation through money, then, took its place alongside *older forms of performing repentance, such as hosting a feast for the local caste group or making a pilgrimage to the River Ganges.*” 31.

¹⁷⁹ N.K. Wagle, “Women in the Kotwal’s Papers, 1767-1791”, Anne Feldhaus, ed., *Images of Women in Maharashtrian Society* (Albany, N.Y: State University of New York Press, 1998), 16. Such a fine was known as a *gunhegari*. In Rajasthan, Dilbagh Singh notes that this form of sexual regulation attempted “to uphold the honour and self-respect of individuals without being influenced by issues of gender, caste, and community status. Forms of behaviour which hurt self-respect and were considered humiliating were loosely termed *be-adbi*”—or uncivilized. Dilbagh Singh, “Regulating the Domestic: Notes on the Pre-Colonial State and the Family,” *Studies in History* 19, no. 1 (February 1, 2003): 69–86, <https://doi.org/10.1177/025764300301900104>: 78-9.

¹⁸⁰ Dilbagh Singh, “Regulating the Domestic: Notes on the Pre-Colonial State and the Family,” *Studies in History* 19, no. 1 (February 1, 2003): 69–86, <https://doi.org/10.1177/025764300301900104>.

finer.¹⁸¹ In cases of murder, the victim's kin held right to retaliate by inflicting death—the principle of *qisas*, or retribution—but could pardon him by accepting compensation, or *diyat*.¹⁸² Mughal enforcement of the procedural justice of *sharia* tended to emphasize this “distributive justice” in criminal dispute resolution—whether or not it was “congruent with the dictates of the law”—and acknowledged that many communities possessed a sense of overlapping jurisdiction with the state and expected to be consulted in the imposition of a punitive sentence.¹⁸³ Bharatpur's *kotwal* had relatively few solid legal precedents in Mughal and Company perspective for the legitimacy of fine imposition, even if such a practice had become more common in eighteenth-century Rajasthan. The Governor General Warren Hastings had in fact outlawed fines for “offenses against morality” in colonial Bengal only a few years earlier.¹⁸⁴ It is still unclear how these localized *faujdari* and *kotwali* judicial systems that were technically out of the Company's purview actually interacted and eventually collaborated with emergent colonial courts, which would soon assume the dishonesty, culpability and criminality of female legal subjects as their default position. Nevertheless, from a local perspective, the levying of such a heavy fine for the rape of a dominant-caste girl, accompanied as it was by at least some

¹⁸¹ See Hina Azam, *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure* (New York, NY: Cambridge University Press, 2015), and Radhika Singha, “Making the Domestic More Domestic: Criminal Law and the ‘Head of the Household’, 1772-1843,” *The Indian Economic & Social History Review* 33, no. 3 (September 1, 1996): 309–43, <https://doi.org/10.1177/001946469603300304>.

¹⁸² Hasan, *Paper, Performance and the State*, 60.

¹⁸³ Abhishek Kaicker, “Petitions and Local Politics in the Late Mughal Empire: The View from Kol, 1741,” *Modern Asian Studies* 53, no. 1 (January 2019): 21–51, <https://doi.org/10.1017/S0026749X17000312>: 31.

¹⁸⁴ Elizabeth Kolsky, “The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805-57,” *The Journal of Asian Studies* 69, no. 4 (2010): 1093–1117, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/40929285>: 1095.

assurance that the perpetrator had been “thrown into confinement”, could plausibly have been regarded as appropriate and satisfactory punishment.¹⁸⁵

In this instance, however, it was clearly the perpetrators who had shopped at the right legal forum, finding a way to circumvent the juridical authority, or *munsifi*, of the Meo *panchayat* by banking on the ambiguity of monetary compensation for crime to muddy the difference between a fine and a bribe.¹⁸⁶ In settling the case through a payment, the *faujdar* could claim merely to not be making exceptions in the exercise of justice—sending a subtle insult to the Meos within the shifting terrain of colonial transition, as the right of Rajputs “to agitate in favour of their grievances or to enhance their power using violence”, a process often referred to locally as *bhumeawat*, had been “built into the normative codes of pre-colonial states”.¹⁸⁷ One indicator that this type of message was being sent is that the payment of money in this instance

¹⁸⁵ There has been work on some carryovers into the realm of laws concerning marriage and inheritance. Radhika Singha, for instance, has documented how the characterization of slavery in India was “informed by a notion of civilizational particularity which continued to affect the legal status of married women and daughters long after men had been ‘liberated’ into the realm of ‘voluntary contract’.” In 1834, the East India Company’s Court of Directors instructed the newly formed Law Commission—which was tasked with producing a formal law code for India—to exclude a variety of social forms from the ambit of slavery, particularly those that qualified as types of marriage or quasi-marriage. This was in keeping with the view of most colonial magistrates that household heads had a right of restraint and chastisement with regard to their dependents, slave or not. See Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford: Oxford University Press, 2000).

¹⁸⁶ Hasan, *Paper, Performance and the State*, 28. In instances where a local *qazi* was not a significant power-holder, the local *panchayat* held judicial authority.

¹⁸⁷ Kasturi, *Embattled Identities*, 21. *Bhumeawat* was a political and cultural process operating within a specific matrix of variables. It may be defined as the fight for identity, status and power by elite Rajputs, arising out of a sense of commitment and attachment to territory, and more specifically to the homeland or *bhum*, and was made up of a multiplicity of strands: rebellions, feuds and banditry... The transition to colonial rule, at odds with local social, economic, and political structures, resulted in shifts in the nature and intensity of *bhumeawat*, which, increasingly, was marginalized as an ‘irrational’ and ‘primitive’ impulse. Rebellions by Rajputs in this period often constituted responses to the transformation of political culture and the social and economic dislocation caused by colonial rule. Other acts of banditry and ‘affrays’ also mirrored aspects of *bhumeawat*, which was linked to economic variables in indirect and complex ways.” 21.

occurred *before* the case was settled, and the Meo *panchayat*'s representatives were stonewalled rather than being included in the decision. By the 1820s, as colonial officials in Rajputana had begun to compile and publish ethnographies that fixed the lineages and mythologies of 'true' Rajput families, it was likely possible for rival groups to treat the Meos as illegitimate contenders for Rajput social status, barred from the privilege of claiming special treatment through *bhumeawat*, the threat of an armed rebellion.¹⁸⁸

At some point, anger in the region's villages over the Bharatpur *faujdar*'s lack of communication with the Meo *panchayat* reached such a pitch that he *was* compelled to negotiate; the Meos appointed two of the *nawab*'s officials as their delegates to him, and these men proposed that if the *faujdar* "should inflict such punishment as his own Shastree awarded for such a crime", they would convince the Meos of Jokohar to forego further revenge. However, ignoring and delaying them longer than the girl's kin were willing to wait, the *faujdar* instead mustered three hundred armed men to guard Choornagaon; at which point "the Choornagaon people who had first made fair speeches to the Jokohur Panchayet, ultimately proceeded to harsh language, and from that to blows. Nearly thirty of the Jokohur people, and 24 of the Nargaon were killed or wounded..." Consequently, by September of that year, the Nawab's letters revealed that the matter had escalated far beyond the borders of Bharatpur: "...all the Meos even of the Bhurtpore Territory cried shame on the Foujdar for his remissness; that the Foujdar's *own Panchayet* had told him in reply to a reference he had made to them for advice, that they had *been from the beginning for delivering up the offender to the Jokohur people.*"¹⁸⁹ "I hear that the

¹⁸⁸ Kasturi, *Embattled Identities*, 2.

¹⁸⁹ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", June 24th, 1822.

Father and Mother of the maltreated Girl *go about with heads uncovered* from village to village demanding aid in obtaining redress and that they have even set forth for Bareilly [in Company territory] for that purpose, as many of their cast and relations reside thereabouts.”¹⁹⁰

The symbolism of such a gesture would have been tremendous for any in the audiences to which the victim’s parents appealed. More than a hundred years later, in the 1930s, British intelligence reports tracking Meo preparations for a revolt against the nearby princely state of Alwar described how the revolting subjects symbolically rejected state sovereignty and validated local caste authority by removing their headgear: “When a *panchayat* is held in a certain village, a *nazrana* (offering) and a *pagri* (turban) is offered to the leader of the *panchayat*, which means that there is *no state authority over the said village* and the leader is recognized as chieftain.”¹⁹¹ The use of large drums or *tamaks*—as well as burning sheaves of grass upon high hills or trees—to mobilize people across distances, the role of *pal*-based *panchayats* in declaring that state sovereignty is to be rejected, and the mustering of revenue to sustain local authority were all elements of a traditional repertoire that characterized uprisings in 1831, 1854, 1870, and 1894 as well.¹⁹²

The formality of these performances of rebellion—their adherence to a shared ritual culture of politics, their claim-making and counter-authorizing—reveals the simplicity of British

¹⁹⁰ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, September 5th, 1822.

¹⁹¹ Mayaram, *Resisting Regimes*, 111.

¹⁹² Mayaram, *Resisting Regimes*, 111. “They in hundreds collect at a village and send for the *lambardars* and other chief villagers to attend the meeting. Their leader gets upon a raised platform who curses, abuses and defies the state authorities...after the speech the whole village is asked to contribute money (cash) for the fund they have started...Defaulters are threatened and money is collected without any distinction from Hindus and Muslims.”

assessments of Mewat as lawless. The presence of a long-established mechanism of organized direct action for redress shows why, whether one disagrees that the Meos were justified in organizing to collectively punish the rapist's village, it is plausible and reasonable that they would have seen themselves as having the *right* to do so, and to hold expectations for the swift delivery of justice from their princely overlords as a condition of being governed by them. Depicted as calling "shame" upon the *faujdar* in a unison of perspective across borders and jurisdictions, the Meos appealed to a "performative public sphere" that was already rife with satirical portrayals of corruption, sexual license, and greed by local state officials such as *qazis* and *kotwals*.¹⁹³ Their revolt leveraged the well-cited boogeyman figure of the corrupt judicial official into a critique of power at large, one embedded in long tradition. Nevertheless, they were denied a representation of their anger as justifiable, or an acknowledgement that the harms they suffered—in both rape and retaliation—might legitimately have provoked widespread resistance.

There is, Farhat Hasan has argued, "a dearth of studies on anger in political spaces" that stems from a tendency to dismiss anger as a particularly irrational component of the "rational activity" of politics. In fact, "political anger was a crucial resource" in this milieu, frequently invoked "to help constitute and reproduce a political community that actively engaged with the state in negotiations concerning its obligations towards the subjects and the reproduction of a mutually acceptable rule system."¹⁹⁴ It remains difficult to reach into the felt experience of anger and outrage that motivated the attack on Bharatpur. In the absence of original text in our own sources, Shail Mayaram's study of the Meos' oral histories of Partition furnishes the terms in

¹⁹³ Hasan, *Paper, Performance and the State*, 89. Hasan analyzes satirical depictions of *qazis* in eighteenth-century Persian and Hindustani poems from South Asia to make these claims.

¹⁹⁴ Hasan, *Paper, Performance and the State*, 88.

which Meos expressed themselves in the 1930s, at the very end—as opposed to the beginning—of colonial-princely domination.¹⁹⁵ The Meo is a *raiyat/ryot*, or subject, of the state; but he may instigate a revolt, or *baghavat/bhumeawat*, to protest the *julam*, or tyranny, of the ruler, whose behavior reduces the people “to dust”, casting subjection in terms of the laying waste of land. The Meo people have specific ethical expectations of their rulers: “The implicit public ethic is of the performance of kingly duties in terms of moral obligations variously called *faraj* (from the Arabic *far’z*) and *rajdhari* (from the Sanskrit *rajdharma*), or the ruler’s performance of righteous action. The community’s perspective suggests that the legitimation of power can come only from a vision of the instrumental use of power in terms of larger values.”¹⁹⁶ The absence of those values was the sign of an absence of power. Thus, in their aggrieved invocation of the paramount ruler’s moral obligations in their dispute with Bharatpur after *panchayati* and *faujdari* judicial processes failed, the Meos’ demand for *insaaf* was not mobilized as an invitation for the state to resume a ‘mediating’ and ‘settling’ role, or to resolve a purported gap in the law by discretion.¹⁹⁷ Rather, as the absence of law is felt and experienced at this juncture, the dominant community declares that it will fill law’s place. In this instance, the demand for *insaaf* signals a political walkout: a strategic, temporary repudiation of communicative structures and spaces where communal grievances can be negotiated within a framework of shared norms.

¹⁹⁵ “Despite the erosion of alternative lifeworlds, moral and political options, and ontological formations, communities within the Alwar and Bharatpur princely states were not quiescent or abject. Processes of state formation involving judicial sovereignty, bureaucratic rationality and territorial displacement were strongly resisted by social movements.” Mayaram, *Resisting Regimes*, 9.

¹⁹⁶ Mayaram, *Resisting Regimes*, 15.

¹⁹⁷ Kaicker, *The King and the People*, 149.

In letting the *faujdar*'s provocations escalate matters to this level of gravity—namely, a rebellion against all external political authority over matters of caste—the *nawab* was content to report evidence of the Rajah's incapacity to rule. It was convenient to his political interest, as well as to Ochterlony's, as shall be explored in the following sections of this chapter. Yet although he transmitted this information in order to position himself, alone, as having correctly gauged the temperature of local *zamindari* and *ryotwari* sentiments before they boiled over into revolt, the *nawab* also transmitted a significant, if implicit, rebuke to Company justice that followed from those very sentiments, and from the strategic choices of actors on the ground. In essence, those actors had elected to escalate protest until it outgrew the purview of *nawab*, *faujdar*, and *raja* entirely. The Meos' critique of British imperium—as weaker than the weakest for being unable to assure the public safety of respectable women—seemed to stem from a particular claim of equity: the right of translocality, of transcendence, over local jurisdiction, inconvenient law, and the ruler of the day. They addressed colonial rule as one corporate body, fragmented and scattered across its territory, to another. This claim to be extended understanding was made actionable when affiliated clans of matchlock-armed Meo across three different neighboring jurisdictions—Bharatpur, Ferozepur, and the Company's Ceded and Conquered Provinces—congregated to wage war against Bharatpur, communicating their resort to “a greater jurisdiction against the authority of the temporal sovereign” through their very ability to coordinate violence across borders.¹⁹⁸

¹⁹⁸ Raman, “Civil Address and the Early Colonial Petition in Madras”, 130. “Colonial judicial systems were often unable to deal with ‘outlaws’ who crossed into ‘foreign’ territory, where British jurisdiction was difficult to enforce, despite the limited rights of political agents to try those with records of ‘plunder’ and ‘rebellion’. The agreements on extraterritorial jurisdiction signed between the British and native rulers were of little use.” Kasturi, *Embattled Identities*, 78.

That Meo women joined in this odyssey through the countryside, recruiting combatants in the wake of their lament, suggests that the movement of women indexes the strength of the connections between society and the state. In this time and place, their ability to travel free, safe, and intact between groups of kin was a measure of the honor and status of caste. It was also the form of politics—a chance to enact plans and strategies, to facilitate networks, to mediate disputes, to provide care. The stories and oral histories of the bards and singers of the Meos, the Mirasis, which are recited at weddings and other occasions, reflect something of this politics. These repositories lacked women as either author or audience—the voice of the tradition is male only. The bards kept old feuds and fights alive—frequently intracaste ones—by repeating ballads. During one flare-up of such an old feud in 1857, however, the colonial administration’s Punjab Glossary noted that “the women on each side brought water to the men on the field of battle and encouraged them with reminiscences of the Meos’ ancient prowess. Neither the women nor the priests were molested by the enemy, and the latter could always stop a fight, if one side ran short of ammunition, by spreading a sheet on the ground between the combatants. Prisoners used to be hospitably entertained”.¹⁹⁹ In this excerpt, we see that women’s absence from the oral tradition—“their own role in the making, reproduction and subversion of identities is eclipsed”—conceals an important place for them in the very concept of a *ladai*: not simply as cause or excuse but also as continuance, as a locus of instigation.²⁰⁰ Quite simply, women did not forget. They had an acute sense of the privileges and treatment due to them in a time of tension or conflict; they pulled fire and emotion out of dormancy when their futures were at stake. This

¹⁹⁹ Rose, *A Glossary of the Tribes and Castes of the Punjab and North-West Frontier Province*, 83.

²⁰⁰ Mayaram, *Resisting Regimes*, 10.

politics—however limited—was especially explosive at a time of social vulnerability for the community as a whole.

1.5: *Adab*: friendship, legality, and politics

Upon turning to the perspectives of the *khass*—the princes and Delhi Resident—the first thing to mention is how rare it is for rape to find mention in the Company’s political proceedings.²⁰¹ The rape of Indian women—unlike the violent ‘cultural’ spectacles of widow-burning, dowry-related violence, and infanticide—did not typically interest colonial authorities unless it was alleged in the context of pathologized practices like child marriage.²⁰² In areas under direct British control, everyday acts of sexual violence were frequently documented and adjudicated by colonial courts—but on the whole, as Elizabeth Kolsky has observed, British administrators in this period saw violence against Indian women by Indian men as an inevitable

²⁰¹ The Political Proceedings were a crucial and expansive set of documents which address foreign relations, intelligence, and political strategy, and describe the slow extension of British sovereignty and indirect rule across the subcontinent. On *khass*: Abhishek Kaicker notes that the binary between ‘the people’ and ‘the nobility’ was foundational to north Indian political discourses from up to a century prior: “whether construed as “the common” (‘*āmm*, ‘*awāmm*) who are contrasted with “the special” (*khāss*), or as “God’s creation” (*khalq-i Allāh*), the “flock” (*ra‘iyat*) entrusted to the pastoral care of the ruler.” Kaicker, *The King and the People*, 9.

²⁰² See Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (Berkeley: University of California Press, 1998); Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime*, electronic resource (Oxford ; New York: Oxford University Press, 2002), <http://www.columbia.edu/cgi-bin/cul/resolve?clio16086541>; and Kamala Visweswaran, “‘My Words Were Not Cared for’: Customary Law, Criminality and the ‘Woman Question’ in Late Colonial India,” *Contributions to Indian Sociology* 52, no. 2 (June 1, 2018): 156–85, <https://doi.org/10.1177/0069966718763419>.

consequence of the country's barbarism, a nuisance that backlogged courts, and "a social problem that should be handled by Indians themselves and not by the colonial state."²⁰³

If, however, as in Kolsky's words, rape was overwhelmingly seen as an "unsensational" crime and was treated in colonial legal courts in a correspondingly unsensational manner, the deeply *sensational* language used by Ochterlony and the Governor-General's Secretary, George Swindon, to describe the alleged rapist's actions in this account is particularly interesting. The cowherd Imaum Bux's conduct was a "gross", "brutal", "heinous", and "unmanly" "outrage"—he was a "ruffian" who committed an "atrocious", an "enormity" that "appears undeniable, and indeed is on all hands undenied".²⁰⁴ In echoing the language of the *nawab*, Ahmed Bakhsh Khan, on this account, these Company officials seem to stage a reversal of the standard narrative of colonial knowledge. Ochterlony was emphatically skeptical not of the crime and the truth of its occurrence as conveyed, but of the Company's prescribed punishment: "it is no such easy matter to satisfy the minds of the aggrieved and injured," he wrote, "who see in the pretended confinement of the Criminal, *whose life is forfeited by the Laws of all countries and all religions*, a mere *semblance* of punishment operating as its total prevention and as a security against its infliction."²⁰⁵ The impossibility of convincing the Meos of the good faith of Bharatpur's administrators prompted him to unilaterally suggest that the Company make a far more muscular, direct, imperial intervention—it must *extradite* the rapist, imprison him properly in Calcutta, and

²⁰³ Kolsky, "The Rule of Colonial Indifference", 1094.

²⁰⁴ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", September 21st, 1823.

²⁰⁵ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", September 21st, 1823.

vigorously publicize this action. This would have the added benefit, on the eve of a succession, of reminding the warlike and troublesome Jat regime of Bharatpur that it had treaty obligations to the British government, and was more than nominally subject to imperial power.²⁰⁶

These forceful assertions of ‘local’ knowledge, however, were coupled with awkward undertones and embarrassing caveats. Ochterlony made his judicial prescriptions in informal letters, sent alongside formal ones, to avoid the appearance of ‘pertinacity’, and appeared not only to be deeply unsure as to how they would be perceived, but also to invite scrutiny of his judgement for the very fact of its emanating from the social networks the Company relied upon to survive as a political force.²⁰⁷ He wrote: “The fact is, that on this *difficult and embarrassing question*, as you justly term it, I should under any circumstances have *felt considerable reluctance to bring my own sentiments prominently forward* in a matter in which I had put Government in possession of all the information that I myself was master of; a reluctance which was augmented in the present case by reflexion on the *personal friendship entertained by me*

²⁰⁶ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, November 23rd, 1823.

²⁰⁷ ‘Anupama Rao, “Discipline and the Other Body”, in Steven Pierce and Anupama Rao, eds., *Discipline and the Other Body: Correction, Corporeality, Colonialism* (Durham: Duke University Press, 2006): 11-12. Ann Stoler notes a similar dynamic at play in colonial Indonesia: “the grids of intelligibility in which colonial agents operated were neither clear nor shared. Their perceptions and practices were fashioned from piecemeal and uncertain knowledge; disquiet and anxieties disrupt rote reports when the prevailing conventions of colonial common sense failed them and when what they thought they knew, they found they did not.” “‘In Cold Blood’: Hierarchies of Credibility and the Politics of Colonial Narratives’. In Ricardo Roque and Kim A. Wagner, eds., *Engaging Colonial Knowledge: Reading European Archives in World History*, (New York: Palgrave Macmillan, 2012), 35.

during a period of 20 years for one of the parties concerned—the Nawab, and on the possible effects of that partiality in *biasing my judgement*...”²⁰⁸

C. A. Bayly has noted that the extension of British networks of political intelligence across India in the early nineteenth century was marked by a rejection of both ‘affective’ knowledge—obtained by the creation of moral communities within colonial society by means of conversion, acculturation or racial mixing—and ‘patrimonial’ knowledge—which derived from a reliance on settler communities of whites.²⁰⁹ In the 1820s, the Company was in the process of prohibiting personal relationships between its officials and indigenous rulers. Far from originating only in the highly public arena of relations between indigenous households and family lineages, “the division between public and private was first achieved through the regulation of British male bodies.”²¹⁰

Ochterlony would very shortly become a casualty of this division, under the guise of punishment for his independent and recalcitrant approach to conflict with Bharatpur. He had been appointed Resident at Delhi on November 14th, 1818, replacing Charles Metcalfe. He also retained several of his powers and duties as the former Resident of Rajputana, particularly those related to Jaipur and Ajmer.²¹¹ As the Delhi Resident, he commanded the third division of the

²⁰⁸ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, November 23rd, 1823.

²⁰⁹ C. A. Bayly, *Empire and Information: Intelligence Gathering and Social Communication in India, 1780-1870*, (New York: Cambridge University Press, 1996), 1-9.

²¹⁰ Indrani Chatterjee, ed., *Unfamiliar Relations: Family and History in South Asia* (New Brunswick, N.J: Rutgers University Press, 2004): 27.

²¹¹ Foreign Dept Political Consultations Vol. 14, No. 2, November 1818. In David Ochterlony, Narendra Krishna Sinha, and Arun Kumar Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India* (Calcutta: University of Calcutta, 1964): 46.

East India Company's field army and had control over all political and diplomatic affairs. He also, however, lived the life of a Mughal gentleman, receiving the Persian title *Nasir-ud-Daula*, or Defender of the State, from the Mughal emperor. He wore local clothing, smoked a hookah, and is rumored to have had thirteen Indian concubines. His chief consort Mubarak Begum, a former Brahmin slave-girl from Pune, was an active political force in Delhi, carrying out multiple ceremonial and strategic transactions with the *vakils*, or ambassador-agents, of various native princes and rulers.²¹²

It is perhaps little wonder then that—although the intertwined structures of appeal, petition, intelligence, and command under the Company's corporate-bureaucratic institutional form placed him in the role of the delegate through whom the paramount power might be addressed—Ochterlony seemed at times to alternate between this role and the role of a petitioner himself.²¹³ For one thing, responsibility for judicial administration had recently been bifurcated from his role as the Resident: the Civil Commissioner now had ultimate authority over enforcing the law within the boundaries of Company territory, which he exercised by issuing judicial decrees in accordance with applicable Company Rules. This had already led to differences of legal opinion between Ochterlony and his counterpart, especially in cases involving local chiefs and nobles possessing independent territory, over whom the Company's jurisdiction was uncertain.²¹⁴ Ochterlony's opinions were already beginning to be sidelined by his suspect status as a so-called 'white Mughal': much credit was already given to "the psychological and physical

²¹² Chatterjee, *Unfamiliar Relations: family and history in South Asia*, 134-5.

²¹³ Raman, "Civil Address and the Early Colonial Petition", 138.

²¹⁴ Foreign Department Political Proceedings, Vol 467, No. 22, March 18th, 1820, in David Ochterlony, Narendra Krishna Sinha, and Arun Kumar Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India* (Calcutta: University of Calcutta, 1964): 111.

vulnerabilities of whites in the tropics, beliefs that called more on Lamarckian notions of acquired character than on the biological surety of race. Europeans were susceptible to cultural and moral contamination...by those they were there to manage and rule.”²¹⁵

From the very beginning, as well, Ochterlony’s dealings with Bharatpur had been defined by jurisdictional conflicts. As Metcalfe, now Secretary to the Government, wrote him in March 1820, before the gang rape was committed: “It appears from reports received from the Civil authorities in Agra that there are several instances of Boundary Disputes between villages in our territory and villages in the Bhurtpoor, territory, which unavoidably become boundary disputes between the two states. *From those accounts it would appear that the Raja of Bhurtpoor supports his villages in these disputes with a strong sympathy and personal interest, which of course gives them advantage over our subjects, who are restricted by our laws and regulations, and are liable to punishment for affrays even in self-defense.*”²¹⁶ It is notable that, like with Ochterlony’s own disclosure of his personal sympathy with one side, the Bharatpur villagers are acknowledged to possess an “advantage”, but this advantage cannot be met by granting a reciprocal “advantage” to the Meos, who are held to have squandered their moral point by engaging in unsanctioned and disproportionate violence. Such distributive or equitable impulses cannot be given in to, as they signify the caprice of Oriental rulers rather than the rule of law.

²¹⁵ Ann Laura Stoler, “‘In Cold Blood’: Hierarchies of Credibility and the Politics of Colonial Narratives”. In Ricardo Roque and Kim A. Wagner, eds., *Engaging Colonial Knowledge: Reading European Archives in World History*, (New York: Palgrave Macmillan, 2012), 40

²¹⁶ “Given that the Governor General had appointed the Collector in Agra as a commissioner to oversee the settlement of all disputes that had arisen, Ochterlony was asked to invite Raja Randhir Singh to appoint a similar counterpart within his own territory for the Company commissioner to cooperate with. It is uncertain that this specific request was ever complied with. Nevertheless, by June 1823, the Governor General wrote to convey his satisfaction to the Raja that the disputes in the Agra region had been reasonably settled.” Foreign Department Political Proceedings, Vol 467, No. 71, March 25th, 1820. In Ochterlony, Sinha, and Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India*, 112; and Vol 523, No. 19, June 6th, 1823, 313.

Despite prior knowledge of the Bharatpur Raja's tendencies in disputes like these, then, Swindon's reply to Ochterlony's suggestion of extradition for the Bharatpur rapist was swift and telling: "our *right to make such a demand* is under all circumstances questionable, whilst the proceeding would be *inconsistent with the general principles of our administration*, and would involve *many embarrassing consequences*, the idea was relinquished, and his Lordship in Council is not yet prepared to act upon it."²¹⁷ The injunction to imprison Imaum Bux at Bharatpur instead was justified thus:

The total absence of regular tribunals in either country for the administration of justice, the uncertainty of Hindoo and Mahomedan Law in their practical application to offenses of such a character, and the knowledge that the Criminal if delivered up to the aggrieved party would be instantly massacred without any trial, oppose several obstacles in the judgement of the Right Hon'ble Governor General in Council to the adoption of any other course. To this much he added that *the conduct of the Jokohur zamindars in attacking and burning the entire village of Nargaon to revenge the crime committed by one of its inhabitants must deprive their feeling and claims to redress of any title to further consideration, though the provocation which they had received may be pleaded in palliation of the outrage.*²¹⁸

It is precisely by attempting to force the recognition of this "title to further consideration"—the title being in this case the Meos' customary entitlements as dominant, Rajput-descended landowners to have their "feeling and claims to redress" hold special weight—that the Meos are pronounced to have lost such a title. This was the opposite of the understanding that might have issued from such rebellion under Mughal dispensation: an understanding that viewed minor *zamindars* as "the lynchpin of agrarian society but also imperial polity...where

²¹⁷ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", December 9th, 1823.

²¹⁸ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", October 24th, 1823.

empire was actuated in rural India.”²¹⁹ The Company had, in fact, legislated a number of Regulations on its own territory that delegitimated the principle of taking victims’ wishes into account—regardless of who they were—when punishing crime.²²⁰ Painfully aware, perhaps, that the old rules of the terrain required reassertion if they were to hold, it was the Meos who had thrown down the gauntlet first, leaving one to marvel at the peculiar, belated obliviousness that drives a colonial dispensation to formally disavow any sympathetic identification with colonized subjects who have already thrown back and rejected such a relation in their collective exercise of solidarity toward a particular form of justice.²²¹

It is plausible that, even before the Company declined to intervene in the Ferozepur border war, the *nawab’s zamindars* would have learned to regard its regime a particularly lost cause, even factoring for their general and customary tendency to oppose centralized state power. In addition to segregating themselves as far as possible from their subjects, Sumit Guha has noted that it was also politically expedient for the British imperial project to portray *previous* Muslim dynasties as having been the rulers that “severed the bond between society and state.”²²² Eighteenth-century theories of ‘Oriental despotism’ posited essentialized qualities to Hinduism and Islam, opposing childlike and violent subjects to capricious and violent rulers through a negation of the overlapping entailments of both in complex institutions such as the family, clan and lineage, and caste. As Guha puts it, this consensus projected the prevailing social and moral

²¹⁹ Chatterjee, *Negotiating Mughal Law*, 72.

²²⁰ See Singha, *A Despotism of Law*.

²²¹ Amit Rai, *Rule of Sympathy: Sentiment, Race, and Power, 1750-1850* (New York: Palgrave, 2002), xiv.

²²² Guha, *Beyond Caste*, 15.

incompatibility between colonized and colonizer onto the rulers that had preceded them: “any *sympathy* with state power...vanished with the establishment of Islamic rule in most of South Asia. After this the link between state and society for the majority of the population would be seen as a purely mechanical tie of despot and subject, viewed as agent and patient respectively. If so, better-qualified, more enlightened (and, naturally, English) despots were wholly justified in forcefully pressing their services on this needy aggregate of hapless molecules.”²²³

Nawab Ahmed Bakhsh Khan, as he relayed the Meos’ situation, seemed to push back on this consensus, writing to Ochterlony: “This is a family matter and a quarrel relating to Cast”. The general import of such a statement—even accounting for the mistranslations it might have undergone as it made its way into the archive—is clear: a forewarning to the new power to extend such sympathy, rather than rule by its own despotic principle, which is disregarding the history of the feud and decreeing justice without consultation or substance. In conveying such information, the *nawab* appeared to reflect a major response by Indian elites and the dominant communities of their territories to colonial disidentification with their social interests: an ongoing process of contesting British administrations of justice not just in court, but in conversation and counsel. If the power of the Mughal Emperor—though he remained enthroned in Delhi—no longer held sway in his own hinterland, there was a need for reconfigured approaches to politics that laid ethical obligations on the new paramount power, both when it sought to disentangle itself from delivering substantive justice in local conflicts and when it sought to interfere in long-established arrangements of stewardship, entitlement, and succession that guaranteed regional stability. In other words, if the Resident sought to appropriate Indian princes’ “implacable condescension for the vast majority of humanity” and their “active distaste and contempt for the

²²³ Chatterjee, *Unfamiliar Relations*, 74-5.

category of the ruled”, it behooved him also to render them their rightful share of social and domestic dignity and acknowledge their particular interest in the outcome of the case.²²⁴

To separate himself from suspicion of untoward partiality toward the *nawab*'s perspective—and through him, the now-illegitimate morality of the rebels—Ochterlony wrote that the life of the rapist was forfeit on universalist grounds, by the formal law and religion of all nations. The Meos, invoking honor, shame, woundedness, and “the violent sensation existing among the whole of their cast and Brethren,” had positively demanded this life forfeit, regardless of the legal or political means it took to enforce their *panchayat*'s decree.²²⁵ But the *nawab*—a military entrepreneur with familial roots in Transoxiana, and now a member of the Mughal service elite navigating dual loyalties to Emperor and Company—earnestly took both Resident and *ryot* under his advisory wing, attempting to commensurate their sentiments and conduct into the moral-political framework of *adab*, a form of self-cultivation and ethics positioned at the “juncture of education and hierarchy”.²²⁶ Scholars of Islamic polity in South Asia and elsewhere

²²⁴ Kaicker, *The King and the People*, 11. The Ryots over whose prospects colonial authority endlessly agonized were the lineal and genealogical descendants of a Mughal “flock” (*ra'iyat*), to be overseen by the ruling elite (*ra'is, amir*). 149.

²²⁵ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, June 24th, 1822. Rosalind O’Hanlon has systematically outlined the values and social structures animating the political field in this period. She explains that most regional elites “have sharply differentiated between and differently valued men’s and women’s identities; patrimonial power has been a strong and enduring feature of local as well as regional and imperial political systems; high-profile codes of kingship and warriorship have been central in securing legitimacy and loyalty for political authority; and pre-colonial indigenous as well as Western imperial states both employed elite military identities to recruit local support, and used gender relations and the deportment of women as a test of civilized values.” “Issues of Masculinity in North Indian History”, 2.

²²⁶ Barbara Metcalf gives a fuller definition: “*Adab* in all its uses reflects a high valuation of the employment of the will in proper discrimination of correct order; behavior, and taste.³ It implicitly or explicitly distinguishes cultivated behavior from that deemed vulgar, often defined as pre-Islamic custom. Moral character is thus the fruit of deliberation and effort. *Adab* means discipline and training. It denotes as well the good breeding and refinement that results from training, so that a person who behaves badly is

have highlighted the “radical comprehensiveness” of *adab*, which co-evolved with Muslim cultures of rule in religiously plural societies and was both shaped by “superregional, cosmopolitan” contexts as well as local and regional ones.²²⁷ One feature of this all-encompassing interpretive character was a “relentless desire to bring all society and all sorts and conditions of humans into consonance with a common core of values underlying all social roles”; another was attentiveness to the quality of “attitudes and sensibilities” behind the ideal fulfilment of those roles, which certified the conduct as virtuous.²²⁸ *Adab* was also a legal concept, standing in Islamic jurisprudence for those procedural requirements that were commendable but not obligatory, and bringing a dimension of embodied ethical practice to the dispensation of a justice (*‘adl*) that, in granting rights flexibly and fairly to different social groups according to their status and kind, constituted the true basis of the equitable justice of *insaaf*: “impartiality, objectivity, integrity, in short a complete ethical code for the activity of the man of learning.”²²⁹ In the Persian and Urdu of these Company correspondences, the word also likely stood more generally for habits of “respect and regard” toward the moral standards that sustained the social hierarchy.²³⁰

That the *nawab* may have considered himself to be an *adib*, and directed advice at his interlocutors within its idiom, is evident from his letters, which reflect the value placed by this

"without *adab*" (*be-adab*)." Barbara Metcalf, ed., *Moral Conduct and Authority: The Place of Adab in South Asian Islam* (Berkeley: University of California Press, 1984), 2-3.

²²⁷ Metcalf, *Moral Conduct and Authority*, 4-15.

²²⁸ Metcalf, *Moral Conduct and Authority*, 15; Kia, “Adab as Ethics of Literary Form”, 282.

²²⁹ M. Arkoun, ‘Insaaf’. In *Encyclopaedia of Islam, Second Edition*, ed. P. Bearman, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Brill, 1954.

²³⁰ M. Khalid Masud, “Adab al-Mufti: The Muslim Understanding of Values, Characteristics, and Role of a Mufti”, in Metcalf, *Moral Conduct and Authority*, 127.

ethical system on political loyalty, friendship, and personal relationships with power-holders of equal or superior rank, and highlight the specific problem of redressal posed by the breach of honor. “It is an old and excellent maxim never to make war,” he wrote to Ochterlony; “to form friendship or ally by marriage *but with our equals*.”²³¹ To Bharatpur’s *faujdar*, who deployed troops against the rioting Meos instead of inflicting a punishment upon the rapist that might be “manifest to all”, he wrote: “What idea can be formed regarding this? Of what system of law can it be supposed a part?...gentlemanlike feeling behoves a gentleman, and the proper observance of moral duties is incumbent upon everyone.”²³² This last statement—in which “gentlemanlike feeling” is perhaps a translation of *adab*, and “gentleman” of *adib*, a person possessing *adab*—carries the air of putting a pretender in his place, perhaps as a reprimand for the lack of respect for his social superior shown by the *faujdar* in stonewalling the *nawab*’s agents.²³³ His own honor, Ahmad Bakhsh insisted to his British friend, “will never admit of my sitting still”; of Rajah Randhir Singh, he remarked: “May he adopt the course *most conducive to his own reputation*, and the good of God’s creatures...I am chiefly afflicted by reflection on the innocent blood which has been unjustly spilt. How surprizing it is that any people should be regardless of

²³¹ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, September 5th, 1822.

²³² “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, 16th June 1823.

²³³ This superiority may have been asserted precisely on the point of precarity. JF Richards has noted that it is “not easy to identify the divide between the imperial political-military elite and the technicians of the empire. Military officers holding ranks well below 1,000 *dhat* (or personal decimal rank), the cut-off point for noble status (that of an *amir*], were nonetheless men of great power and influence. They served as *faujdar*s, as fort commanders, or as subordinate field commanders in prominent and responsible positions...” J.F. Richard, “Norms of Comportment among Imperial Mughal Officers” in Metcalf, *Moral Conduct and Authority*, 268.

the sufferings of their fellow men.”²³⁴ This is “political philosophy working by example, a discourse intended to turn grasping and rude men, such as the British...to God’s laws and the service of Empire and to prevent the corruption of public office by venality, irreligion and brutish comportment.”²³⁵

The Nawab Ahmad Bakhsh Khan had been in the service of the Raja of Alwar in 1803 during the conquest of Delhi by Lord Lake. As recognition for his services, he was awarded two parcels of land: the town of Loharu and fifty-six nearby villages, some distance west of Delhi, by the Raja, and the *pargana* of Firozepur, in the Gurgaon district south of Delhi, by Lord Lake. It is notable that the Alwar Raja awarded the *nawab* Loharu in perpetuity, but that he received Firozepur from the Company only on the condition of “fidelity and military service”.²³⁶ Concomitant to this reward for loyalty and support, the *nawab* likely expected to be valued as belonging an elite class of native informant-interlocutors that saw themselves as “physicians of the state.”²³⁷ Administrators and rulers of Islamicate dispensations in South Asia, like him, often “drew inspiration from Greek, Arabic, and Persian ethical literature (*akhlak*)...These theories of moral ecology...held that the polity, like the body, was subject to diseases, and different regions and races, like different bodily organs, were the seat of different humors which determined moral and physical qualities. These could be kept in balance by a good king, but ineptitude could throw

²³⁴ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, June 24th, 1822.

²³⁵ Bayly, *Empire and Information*, 84.

²³⁶ The *pargana* was in fact confiscated from his family in 1835, when his successor Shams-ud-din was found guilty of having conspired to murder the Resident of Delhi, Mr. Fraser (although his younger sons managed to retain Loharu). Hunter et al., *Imperial Gazetteer of India*, Vol. 16, 169. Firozepur was a small town with a population in 1901 of roughly 7000. Vol. 16, 100.

²³⁷ Bayly, *Empire and Information*, 88.

the body politic into disorder.”²³⁸ Learned administrators who possessed extensive knowledge of *adab* and *akhlaq* could act as self-appointed “architects of civilization and guarantors of its survival in the teeth of political upheavals”, who could descend from virtuous equanimity to enter the fray of political conflict as a show of loyalty to a patron.²³⁹ Within the *nawab*’s milieu, in any case, friendship was “existential”: “as a truth-telling interlocutor, the ethical friend provided companionship, a relationship understood to assist the individual in sharpening his perception”.²⁴⁰ In the overlapping roles of vassal and friend, Ahmed Bakhsh exhorted Ochterlony to behave more like a king when kings did not, to be vigilant for signs of ineptitude among his subordinates: “I beg to observe that as you are the ruler here, a report to you of all that occurs whether good or bad is my duty; and granting that the restraint and punishment of his own officers is the appropriate duty of the Maharajah, yet when he becomes no longer able to control them, what is to be said?”²⁴¹

Notwithstanding this classical knowledge of *akhlaq*, Ahmad Bakhsh had lived to see a period of rapid change in the political order of the north, where, with the advent of British power, “the capacity to mobilize followers through the politics of the camp and court, the importance of parochial alliance and faction, of fortune, gesture, nuance and slight was diminished. Kingliness and the distribution of honors became less important and less practicable, while 'economy' and

²³⁸ Bayly, *Empire and Information*, 25.

²³⁹ Kia, “Adab as Ethics of Literary Form and Social Conduct”, 283.

²⁴⁰ Mana Kia, “Indian Friends, Iranian Selves, Persianate Modern,” *Comparative Studies of South Asia, Africa and the Middle East* 36, no. 3 (December 1, 2016): 398–417, <https://doi.org/10.1215/1089201x-3699019>: 398.

²⁴¹ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, September 5th, 1822.

'good management' were the measure of success for the dependent princes and the landlords of the British territories."²⁴² Many successive iterations of British colonial policy coalesced around the objective of eradicating quarrelsome *biradaris*, or fraternal groups, that were "'addicted' to feuding, banditry, and rebellion" and had to be "systematically put outside the pale in a period devoted to the rule of law and agrarian productivity, improvement and expansion."²⁴³ To influence Ochterlony, therefore, the *nawab* cleverly portrayed himself in their exchanges as a scrupulous landowner in the Physiocratic tradition, worried about the impact of conflict on economic productivity when enemy raiders were "setting fire to the houses, driving off the cattle, slaying the men, and carrying off the women and children".²⁴⁴

And yet, despite the Resident's own familiarity with local political norms, the Company's uneasiness and ambivalence toward Mughal principles of social intimacy and the ethical imperatives embedded in them soured any expectation the *nawab* might have held of his loyalty—to say nothing of the service of his cultural translation—being reciprocated. "The opposite party is certainly very powerful," he eventually wrote, "but hitherto it has been clearly understood that Rajahs or chiefs, powerful or weak were all equally in subjection to the British Government, and that none would commit any aggression on another, I had hoped that the

²⁴² Bayly, *Indian Society and the Making of the British Empire*, 152.

²⁴³ Kasturi, *Embattled Identities*, 19-20. By mid-century, "officials argued that the aim of the state was to 'reward the industrious cultivator to reclaim the turbulent and the freebooter by giving them the opportunity of earning an honest living' [a settlement officer in Jhansi in 1869]."

²⁴⁴ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", July 27th, 1823.

quarrel existing between the zamindars of the two states would be terminated in a few days...”²⁴⁵

As this repeatedly failed to happen, however, and the Raja grew more emboldened, the *nawab* invoked the traditional military duties and capacities of his own *khidmat*, or office, as a *jagirdar*, or governor, to suppress the attacks on his border.²⁴⁶ Both *adab* and political economy were at work in this spirited defense of his deployment of a *cozauk*—an army comprised of members of his own household and clan—to support his border villages:

I, to the extent of my ability and knowledge, will not forego patience; but *if notwithstanding this the enemy should proceed to bloodshed, I would submit to his justice, how far I can tamely look on.* From the trifling aggression already committed ten villages besides Nye have become desolate, and notwithstanding all my endeavours to bring back their inhabitants by offering advances, supplies of grain, and a low assessment, that object has not yet been attained owing to the terror caused by the enemy’s force remaining in sight, within two cos of them...If I were to confine myself to looking on without making opposition, these villages would not be re-peopled for twenty years to come.²⁴⁷

He was strongly rebuked for this intervention, despite his defence of it. The British had ordered *zamindars* in long-established Company territories like Bengal to dismiss and disband their armies and police forces as early as 1792, in a “longue-durée and ultimately incomplete effort to demilitarise the Indian countryside.”²⁴⁸ By the early nineteenth century, the armies, police, and retainers of princely states and *jagirdars* of all kinds “were perceived as an open threat” to the

²⁴⁵ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, June 26th, 1823.

²⁴⁶ “The office/service (*khidmat*) of zamindari entailed other obligations, which included law-and-order responsibilities, including acceptance of liability for all thefts in their domains (or at least those thefts about which imperial officials chose to make a fuss) and apprehension of thieves.” Chatterjee, *Negotiating Mughal Law*, 79.

²⁴⁷ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, July 10th, 1823.

²⁴⁸ Chatterjee, *Negotiating Mughal Law*, 79.

Company's sovereign power, and clan levies like those initiated by both the *nawab* and the Meos "were suspected of acts of robbery for themselves or their patrons."²⁴⁹

Ahmad Bakhsh Khan evidently saw such a reprimand as a betrayal of the values enshrined by the principle of *adab*—values that bound him and Ochterlony together in public and private. For those trained in the administrative tradition of the Mughal state, "overriding all other relationships within the system were direct personal links between the emperor [the supreme political power] and all officials."²⁵⁰ In the *Gulistan*, "to violate the precepts of friendship is a sign of ignorance and thus a lack of virtue, the gravity of which makes the great offense of violating an oath seem slight by contrast."²⁵¹ Refusing to change course, he wrote to Ochterlony that since honour required him to do battle, the guardianship and education of his children now fell upon "you": "I while with Lord Lake executed whatever commands he gave me, and it is for the British Government to decide whether the opposite party shall now be allowed to retaliate on me for my services in those days."²⁵² Eventually Ochterlony did relay some of the grievances of his ostensible friend—particularly about loyalty arising from previous alliances—in familiar terms of service, obligation, and moral responsibility to the Bharatpur Raja: "This remarkable disagreement prevents the adoption of decisive measures of repression and punishment. You must be well aware...that such contestations among the chiefs of Hindostan are utterly repugnant to the wishes of the British Government and to their Rules and ordinances. It is incumbent

²⁴⁹ Kasturi, *Embattled Identities*, 32.

²⁵⁰ Richards, "Norms of Comportment among Imperial Mughal Officers", 257.

²⁵¹ Kia, "Indian Friends", 399.

²⁵² "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", July 10th, 1823.

therefore on your officers to shape their conduct accordingly so that the flames of discord may be extinguished and all grounds of quarrel removed.”²⁵³ He insisted that the princes possessed the capacity to have prevented the conflict altogether, reasserting the British view that natives possessed little political agency unless animated by the interests of their rulers: “had both parties on the very first appearance of disturbance given their servants a check of sufficient sincerity, the business could never have attained the height it has, nor have been attended with loss of lives...But the contrary being the case and causeless animosity prevailing, both parties favour their own people, and neither admit the fault to be on their side.”

For all the Resident’s insight, however, it is in his follow-up question—“How could a set of villagers have maintained themselves in disobedience and opposition to the prohibitory commandments of their Rulers, instead of returning to a proper behavior?”—that we see the gap between knowledge and command.²⁵⁴ The assumption that either prince had the capability to compel peace without delivering justice is yet another example of Ochterlony’s misreading of the topography and directionality of political authority and obligation. At this impasse, the *nawab* made a necessary suggestion: that since conflicting accounts had come before him, Ochterlony must delegate his own trusted *harkaras*, or informants, to the area, in order to “ascertain without attracting attention, what is the distance of the village Nye from the Boundary, and to what distance the enemy carried their aggression within my territories; all which may be accurately ascertained from the people of the adjacent villages, and in addition to their

²⁵³ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, July 26th, 1823.

²⁵⁴ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, July 26th, 1823.

depositions the appearance of the burnt villages, and the marks of bloodshed near the village of Nye will afford corroborative proofs. *There can be no doubt that from the reports of people thus despatched every thing will become manifest to you.*²⁵⁵

The Resident did, eventually, dispatch his own *harkara* to provide a report—which revealed that it was the *nawab*'s account more accurately reflected what had happened than Bharatpur's.²⁵⁶ But before much more could be done, Randhir Singh died, setting in motion a long series of intrigues over Bharatpur's throne—and the conflict between the *zamindars* of Firozpur and Bharatpur faded into the background.

1.6: A boundary crossed: the conquest of Bharatpur

Bharatpur's ultimate fate—set in motion by the same colonial legal expediencies that haunted the quest for justice for the Firozpur gang rape—is a fitting conclusion to the argument I have made in this chapter. Sandwiched between Gurgaon, Alwar, Jaipur, Agra, and Mathura, it consisted in the 1820s of roughly fourteen *parganas* to Firozpur's one, and had a 1901

²⁵⁵ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, July 27th, 1823.

²⁵⁶ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, July 29th, 1823.

population of roughly 625,000.²⁵⁷ Jats made up about fifteen percent of its population, Meos eight percent, and Gujars seven percent.²⁵⁸ The ruling Sinsinwar lineage of Jats, like the Meos, claimed descent from Rajputs—specifically, the Jadon Rajputs who ruled from the town of Bayana in the 11th and 12th centuries.²⁵⁹ By the beginning of the eighteenth century, toward the end of the Mughal emperor Aurangzeb’s reign and throughout the imperial disturbances that followed, the Sinsinwar Jat leader Churaman expanded his territory and harried the roads to Delhi and Agra, compelling the new emperor Farrukhsiyar to grant him a *jagir* and a title in 1714. In 1722, Churaman’s cousin Badan Singh was proclaimed the Raja of Dig upon condition of paying tribute to Delhi, marking Bharatpur’s emergence as a separate state. From the 1730s to his death in 1763, the Raja’s son and successor Suraj Mal turned Bharatpur into a major regional power; he sacked Delhi in 1753, captured Agra in 1761, and annexed Mathura, Alwar, Gurgaon, and parts of Rohtak. After the death of Suraj Mal’s successor in 1768, however, Jat power declined as the Marathas began to gain influence and the Rajput state of Alwar began to assert its dominance. Eventually, through the intercession of the widowed *rani* of Suraj Mal, many of the territories lost to these kingdoms were restored to Bharatpur between the 1780s and 1790s under the rule of Ranjit Singh (1776-1805).

²⁵⁷ William Wilson Hunter et al., *Imperial Gazetteer of India* (Oxford: Clarendon Press, 1908), <https://dsal-uchicago-edu.ezproxy.cul.columbia.edu/reference/gazetteer/>, Vol 8: 79.

²⁵⁸ Hunter et al., *Imperial Gazetteer of India*, Vol. 8: 80. After the conquests of Muhammad Ghori, the region came under the control of the Delhi Sultans. During the Mughal era, it generally formed part of the *subah* or province of Agra, although the northern area, being part of turbulent Mewat, was often placed under special separate dispensation.

²⁵⁹ A descendant of the ruler of Bayana is said to have kept a Jat woman as his concubine, and since her two sons could neither be admitted into Rajput status nor claim a Jat *got* or clan as their own, they took the name of their paternal village, Sinsini, near the town of Dig, and made it their capital. Hunter et al., *Imperial Gazetteer of India*, Vol. 8, 75.

In 1803, eager to free himself of the tribute he was required to pay to the Marathas, Ranjit Singh allied with the East India Company's Lord Lake in his campaign against the Maratha chief Daulat Scindia, and assisted in capturing Agra. For this, he was awarded five additional districts. However, the following year saw Ranjit Singh switch sides to Yashwantrao Holkar, who was attempting to rally a confederacy of Indian princes against the British. Pursued all the way to the fort of Bharatpur, with its notoriously thick earthen fortifications and moat, in early 1805, the Jats and the Marathas famously withstood a punishing siege by the EIC's army. When the British failed to overcome them, a peace treaty was concluded that left Ranjit Singh with his kingdom, though on poor terms: his new districts were confiscated, he was made to give up one of his sons as a hostage to the British, and he was asked to pay an indemnity of 13 lakh rupees and to recognize British paramountcy in the region of Delhi and the Ceded and Conquered Provinces.²⁶⁰ Ranjit Singh died that very year.

It was the shadow of these events that lay heavily on the next Bharatpur Raja, Randhir Singh (1805-1823), as he deflected and obfuscated Ochterlony's accusations of corruption and dysfunction at his court. Apprising him of the *nawab's* complaints about unpunished rape upon one of his subjects, Ochterlony wrote him: "I hope that after this communication it will no longer be in the power of your servants to screen the offender from your knowledge, and that you will inflict such punishment on him, as your honour and reputation for justice, as well as the enormity of his crime demand, and as will prove satisfactory to the complainants."²⁶¹ Disdaining the

²⁶⁰ Hunter et al., *Imperial Gazetteer of India*, Vol. 8, 78.

²⁶¹ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", David Ochterlony to Maharajah Randhir Singh of Bhurtpore, 11th July. 1822.

implication that he was unaware of what was happening, the Raja rejoindered that he was two steps ahead:

I proceed to share briefly for your information that *some inconsiderate person* having committed a rape on a young woman in a wood; when the superintendent of my [unclear] districts learnt the circumstance, and when her relations accused an inhabitant of Nagaon of the crime, he was immediately thrown into confinement...I request that you, who are in the highest authority here, and are of excellent judgement will reflect whether, while the Panchayets were assembling and the servants of both states were occupied in investigating the case for the purpose of settling the dispute and punishing the offender, the precipitation of attacking unawares a village yielding five thousand rupees per annum was necessary, or justifiable...²⁶²

He was quick to assert that he maintained total power over his public officials, and that none held any authority in his stead: “none of my servants have power to act without my sanction, and concurrence. I am not so inattentive as to admit of my servants concealing any affair from me. In the first place they have no power so to act, and in the next public and private news writers, are everywhere stationed throughout the *purgannahs* to report all occurrences, and I hear their daily reports.”²⁶³ “The punishment of the offender,” the Raja wrote, finally delivering an ultimatum, “is merely delayed till satisfaction be obtained for the unprovoked attack on the village”—an attack he claimed was carried out by five thousand men.²⁶⁴ To this, Ahmed Bakhsh Khan dryly pointed out to Ochterlony that Meo people even from two of the Raja’s *own* villages had attacked Nagaon—“Why did he not prevent *their* coming?”—and remarked: “I request you to

²⁶² “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, August 14th, 1822.

²⁶³ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, August 14th, 1822.

²⁶⁴ “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, August 14th, 1822.

reflect that there are not 5000 Ryots in the whole district of Ferozepur...I would also beg you to reflect what possible advantage I can derive from quarrelling with neighbours whose country is fifty times larger than mine.”²⁶⁵

The Raja’s interactions with Ochterlony—claiming him to be his only friend, while *nawab* Ahmed Bakhsh had friends “everywhere”—reveal that although Bharatpur required British recognition to survive, especially in the wake of the dissolution of the Maratha confederacy after 1818, relations between the two were strained at best. The British needed to be kept at arms’ length from Bharatpur’s internal affairs; and with that non-interference in mind, Randhir Singh appears to have been skillful at both appearing to be toeing the line and manipulating the Resident for his own interests. By the beginning of 1821, his health had begun to deteriorate, which likely made him especially sensitive to accusations that he was ill-informed on affairs of state: “the Rajah was naturally of a livid character, the Constitution broke, his Illnesses frequent & his dissolution often expected hourly & that for the last two years of his life he had become totally blind.”²⁶⁶ That year, perhaps sensing he had not long left, Randhir Singh sought (and received) assurance from the Governor General that the treaty between his kingdom and the British would continue to be observed.²⁶⁷ He also received a controversial 10,000 rupees’ worth of presents from Ochterlony as part of the granting of a *khillat*, or robe of honor, to reconfirm his status as a ruler backed by the EIC. Randhir Singh was eager to receive such favor

²⁶⁵ The Meo rebels from outside Ferozepur were “held in confinement” for their participation by the Judge and Magistrate of Company-occupied Agra. “Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar”, September 5th, 1822.

²⁶⁶ Foreign Department Political Consultations, January 17th, 1824, No. 3. In Ochterlony, Sinha, and Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India*, 334.

²⁶⁷ Foreign Department Political Consultations, February 24th, 1821, No. 93. In Ochterlony, Sinha, and Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India*, 146.

because it would strengthen his own position in being able to provide for his favorite queen, the childless Rani Laxmi, after his own death. By endowing her with her own wealth without drawing from the official treasury of the kingdom, he possibly hoped to give her a chance to free herself of the customary confinement of widowhood and the control of his relatives, and perhaps even to flee to British territory and set herself up in luxury.

Two years later, according to the treaty he had recently reaffirmed, the Governor General's secretary in Calcutta urged Ochterlony to remind the Raja that "he was bound to have submitted the cause of his dispute with the chief of Ferozepore for the adjudication of the Governor General in Council before proceeding to measures of retaliation, and that any future neglect of this condition will be considered to constitute a serious departure both from the Letter and spirit of his engagements."²⁶⁸ The Raja's compliance would have been an opportunity to give a last demonstration of goodwill and obedience to the paramount power, that would predispose it not to scrutinize political affairs in Bharatpur further. But when Randhir Singh did finally die in late 1823, however, it became clear that the funds he had ensured for the upkeep of his Rani had likely been used to bolster the Rani's position in the growing political struggle over the selection of Bharatpur's next king. Randhir's brother Baldeo Singh had succeeded him, and persuaded the British to preemptively recognize his own minor son Balwant Singh as the lawful successor to the throne in late 1824.

Finally, when the British government was ready to grant Buldeo Singh recognition by granting him a *khillat* in February 1824, Ochterlony deputed his assistant Captain Robert Ross to

²⁶⁸ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", George Swindon to David Ochterlony on behalf of the Governor General. October 24th, 1823.

travel to Bharatpur and reiterate the instructions that the Governor-General had previously issued to Randhir Singh and the *nawab* the previous year:

The Rajah of Bhurtpore should indeed be distinctly informed that any indications of design on his part to screen the delinquent from the punishment so justly merited will excite the severest displeasure of the British Government, and he should be required to signify formally in writing his consent to the measure proposed of subjecting the offender to a bona fide imprisonment for life. When sentence has been pronounced as above, it should be made known to the people of Ferozepore, and if after receiving intimation of the same publicly and formally from yourself and their Chief the latter shall proceed to further acts of violence against their neighbours, their conduct must then be regarded as a flagrant breach of the public peace, and be punished accordingly.²⁶⁹

The command that the Meo girl's rapists were to be—or remain—seriously and rigorously imprisoned was thus delivered alongside horses, cashmere shawls, swords, pearl necklaces, and an elephant. The Captain's reception at Bharatpur appears to not have been entirely smooth, and we do not know if the instructions were ultimately accepted or not. The affair concludes thus: "The GG in CI learns with regret the recurrence reported in para 6 of Captain Ross's letter to your address, but I am directed to observe that the officer conducted himself with perfect judgement & propriety in regard to it, and that after the apology afforded by the Bhurtpore Durbar, any further advertence to the affair does not appear to be called for."²⁷⁰

When Raja Baldeo Singh himself died just a year later, in 1825, and a cousin named Durjan Sal cast young Balwant Singh into prison, the British, occupied in a war with Burma, proved unreliable allies even to their own anointed candidate. The Rani claimed that Randhir Singh had secretly adopted Durjan Sal, and that the latter therefore had a right to the throne over

²⁶⁹ "Papers regarding an armed clash between certain Zamindars of Bharatpur and followers of Ahmed Bakhsh Khan caused by the abduction and rape of a 12-year-old girl from the village of Jokohar", December 19th, 1823.

²⁷⁰ Foreign Department Political Consultations, March 26th, 1824, No. 8-12. In Ochterlony, Sinha, and Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India*, 340-342.

the Raja's brother Baldeo Singh, who had succeeded. Confronted by her intrigues, the Resident was left struggling to explain why he had granted the ailing former Raja such an enormous favor; it marked the beginning of a decline of his status as a reputed officer in the eyes of Calcutta.²⁷¹

In response, Ochterlony, who had personally overseen the investiture of Balwant Singh as heir, moved an armed force to support him up until Mathura, but was peremptorily countermanded by the Governor-General in Calcutta, who stated that their confirmation of his legitimacy did not impose on the British "any obligation to maintain him in opposition to the wishes of the chiefs and people."²⁷² Ochterlony's instinct, however, had been the right one from the perspective of British interest: Durjan Sal had the popular support of several factions in Bharatpur precisely because he opposed British power, and appeared to be secretly dealing with neighboring Rajput and Maratha states to counterweight their influence. Less than a year later, in January 1826, the Company ended up invading Bharatpur to depose Durjan Sal exactly as Ochterlony had planned—except with a much larger force of over twenty thousand men. The kingdom was forced to surrender to the commander Lord Combermere, Durjan Sal was deported and imprisoned in Allahabad, and Bharatpur was laden with another round of indemnities. The minor prince, Balwant Singh, was installed as a puppet ruler, first under the regency of his mother and later of a British-appointed council: Bharatpur was effectively integrated into the empire.

Ochterlony, humiliated and on the verge of retiring, died that year. One of his last letters to the Governor General in Calcutta laid out the many features of the political reality of Delhi

²⁷¹ Foreign Department Political Consultations December 5th, 1823, No. 9; January 17th, 1824, No. 3-5; February 20th, 1824, No. 14. In Ochterlony, Sinha, and Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India*, 332-7.

²⁷² Hunter et al., *Imperial Gazetteer of India*, Vol. 8, 78.

and Rajputana that he felt the Company had apprehended too late, and not consistently enough, when moving to consolidate its power. This belated diplomatic brief is worth quoting at length precisely because of the extent to which it, too, continued to misread the implicit contract between *zamindar* and state, and the collective imperatives to political justice that cohered it even in the relative absence of formal mechanisms to communicate the popular political will of the ruled:

Were it not for the doctrine solemnly inculcated by His Lordship in Council that the ‘will of the Chiefs and people’ is to be consulted when their sovereign solicits the aid of his acknowledged Paramount, I should deem it superfluous to mention the fact, of all these Hindoo or Mahomedan Principalities being pure despotisms. *The voice of the people has not yet been heard in the East, without a legislative organ to give it utterance or the least conception of their inherent right to appoint and control their Rulers.* The allegiance of the multitude is readily yielded to the strongest, nor am I aware that the nobility have any admitted privileges. They may offer the advice of servant to a Master, but on no occasion can they dictate, or legislate for themselves or the community. Ambitious and equally devoid of patriotism and loyalty, these Chiefs so far from supporting order, are the constant instigators of internal discord...²⁷³

The former Resident’s assessment of the popular support for Durjan Sal’s kingship might easily stand in for his attitude toward the Meo *zamindars*, whose rebellion against Bharatpur had sought precisely to impose control over its ruler and demonstrate the damage that would ensue if the people went unheard—reflecting a powerful and longstanding “conception of their inherent right”. It also betrays a fundamental misunderstanding of the minor nobility and princes, whose practices of conversation and counsel were premised on a hierarchy sustained by ethical friendship and political loyalty.

²⁷³ Foreign Department Political Consultations, July 29th, 1825, No. 19. In Ochterlony, Sinha, and Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India*, 433-5.

Ochterlony then proceeded to his primary point: that the East India Company had a right not only to supervise the “internal affairs” of princely states, but also to depose them according to political interest: a right he himself had exercised before.

Still conscious of the existence of this turbulent and predatory inclination in their powerful subjects, the Princes acknowledging our supremacy have sought our guarantee for the peace of their dominions, and the continuation of their dynasties. Hence the origin of the Paramount authority which the British Government has exercised for these last ten years...*Although interference with the internal affairs of such Governments, seems disclaimed by the Governor General in the instance to be considered, I had not long before, been instructed by His Lordship in Council that the Rao Rajah of Alwur, if proved guilty of instigating the attempted assassination of his neighbor the Nawab Ahmed Buksh Khan, ought to be deprived of his sovereignty.* This right of deprivation which appears unquestionably to involve every other, not to go beyond the limits of my own jurisdiction, has been twice exercised during my administration of the affairs of Central India.²⁷⁴

This right to depose was, he argued, foundational to paramouncy, and derived from nothing other than superior military resources and capability: not ethical obligation, not avenues for sharing or delegating power and status, and not popular approval.

The British Empire in India is often pronounced to be founded, more than any other, on opinion. By which I understand a belief in the governed, that the Wisdom, Resources, but above all, the Military strength of their Rulers, remain unexhausted and invincible. *At least it is certainly this unwelcome faith which among us, represses the hope of discontented Millions, and retains them in quiet subjection...It is no disgrace to the East India Company, that their sway is disliked by all their ambitious and warlike subjects.* These long for the renewal of that Anarchy which among other high excitements, gave every man of courage, the hope of rising from insignificance to prominence. *The Security guaranteed to life and property by the present Order of things, is no compensation to such characters, for the loss of prospects like these.*²⁷⁵

In 1823, failure to deliver justice to a rape victim had resulted in the loss of hundreds of homes and harvests, and dozens of lives, across Bharatpur and Ferozepur. In 1826, a war of conquest

²⁷⁴ Foreign Department Political Consultations, July 29th, 1825, No. 19. In Ochterlony, Sinha, and Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India*, 433-5.

²⁷⁵ Foreign Department Political Consultations, July 29th, 1825, No. 19. In Ochterlony, Sinha, and Das Gupta, *Selections from Ochterlony Papers, 1818-1825, in the National Archives of India*, 433-5.

against a disobedient prince had increased these tolls to the thousands. It requires a gift for euphemism, indeed, to pronounce these legacies of colonial occupation—legal dysfunction, territorial and administrative instability, and entrenched collective incentives to political expediency—a “Security guaranteed to life and property by the present Order of things”.

Chapter 2: Heinous Crimes and Wastes of Time

In this chapter, my purpose is to show that the order of things which Resident David Ochterlony considered a public guarantee of security to life and property in the new northern territories of the Bengal Presidency was not an order of things that reflected his view of rape as a crime that was heinous under any law worth the name. The East India Company of the early nineteenth century was, indeed, single-mindedly focused on threats to property and life—in that order—in territories under its direct control, and its courts and legislation were steadily empowered to prosecute and punish an ever-expanding index of crimes that threatened both property and life in variable proportion. If these two poles of murder and expropriation were the axis of the discursive sphere of the ‘heinous crime’, high levels of collusion and premeditated organization in violence were its measures of gravity, the forces that shaped and turned the state’s response. The punishment and deterrence of ‘heinous crime’ was avidly monitored and strategized even in the earliest criminal justice reports, regulatory amendments, and circular orders of the Bengal Presidency. Yet with all this attention to heinous crime, the bounding priorities of murder, expropriation, and collusive social violence deflected the judicial gaze and discretionary power of the Company’s courts and magistrates away from rape—which, in the kind of harm it inflicted upon a victim, was a form of crime that overlapped each of these bounds.

The earliest criminal proceedings of the newly-constituted ‘Anglo-Muhammadan’ courts of the Delhi Territory and the Ceded and Conquered Provinces thus present a paradoxical picture: an unsafe, ‘lawless’ countryside with dangerous roads and highways, habitually plagued

by mass murder, armed robbery, and violent skirmishes over land, honor, and property, in which women appear to almost never be assaulted or subjected to sexual violence, or to suffer it during the commission of other criminal acts. Women are killed, women are abducted, and women become bargaining-chips in contests of honor and authority; but the criminal report column that corresponds to rape, where it appears at all, usually reads zero. Rape was, in fact, one of the very last crimes to be recorded regularly and systematically as a heinous crime in the proceedings from northern India. In a time of instability, military occupation, and colonial dispossession, is it reasonable to infer or posit from this archive a landscape through which it was difficult for women to move without male social protection or strength in numbers? “It is almost commonplace,” sexuality studies scholar Anjali Arondekar has remarked, “particularly for those of us who work within colonial archives, to argue that historical archives must be read as *registers more of selection than of empiricism.*”²⁷⁶ But what manner of archival reading reveals registers of selection, she asks, *other* than projects of counter-selection narrated in slippage, trace, and fragment? I attempt to delink my argument in this chapter from the now-conventional mandate to fill in the gaps indicated by state archives, to find revelatory or redemptive traces of what ‘must’ be present but is missing. In re-traversing this old, gappy ground of the archive of violence against women, I seek neither gaps in material nor material in gaps; but filters in the internal logic of those registers of selection that could decant the coloniality in the law from the sedimented misogynies of the society it occupies and governs.

At its essence, my question is about how ‘law and order’ marks or unmarks commons and public spaces as safe, for which bodies, and for what forms of living, livelihood, and life. I rely on Nasser Hussain’s theorization of colonial ‘law and order’ as a “median category” of rule that

²⁷⁶ Anjali R. Arondekar, *Abundance: Sexuality’s History* (Durham: Duke University Press, 2023), 66.

emerges from and synthesizes two Enlightenment concepts: primitivism, or the absence of formal law in uncivilized societies, and Oriental Despotism, or the pure discretionary absolutism of the Asian ruler over each of his subjects.²⁷⁷ To Hussain, “colonial lawful rule...is a form of sovereignty and governmentality: a rule that is lawful, as it lays claim to legitimacy through law, but also one that is *literally full of law*, full of rules that hierarchicalize, bureaucratize, mediate, and channel power.”²⁷⁸ To delve into this fullness of law is to establish its relationship to the presence of violence in a social landscape as one of direct or inverse proportion: for instance, whether such fullness indicates that violence is pervasive and widespread, or rare and contained. Whatever the choice, however, such explorations continue to be looped into the imperative to bridge gaps, as we are told that violence “cannot be understood by traversing from one cataclysmic event to the next” and that “the micro-moments betwixt and between these macro-events are where the violence central to the workings of empire can be found.”²⁷⁹ Where evidence of these violent micro-events is fragmentary, excised, or absent, the fullness of ‘law and order’ is re-established as a “figure of tautology that rushes in and threatens to foreclose critique...for [to] the question of why the law required such large powers to establish order, the

²⁷⁷ Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law*, electronic resource (Ann Arbor: University of Michigan Press, 2019), <http://www.columbia.edu/cgi-bin/cul/resolve?clio17645693>, 150. “These concepts from Locke to Montesquieu onward couple cultural and racial difference with forms of state and government. Where primitivism is criticized for an absence of state rule, despotism is marked by nothing but rule, nothing but the all-choking ‘will of the one.’” He continues, that the nineteenth-century British empire “consisted of people who were not slaves but, because deemed utterly incapable of participating in their rule, were not quite free subjects either. This empire required a new conception of sovereignty, one that was neither despotic nor democratic.”

²⁷⁸ Hussain, *Jurisprudence of Emergency*, 87.

²⁷⁹ Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge ; New York: Cambridge University Press, 2010), 2-3.

answer—indeed, the only answer—can be the level of disorder that confronted authorities.”²⁸⁰

Do such archives suggest, then, that there is nothing dis-ordered, exceptional, or worthy of remark about rape, or that rape is itself a category of exception within the wider category of violence against women?

Some studies of racial violence in colonial India have contended that physical assaults by white men upon Indians were a “quotidian” and “intrinsic” feature of imperial rule, a necessary corollary that “simultaneously *menaced* and *maintained* British power in India from the late eighteenth to the early twentieth centuries.”²⁸¹ To be a colonial subject, then, was to be at least to some degree publicly unsafe—exposed to arbitrary physical harm by the impunity of British subjects—in spaces and places governed by the colonial state. The legal regulation of Indians’ exposure to quotidian racial violence within acceptable bounds is understood to have “conjoined the empire’s rule of law to its theory of just war, bridging the gap between colonial justice and colonial violence.”²⁸² But what reasons of state become evident in the breach, not the bridge—in a permission granted to violence within acceptable bounds that is not engineered, monitored, or

²⁸⁰ Hussain, *Jurisprudence of Emergency*, 87.

²⁸¹ Kolsky, *Colonial Justice in British India*, 1. See also Clare Anderson, *Legible Bodies: Race, Criminality, and Colonialism in South Asia* (Oxford: New York, NY, USA : Berg, 2004); Deana Heath, *Colonial Terror: Torture and State Violence in Colonial India*, (Oxford: Oxford University Press, 2021); Steven Pierce and Anupama Rao, eds., *Discipline and the Other Body: Correction, Corporeality, Colonialism* (Durham: Duke University Press, 2006); Alastair McClure, “Archaic Sovereignty and Colonial Law: The Reintroduction of Corporal Punishment in Colonial India, 1864–1909,” *Modern Asian Studies* 54, no. 5 (September 2020): 1712–47, <https://doi.org/10.1017/S0026749X18000410>; Alastair McClure, “Killing in the Name Of? Capital Punishment in Colonial and Postcolonial India,” *Law and History Review* 41, no. 2 (May 2023): 365–85, <https://doi.org/10.1017/S0738248022000335>; Gagan Preet Singh, “Forensics, Body and State Power in South Asia: Recent Interventions and Their Importance,” *History Compass* 19, no. 11 (2021): e12693, <https://doi.org/10.1111/hic3.12693>; and Radhika Singha, “Punished by Surveillance: Policing ‘Dangerousness’ in Colonial India, 1872–1918,” *Modern Asian Studies* 49, no. 2 (2015): 241–69, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/24495402>.

²⁸² Kolsky, *Colonial Justice in British India*, 2-3.

tracked, as racial violence was, but assumed and reproduced as having an internal and natural level? The British in India are known to have “vigilantly addressed scandalous and sensational forms of gender violence” such as *sati* or widow-burning, while by contrast, “cross-culturally common forms of gender violence, like rape and wife-murder, produced no ‘moral panics’, imperial scandals, or parliamentary inquiries. In fact, *despite their prevalence, they were hardly noticed at all.*”²⁸³

Hussain argues that a historical critique of the exception—the maintenance of the force of law through its capacity to ‘include by exclusion’—“must focus on the constitutive role of the colonial in the articulation of the modern.”²⁸⁴ This is precisely my aim. To delve further into the colonial abandonment of public responsibility to redress rape, I show that the re-delegation and ‘in-sourcing’ of legal attention to rape to Indian communities—on the assumption that it was a pervasive but private form of household crime—is clear, early, and consistent in colonial records from Delhi and its environs. I then move to argue that the privatization of violence against women by their husbands and families also attenuated access to redress and justice for victims of rape by non-kin in public, deprioritizing such redress at a time when high levels of generalized violence threatening property and life exacerbated the social precarity of women. If in modern India, the study of rape trials has documented how “a series of illegitimate legalities (or legitimate illegalities) fold into the law, structuring specific forms of *public secrecy* that *constitute actively that which we must know not to know*”, the history of the rule of law in colonial India suggests that an epistemic foundation of ‘the public’ itself can be traced in the gendered and spatialized differentiation of what cannot be known—private violence against

²⁸³ Kolsky, *Colonial Justice in British India*, 63.

²⁸⁴ Hussain, *Jurisprudence of Emergency*, 26.

domesticated subjects—from what is not worth bothering to know—endemic violence against abandoned subjects.²⁸⁵ It is at least in part due to the distinctive treatment of rape in India’s early colonial courts that rape continues to be constituted as *a crime that only happens in public, but is not a public crime*.

Inherent to this public immateriality, however, it is important to note, was the notion that any woman whose sexuality carried social value had no need of access to public space to begin with—a notion that cannot be held to have arisen intrinsically out of the abstract normative vacuum of colonial rule of law. While the previous chapter suggests that many communities in the Ceded and Conquered Provinces of India who were committed to avenging rape as a matter of hierarchy, respect, and rank can be construed as indirectly securing public safety for certain women, and as in fact instigating their mass mobilization through the countryside in defense of their freedoms of movement, it does not follow that women’s access to public space was valued as a social good outside frames of necessity. Early British observers of Indian society repeatedly insisted that the opposite was true. One unique instance of this stands out in the memoir *Indian Recreations*, published by the missionary William Tennant in 1804. Tennant remarked upon a “great similarity” among all classes of Indians regarding their “intercourse with the female sex”:

Female virtue among each [‘Hindoos’ and ‘Mussalmans’], is secured by a seclusion of the sex almost totally from society; and that by a strictness and vigilance well suited to the mean idea they entertain of their fidelity. The man who is conscious of habitual frailty in himself, cannot easily give credit to another for continence and self-denial, virtues almost beyond his conception. The Haram and the Zenana are therefore guarded with equal solicitude, not only from the visits of the males, but from the intrusion of every eye: and, perhaps, neither the Hindoo nor the Mussalman form a wrong estimate of female virtue in the East. Whatever virtue obtains there, must be either constitutional, or the effect of restraint. What virtue, regulated by principles of duty, can be expected from

²⁸⁵ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India*, First edition (New Delhi: Oxford University press, 2014), 5. Baxi continues, “Rape trials, far from destroying secrets, are privileged sites of the production, negotiation, and management of public secrets. I therefore move away from the commonplace view *that courts as public spaces destroy secrets*.”

persons almost without education, who have been excluded from their infancy from every active scene of life, where alone there can be self-government, and where either virtue or temptation can alone exist? The women in Hindustan seem accordingly to possess but few ideas, and *but little chastity*. Accustomed to regard themselves, what in fact they have ever been, merely the instruments of sensual pleasure, and the means of perpetuating the species, that object engages the whole range of their knowledge, and constitutes the sum of their duty.²⁸⁶

Tennant, as we see here, was sympathetic to the possessiveness and jealousy he perceived in Indian men's household arrangements, suggesting that "female virtue in the East" could be secured only by the private confinement and "restraint" that paradoxically also condemned them to a life without education or activity, the wellsprings of good judgement. Confining the range of their knowledge and duty to "sensual pleasure", Tennant conceived of Indian women as purely sexual objects, engaging with no other concerns than sex and childbirth, and lacking thought or agency beyond sexual temptation; they were shut up, therefore, for their own good.

However, as a sort of counterpoint to its own views on Indian women's freedoms and virtues, Tennant's *Indian Recreations* also extensively quoted and reproduced translated excerpts of a Persian text whose English title is *A Vindication of the Liberties of Asiatic Women*. This text had been written by Mirza Abu Talib Khan, a native of Lucknow who had served as a tax collector and administrator under both the Nawab of Awadh and the East India Company, and had travelled to England, France, and the Ottoman Empire between 1799 and 1803, becoming known in London as 'The Persian Prince'. The sweeping travel account from which the excerpt was taken, *Masir Talib fi Bilad Afranji*, had not yet been translated into English in full, so it is even more noteworthy that Tennant included it.²⁸⁷ In this *Vindication*, so that "the distinction

²⁸⁶ William Tennant, *Indian Recreations; Consisting Chiefly of Strictures of the Domestic and Rural Economy of the Mahomedans & Hindoos* (Edinburgh: Printed by C. Stewart, 1803), 181.

²⁸⁷ *Vindication* was published by Charles Stewart published in 1810, six years later. See Michael H. Fisher, "Representing 'his' Women: Mirza Abu Talib Khan's 1801 'Vindication of the Liberties of

may be the more easily made, and the real state of the case become evident to those capable of discernment”, Talib declared as false the “notions entertained by European women, *that the inclination of the Asiatic females leads them to walk out in the streets, and marketplaces, and that their husbands keep them shut up, and set guards upon their door.*” The truth, he insisted, was that the women of Hindustan themselves enjoyed and valued seclusion, and had no desire to be out in public. They constructed parallel lives, with a full range of parallel conveniences that imposed no obligation upon them to step outdoors:

It may be here observed, that the advantages of this little intercourse, which prevents all the evils from the admittance of strangers, and afford so much time for employment and useful work, are so very manifest, that they need not be enlarged upon...In Asia, where, by the cheapness of work, the women have separate apartments for themselves, they have not to make their time in convenience suit that of their husbands. When their particular friends are with them, they do not desire their husband's company, for several days, but send his victuals to him in the *mardana*, (men's apartment); and, in like manner, when the husband wishes to be undisturbed, he eats and sleeps in the *mardana*.²⁸⁸

This seclusion was necessary, Talib argued, because of caste; because India had long possessed many different ‘races’ living in the same space and territory, unlike in England, which he perceived as racially monolithic: “to allow the women such a liberty there [in India], where there is such danger of corruption, *would be an encroachment upon the liberty of the men*, which (as shown in the beginning) is contrary to justice.” This framing of women’s public freedom as an encroachment upon the freedoms of men presents women as poorly-provisioned and irresponsible carriers of a social value in which others had a greater, controlling, stake—but tries to offer the carriers compensatory incentives. Talib went on to reiterate the various social

Asiatic Women,”” *The Indian Economic & Social History Review* 37, no. 2 (2000): 215–37, <https://doi.org/10.1177/001946460003700204>.

²⁸⁸ Tennant, *Indian Recreations*, 307-321.

advantages of a life lived in *purdah*: women could visit and converse with closely related men, speak to old neighbours and domestic servants, go in palanquins to the houses of their relations and friends even if their husbands were unacquainted, walk in gardens after other people were excluded, send for musicians, and enjoy many other diversions without ever having to experience life in public:

The Asiatic women have no necessity to expose their persons; but it must also be observed that they have many reasons for preferring privacy. *One is the love of leisure, and repose from the fatigue of motion; a second, their desire of preserving their honour by not mixing with the vulgar, nor suffering the insults of the low and rude, who are always passing along in the streets.* This feeling they have in common with the wives of European noblemen, who, to preserve their dignity, are never seen walking on the streets; and also with ladies in private life, who, when walking out at night, and even in the day, are always attended by a male friend, or servant, who protects them.²⁸⁹

Talib's views, as those of a nobleman and sometime Company administrator, cannot be taken as representative of the attitudes of Indians as a whole, but can be seen as reflective of those of the 'respectable natives' who were most likely to serve as jurors, assessors, or legal officials in Company courts and determine the fates of rape trials. As shall be shown, their judicial involvement did little to dispel the "administrative common sense, the norm of knowing the people", that took rape "less seriously as an injury against the woman's sensibilities than as a point for discourses about native codes of honor."²⁹⁰

²⁸⁹ Tennant, *Indian Recreations*, 307-321.

²⁹⁰ Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford: Oxford University Press, 2000), 249.

2.1: “A most undefined system”: colonialism in the Ceded and Conquered Provinces

From 1803 onwards, the Company’s Bengal Regulations were extended to the Ceded and Conquered Provinces in the north, and its district (*zillah*) magistrates in the region were granted broad discretionary power to accept or deny criminal charges and complaints as well as to set bail for defendants.²⁹¹ In March 1803, as it was “expedient that persons charged with crimes should be speedily brought to trial, and that witnesses should not be exposed to the inconvenience and expense arising from a long absence from their homes,” the new territory received its own Court of Circuit, which toured through the area’s districts, adjudicated the most severe crimes, and referred legally-ambiguous decisions and cases meriting capital punishment to the final court of appeal in Calcutta, the Nizamat Adalat.²⁹² Circuit Judges were required to

²⁹¹ Regulations I and IV of 1803, *Regulations Passed by the Governor General in Council of Bengal, Vol. II, 1796-1803* (London: J.L. Cox, 1828). The British conquered the North-Western Provinces, consisting of over twenty districts, in several stages. In 1801, the nawab of Awadh made over the Ceded Provinces to the East India Company in exchange for a guarantee of protection against external aggression. The ‘ceded’ districts comprised most of the Gorakhpur, Rohilkhand, Allahabad, and Agra Divisions. In 1803 the conquered provinces were acquired from the Marathas. This area consisted of the Meerut and Agra Divisions, Banda, Hamirpur, and small tracts belonging to Jalaun. In 1834, both the ‘ceded’ and ‘conquered’ districts were formed into the Presidency of Agra. In 1836, the name of the region was changed to the North-Western Provinces. Both the North-Western Provinces and Awadh (annexed in 1856), were brought under a single central administration in 1877 and formed part of the Bengal Presidency. Further reorganization took place at the end of the nineteenth century, after which the area was given the new name United Provinces. The region is now called Uttar Pradesh. Malavika Kasturi, *Embattled Identities: Rajput Lineages and the Colonial State in Nineteenth-Century North India* (New Delhi; Oxford: Oxford University Press, 2002), 41.

²⁹² Regulation VII, 1803, *Regulations Passed by the Governor General in Council of Bengal, Vol. II, 1796-1803* (London: J.L. Cox, 1828). The Nizamat Adalat was established in 1772 by then Governor-General Warren Hastings’ Scheme for the Administration of Justice to judge criminal cases involving the native population of Bengal in anticipation of the full military conquest of the province, which was completed by around 1790. In 1793 Governor-General Cornwallis, acting on the assumption of British Nizamat, established subsidiary criminal courts—Circuit Courts—across the province, over which British magistrates presided. For a very clear outline of the legal structure and the timeline of codification in India at this period, see Appendixes A and B of Nasser Hussain’s *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003), 145-151. Scott Alan Kugle, “Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia,”

“transmit to the Nizamat Adalat a report, containing such observations as they have made during the circuit regarding the effect of the present system for administering the criminal laws in the prevention and punishment of crimes...and such other matters as they shall think deserving the notice of the court.”²⁹³

Some of the earliest reports from the new province about “cases of a heinous nature”, covering the years 1813 and 1814, remarked either on the unnerving absence or excessive proliferation of such cases, seeing both as an indicator that the system was not working. A Judge Leycester, posted in today’s Mainpuri, Uttar Pradesh, remarked: “the country at present is going on under a most undefined system, differing in different places, and differing in the same place as people are changed, at the same time that the government has every reason short of the fact to suppose that the uniform system prescribed by the Regulations is in force.”²⁹⁴ “It does not even seem to be understood *what is necessary to show*,” Leycester continued, “that an offence has been committed so as to make it proper to include it in these statements.” Police *darogahs* and prosecuting subjects could not “establish the charge by evidence” according to the Court standard, leading to many offences being excluded from reports—and Leycester assumed that this was not the intention of government, “*for the statement would then be of offences proved against various persons, and not of offences actually committed, though not established as*

Modern Asian Studies 35, no. 2 (2001): 257–313,
<https://www.jstor.org/ezproxy.cul.columbia.edu/stable/313119>, 264.

²⁹³ Regulation IX of 1803 also allows judges of the Adalat courts, the magistrates, and the judges of the Courts of Circuit to proposed regulations regarding any matters under their cognizance. *Regulations Passed by the Governor General in Council of Bengal, Vol. II, 1796-1803* (London: J.L. Cox, 1828).

²⁹⁴ “Reports on the Administration of the police in the Bareilly Division”. *Records of the Board of Commissioners of the Affairs of India*, Vol. 519. IOR/F/4/519/12436, Leycester, Provincial Judge at Mynpooree, 20th March, 1815.

perpetrated by any particular persons.”²⁹⁵ In other words, these reports in no way reflected the actual prevalence of heinous crime—how many offences were committed, how common they were, and how severe the effects of such crimes might be on the public in general and at large.

This, I aim to show, arose from the blindness of the category of heinous crime itself. In 1815, the categories of crime listed as heinous in the report sent to the Nizamat in Calcutta from Bareilly were murder, dacoity, major or violent robberies and burglary, and arson. In the report from Benares for the same year, they were murder, dacoity, highway robbery, arson, forgery and perjury—and most of the crimes occurring in the district were reported as affrays relating to boundary disputes or land disputes, as well as petty theft and burglary.²⁹⁶ A report from the district of Meerut exemplifies this relatively outsized colonial focus on crimes against property, classifying these into dacoity with murder, dacoity with wounding, simple dacoity, river dacoity, highway robbery by horseman, and highway robbery by footpads.²⁹⁷ By the mid-1820s, when the jurisdictional authority of the Nizamat Adalat was extended to the Delhi Territory as well, the “half-yearly abstract statements of robberies and other crimes ascertained by the police officers or otherwise to be committed” within the Territory featured bizarre subgroupings under their

²⁹⁵ “Reports on the Administration of the police in the Bareilly Division”. Leycester, Provincial Judge at Mynpooree, 20th March, 1815.

²⁹⁶ “Reports on the Administration of the police in the Bareilly Division”. Leycester, Provincial Judge at Mynpooree, 20th March, 1815.

²⁹⁷ The categories of crime reported from Meerut in April 1815 for 1813 and 1814 were dacoity with murder, dacoity with wounding, simple dacoity, river dacoity, highway robbery by horseman, highway robbery by foot pads, murder homicide not amounting to murder, murder by thugs, burglary, thefts, receiving stolen property, and violent affrays. A list of numbers of people apprehended committed acquitted or punished in 1814 lists a few more petty crimes: counterfeiting coin, petty thefts, petty assaults, and other various offenses. For each of these there are no convictions or even apprehensions. “Reports on the Administration of the police in the Benares Division”. *Records of the Board of Commissioners of the Affairs of India*, Vol. 520. IOR/F/4/520/12438. Letter to the Nizamat Adalat on April 30th, 1815, from the Police Superintendent of Meerut, Mr. Shakespeare.

designations of heinous crime. The six main categories of such crime were dacoity, highway robbery, burglary, cattle stealing, theft, and affray. Squeezed within the ‘affray’ category, we find a diverse array of crimes upon the body, crimes of fraud, and crimes thought to be uniquely ‘Indian’: rape and adultery, simple wounding or violent beating, willful murder, homicide not amounting to murder, arson, receiving stolen property, forgery, perjury, and along with *thagi*, the practice of *sati*, or burning alive. Most of these affray subcategories have almost no cases listed under them.²⁹⁸

It seems necessary at this juncture to further consider the emergence of heinous crime as a critical category of judicial priority for colonial law, and discuss how the paradox of indifference to gendered violence has been approached by previous scholarship on the legal history of the Bengal Presidency. Hussain contends that British India “was a regime of conquest, not incapable of creating certain levels of political legitimacy, but consistently dependent upon the discretionary authority of its executive and the force of its army.”²⁹⁹ Radhika Singha’s seminal treatment of the subject, *A Despotism of Law*, has argued that the Company’s lawmaking during this period of colonial occupation was “a cultural enterprise in which the colonial state struggled to draw upon existing normative codes—of rule, rank, status and gender—even as it also re-shaped them to a different political economy with a more exclusive definition of sovereign right”, under which “legitimate violence was the sole prerogative of the state.”³⁰⁰ The

²⁹⁸ “Administration of justice in the Delhi Provinces.” *Records of the Board of Commissioners of the Affairs of India*, Vol. 855. IOR/F/4/855/30394. There is about one adultery case in each division per half yearly report—either one or zero. In the report from January to June 1826 in the *zillah* of Rohtak in the Delhi territory, we have two rape cases appear, which is later reduced to just one in the agglomerated report.

²⁹⁹ Hussain, *Jurisprudence of Emergency*, 19.

³⁰⁰ Singha, *A Despotism of Law*, 4.

Company administered a plurality of laws, including diverse regional Regulations, Acts of Parliament, Hindu and Islamic law, English common and statutory law, and the (notorious) principle of ‘justice, equity, and good conscience’.³⁰¹ Hoping, however, to impress upon its political competitors a new idea of civil authority that was not “just another imperium laid over a segmented political formation”, the Company’s Criminal Regulations sought to end layered and distributive structures of political power, and were oriented primarily toward “the civil pacification” and “disarming” of these alternative holders of power—particularly “criminal communities” of thugs and dacoits who drew on the tacit or explicit support of landholding elites to commit ‘outrages’. At the same time, however, they also aimed to “lay down norms of governance for Indian chiefs and rulers *without an expensive commitment to direct administration.*”³⁰² For instance, in one 1826 letter from the Nizamat to its newest subordinate judicial body, the Board of Revenue governing the Delhi Territory, the administrators of the old

³⁰¹ Kolsky, *Colonial Justice in British India*, 70.

³⁰² Singha, *A Despotism of Law*, 7. Law formation as commercial order proceeded largely as an attempt to domesticate and contain the sedentary landed elite, which transformed their economic and political character. Previously, this landed elite had represented a system that was thoroughly decentralized, containing multiple overlapping jurisdictions: kings and lords were not the only people who had the capacity to punish or inflict harm. The British at once respected and disdained this system: as Robert Travers has argued, given that Britain itself was only beginning to emerge from an early modern state system built on notions of provenance, custom, and estate, they initially envisioned themselves as resurrecting and improving upon an ancient native constitution that left certain prerogatives to customary structures. Travers explains that in eighteenth-century British debates about India, “the rhetoric of barbarism and civilization was cut across by view of the world as a set of ‘ancient constitutions’, closely related to the particular ‘genius’ of different peoples...more commonly in India, it could refer to an old system of government that had become run down and needed to be restored.” Robert Travers, *Ideology and Empire in Eighteenth Century India: The British in Bengal* (New York: Cambridge University Press, 2007), 7-9. See also Anupama Rao, “Problems of Violence, States of Terror”, in, Saurabh Dube and Anupama Rao, eds., *Crime through Time* (New Delhi: Oxford University Press, 2013), 153. As Sandria Freitag notes, “the very creation of this social order marginalized certain groups. The responses of marginalized groups, particularly in the way they chose which elements of their own cultural subsystems to alter and which to protect against the encroachments of an alien state, also formed an important component of the resulting social order.” Sandria B. Freitag, “Crime in the Social Order of Colonial North India,” *Modern Asian Studies* 25, no. 2 (1991): 227–61, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/312511>, 229.

Mughal capital were asked “to report whether cases of assaults and other minor offenses could with public advantage *be referred to the heads of castes for adjustment*, and under what checks.” To this query, the Board replied somewhat dryly that they were “not aware that any description of persons resident in the Delhi Territory can come under the denomination of heads of castes.”³⁰³ Given the story from the other side of this equation, the princely state ruled by subsidiary alliance, in Chapter 1, these statements about the nonexistence of alternative forums to deliver and provide justice become all the more meaningful.

As Ochterlony’s remarks from the previous chapter and the above observations of the Company’s officers show, indirect rule—leaving Indians in charge in any meaningful way—was imagined to be little better than chaos. The legal systems adhered to by native rulers were simultaneously imagined to be weak and nonexistent, degraded and misapplied, and spread-out and multitudinous in jurisdiction.³⁰⁴ Charles Metcalfe, who governed the Delhi Territory before Ochterlony, remarked that “the native administration ...took no concern in criminal justice and police, any further than as it might be made subservient to its immediate pecuniary gains,” and

³⁰³ “Papers regarding the administration of justice in the Delhi Territory, Vol 1.” *Records of the Board of Commissioners of the Affairs of India*, Vol. 1155. IOR/F/4/1155/30387. Extract judicial letter from Bengal dated 7th December, 1826. See also James Alan Jaffe, *Ironies of Colonial Governance: Law, Custom and Justice in Colonial India*, (Cambridge: Cambridge University Press, 2015) and Leigh Denault, “Little Republics or Petty Republics? The Panchayat, Imperial Sovereignty, and Discourses of Self-Government in British India, ca. 1870–1917,” *Comparative Studies of South Asia, Africa and the Middle East* 38, no. 3 (2018): 402–22, <https://muse-jhu-edu.ezproxy.cul.columbia.edu/pub/4/article/712667>.

³⁰⁴ The later colonial jurist Henry Sumner Maine went even further: “Nobody who has enquired into the matter can doubt,” he wrote, “that, before the British Government began to legislate, India was, regard being to its moral and material needs, a country singularly empty of law.” Quoted in Elizabeth Denise Kolsky, “‘The Body Evidencing the Crime’: Gender, Law and Medicine in Colonial India” (Ph.D., New York, Columbia University), accessed July 6, 2024, <https://www.proquest.com/docview/276468989/abstract?parentSessionId=58%2Fe3nUaNj4rufs09O9Rg10uYI3ZvIiYSBuiEH%2BgDg8%3D&pq-origsite=summon&sourcetype=Dissertations%20&%20Theses>, 51.

that the ordinary rural inhabitants of Delhi, “*while they hold their own society as sacred...considered the rest of the world as a fair field for their own aggrandizement.*”³⁰⁵ As they worked to build a system of law from Hindu and Islamic scripture instead, many of the first European scholars of Indian religious texts also argued that though these texts had a definite notion of ‘authority’, they had no commensurate one of legality.³⁰⁶ Magistrates and judges concurred in this idea that personal power and authority were paramount: in his early report from Mainpuri, for instance, Judge Leycester reported “another peculiar feature in the conduct of all business at the [police] *thanahs*—as they sometimes get reprimanded by the Magistrate for illegal interference, the reply expresses no contrition for disobedience to the Regulations, but a promise of submission to the Magistrate’s orders, *as if the Regulations were not in force of their own virtue.*”³⁰⁷

Despite an imputed absence of legality, however, establishing the ‘rule of law’ meant accessing pre-existing notions of authority to ensure commercial order in the Company’s early jurisdictions, as the cumulative effects of massive economic transformations wrought by the mercantile state, the displacement caused by land reforms, and violent expropriations that followed further bouts of conquest meant that the Company perceived a ‘law and order crisis’ that it had in fact itself caused, through it refused to acknowledge that causation.³⁰⁸ In 1793,

³⁰⁵ “Papers regarding the administration of justice in the Delhi Territory, Vol 1.” *Records of the Board of Commissioners of the Affairs of India*, Vol. 1155. IOR/F/4/1155/30387. Extract judicial letter from Bengal dated 7th December, 1826.

³⁰⁶ Kugle, “Framed, Blamed and Renamed”, 22.

³⁰⁷ “Reports on the Administration of the police in the Bareilly Division”. Leycester, Provincial Judge at Mynpooree, 20th March, 1815.

³⁰⁸ The Indian reformer Rammohun Roy “cited the twin problems of language and legal training as the primary impediments to the Company’s administration of justice, referring to the Company’s officers

native Hindu and Muslim religious scholars—*pandits* and *qazis*—had been assigned as ‘law officers’ to assist a new system of British judges with their caseloads at all court levels in the Bengal Presidency.³⁰⁹ Though these Company Magistrates and Circuit Judges were trained and sent out into the countryside in order to work with and oversee these *pandits* and *qazis*, they initially seldom chose to exercise their right to override or interfere with the former’s judicial decisions.³¹⁰ Yet since the law was depicted as having to be largely remade, albeit on the unacknowledged base of the pre-existent, prioritization was the order of the day: after land revenue, labor, and production were quickly legislated, the Company found it could not ignore violent crime that affected the security of property.

At the same time as Singha explains, courts began to consider the personal harms suffered by litigants an ambiguous measure of their claims to public justice:

In the view of British magistrates and judges, the Islamic law, which they claimed to be using for criminal justice, *concentrated too narrowly on the consequences of the criminal act and on claims made by the injured parties for compensation or retaliation. What they wanted to communicate was the idea that the criminal act affected the interests of all, i.e. the public interest which the state represented, and punishment would be meted out in those terms.* The criminal regulations of the Company formalized the claims of state upon individual subject, cutting through identities and claims which came in the way.

themselves as ‘the main causes of obstruction in the dispatch of the judicial business.’” Kolsky, *Colonial Justice in British India*, 74.

³⁰⁹ Local scholars of religious law had always been present in some capacity as mediators during the early stages of Company rule. In many areas of Bengal they had been left to operate independently before the Company came to assume the juridical duties of *diwan*.

³¹⁰ Kugle, “Framed, Blamed and Renamed”, 263. This was also because Company servants were often badly trained and lacked any local knowledge. Thomas Babington Macaulay condemned this reliance on the discretion of ill-trained colonial officials: “Judge-made law,” he wrote, “where there is an absolute government and lax morality—where there is no bar and no public—is a curse and a scandal not to be endured. It is time that the Magistrate should know what law he is to administer—that the subject should know under what law he is to live.” It was an open secret, however, that ‘giving’ good laws to the colony would undermine the Company’s long-term interests: arbitrary adjudication, however inefficient, preserved despotic power. Quoted in Kolsky, “‘The Body Evidencing the Crime’”, 45.

This brought the law into contest with other sources of identity, other claims to a legitimate exercise of violence.³¹¹

The creation of the category of heinous crime provided an important opening for these ideas about public interest and public justice to override Islamic law.

The primary distinction that the Islamic *Sharia* drew was between *hadd* offences—crimes with scripturally mandated fixed punishments, such as that of *qisas*, a victim’s right of retribution—and a larger category of offences that could be punished by *tazir*, or the discretion to dispense exemplary punishment, granted to legal officers by the ruling Muslim dispensation. Under those dispensations, *qazis* had generally been regarded not only for their ability to prove guilt and pass sentence, but for their encouragement of extrajudicial settlements and compromises.³¹² Since, however, this particular notion of legal flexibility—being grounded in cultural embeddedness—did not serve their purposes well, the British saw this system from the beginning as placing limits on the power to punish: both text (*Sharia*) and customary discretion (*tazir*) posed their own limitations to the aspired systematization of law. The reconstitution of *tazir* arose as British magistrates became more aggressive about finding ways to take wider powers to encourage and enforce criminal prosecution—and Regulation LI of 1803 identified heinous crime as one of the three major exceptions that enabled *tazir*, and its prevalence as justifying extraordinary legal intervention:

[F]or heinous crimes, in a high degree injurious to society; and particularly for repeated offences of this description, which, for the ends of public justice (as expressed by the term *seesut*) may appear to require exemplary punishment beyond the prescribed penalties...an unlimited discretion, extending to capital punishment, is admitted to have been left by the Mohammedan law to the sovereign authority of every country in which that law prevails, as well as to its judiciary delegates. In the adjudication of punishment

³¹¹ Singha, *A Despotism of Law*, 4.

³¹² These courts were largely voluntary: Hindus did not have to use them, though many did, and most disputes were settled locally or within the community. Singha, *A Despotism of Law*, 4-9.

under the discretion thus allowed by the Mohammedan law...the fatwas...are *often governed by a consideration of the degree of proof against the party accused, rather than the degree of guilt and criminality of the act established against him*; and the penalties awarded by them, in such cases, are either adjudged on insufficient proof of guilt, or are *inadequate to the heinousness of the offence of which the prisoner is convicted....It is further requisite to define the crime and punishment of robbery by open violence, under the continued prevalence of this atrocious crime, which is frequently attended with murder, or with maiming or other personal injury, as well as the crime of arson or willful burning of houses, and other aggravating circumstances, and for the punishment of which the specific provisions of the Mohammedan law...have been found altogether inadequate.*³¹³

We see from this Regulation that the Company intervened in the exercise of *tazir* by resort to an extant indigenous concept, namely *siyasat*, the political right of the former Mughal rulers to side-step the formal procedures of Islamic *fiqh* (jurisprudence).³¹⁴ It did so by contending that the native law officers themselves were applying *tazir* irregularly, citing exceptions and extenuating circumstances such as the premature age or mental illness of dacoits that prevented heinous crime from being punished uniformly, creating “distinctions...evidently repugnant to the principles of public and equal justice”, and encouraging an increase in prevalence.³¹⁵ In the precolonial period, *siyasat* had offered Muslim rulers an opportunity to exercise greater penal oversight and exemplary justice without ostensibly admitting any change to the divine *Sharia*.³¹⁶ In the hands of the British, however, as Scott Kugle has noted, the

³¹³ Regulation LIII of 1803, *Regulations Passed by the Governor General in Council of Bengal, Vol. II, 1796-1803* (London: J.L. Cox, 1828).

³¹⁴ Kugle, “Framed, Blamed and Renamed”, 264.

³¹⁵ Regulation LIII of 1803, *Regulations Passed by the Governor General in Council of Bengal, Vol. II, 1796-1803* (London: J.L. Cox, 1828).

³¹⁶ Kugle advocates for an understanding of *siyasat* along a scholarly consensus that it denotes “the modus operandi of power that is presupposed, rather than the field of contesting power, as commonly understood as ‘politics’.” Kugle, “Framed, Blamed and Renamed”, 264. His definition of the *Sharia* is also helpful: “the shari’ah consists of a network of decisions by jurists on whether a specific action is obligatory, recommended, permissible, discouraged or forbidden when compared against the known sources of revelation. As such, the shari’ah is a wide umbrella of moral sanctions covering other theoretical possibilities as well as practical exigencies. The shari’ah embraces contradictory juridical

concept of *siyasat* paved the way for a far more wide-ranging transformation of Islamic law, in the period from the 1770s to the 1830s, into ‘Anglo-Muhammadan’ law. Before Law Commissions established a fully codified law largely excised of indigenous legal origins, Anglo-Muhammadan law carved out a swathe of discretion that enabled that later systematization. This law, Kugle has shown, “disguises itself as a system; however, it should properly be seen as an interpretative experience that regulates and justifies the raw exercise of power.”³¹⁷

It is clear from legal scholarship like Kugle’s that ruler’s right of interpretation, once acknowledged and granted by native law officers, meant that even as the Company disparaged native legal regimes as uncodified and incoherent, *tazir*, or the indigenous principle of judicial discretion, was “simultaneously criticized and re-admitted in colonial law-making.”³¹⁸ During a state of ‘exception’, or upon a site of generally assumed chaos and ‘disorder’, this discretion was important for both varying and stabilizing the objects of legal regulation, ensuring that the judiciary could tailor them to whatever moral, social or political intervention was desired by executive power. As Radhika Singha has put it, “judicial discretion came to form a crucial aspect of the way in which colonial criminal law braced civil pacification. This is most clearly represented in the tension between the premise of individual responsibility for a specific offence, and the deduction of criminal intention from membership of a particular community, or a suspect

decisions and a multiplicity of juridical methods, insisting only that they be based on certain authentic sources and reasoned deduction.” Kugle, “Framed, Blamed and Renamed”, 258.

³¹⁷ Kugle, “Framed, Blamed and Renamed”, 257. Anglo-Muhammadan jurisprudence contrary to *fiqh*, Kugle contends, was “the nexus where authoritative texts, cultural assumptions, and political expediency come together during a crisis...The administrative structure of courts and the legal rhetoric that flows through them disguise jurisprudence as ‘a system’ rather than revealing its nature as an interpretative experience; this disguise serves to heighten the authority of these exercises of power and to limit the ability to contest them to specialists.” Kugle, “Framed, Blamed and Renamed”, 257.

³¹⁸ Singha, *A Despotism of Law*, 31.

way of life.”³¹⁹ The differential treatment of “groups of people behaving in ways defined by the state as anti-social and, hence, against the authority and interest of the state”, Sandria Freitag notes, was presented as temporary, but in fact comprised a strategy of permanent exception, and was colonial law formation’s most conscious and productive signature.³²⁰

Ultimately, the non-Muslim Company State “arrogated the right to administer a community’s laws *to it*” by a violent and forced encoding of their own reason into the empty space of their ‘unreason’.³²¹ Because many Company administrators suspected that native collaborators were withholding information and denying their rulers full access to their knowledge, law was conceived and practiced antagonistically, as a way of excising untrustworthy native experts from its operation.³²² From this alone it is clear that the giving of law “revolved not around the *abstract* problem of truth but around distinctly *colonial* perceptions about the deceit and dishonesty inherent in Indian culture”—a quality that was unchangeable, and had to be assumed ‘as a rule’.³²³ A British magistrate, after hearing the litigants through

³¹⁹ Singha, *A Despotism of Law*, 27. A parallel covert system of colonial law, recent scholarship has shown, arose to govern crimes attributed to collectivities: “‘Covert’ in this case,” Sandria Freitag argues, “refers not so much to a secret system, as to an alternate structure whose importance was minimized by the implication that the elements of the structure were intended to be *temporary*. This alternative legal structure encompassed different court procedures, different definitions of acceptable evidence, even different punishments for particular crimes.” Freitag contends, however, that “although the control mechanisms devoted to individual crime constituted the most visible sinews of the legal system, in fact the tactics used for collective crime reveal much more about the workings of the colonial Raj.” Freitag, “Crime in the Social Order of Colonial North India”, 229-231.

³²⁰ Freitag, “Crime in the Social Order of Colonial North India”, 229-231.

³²¹ Kugle, “Framed, Blamed and Renamed”, 264.

³²² Kugle, “Framed, Blamed and Renamed”, 271.

³²³ Kolsky, “‘The Body Evidencing the Crime’”, 15. In a letter from the Bengal Government to the Court of Directors in 1827, for example, the Company blamed judicial backlogs and disarray on native corruption and deceit: “the notorious disregard for truth, so generally displayed by the natives in giving evidence, and from their want of moral principle, evils which cannot be mitigated or remedied by any

translation, would unilaterally decide what issue the case centered on, choose only the facts he felt were pertinent or material to it, and have the rest excised from the record as ‘inadmissible’. A ‘processed’ case would be handed over to the *qazi* only once the magistrate had restricted the facts it contained in this manner. The *qazi*’s job was then to use these facts only to determine whether a defendant was ‘guilty’ and indicate what punishment was proper to a crime under Islamic law; he could not suggest settlements, compromises, or community mediation, and was forbidden to engage in any interpretation or deduction that might challenge the procedural straitjacket so set.³²⁴ The legal bearing of a *fatwa* produced by *qazi* in accordance with this procedure was additionally limited to a single case. It did not affect the body of the law or set a precedent in the record; only British judges’ affirmations, negations or modifications of such *fatwas* did.

These judges, however, were floundering at the hands of what they called the *Omlah*—native servants of the Company state. Overworked magistrates with a poor understanding of native languages and social codes regulating people and communities frequently relied on confessions taken by the police rather than conducting their own inquiries. The colonial police force often acted in a *de facto* judicial capacity, taking confessions, deciding guilt, and punishing wrongdoers. In the hands of police, then, the evidence that law courts relied on in the dispensation of justice was not merely obtained: it was produced, purchased, extorted. As early as 1832, a Select Committee on East India Affairs had examined the prevalence of torture and suggested that the colonial police force be reformed and modernized to curtail the use of

direct or immediate modification of our judicial institutions.” Kolsky, ““The Body Evidencing the Crime””, 20.

³²⁴ Kugle, “Framed, Blamed and Renamed”, 284-7.

corporeal violence.³²⁵ A system that conditioned its operators to regard every native a liar and suspect every case to be false and opportunistic created conditions of artificial scarcity in the administration of justice.

Appalled that litigants would have the presumption to conflate what was good for self or community with what was relevant to ‘public advantage’—a smokescreen for colonial military and economic interest—colonial officials began to pull their time and attention back from petty crime that could precede or portend more violent crime. From the earliest years of Company administration, such pulling back had been justified as a means to spare Indians public humiliation, for being the victims or perpetrators of crimes whose severity did not merit the level of stigma inflicted on those who were required to appear in colonial courts. E. Colebrook, a Court of Circuit judge in Murshidabad, Bengal, had said as much in an 1801 report on the use of Islamic law in British courts, where he stated that the very process of seeking punishment in public particularly dishonored women, whether they were perpetrators or victims:

For the minor offences or injuries which are affected without violence, the discretionary punishment of the Mohammedan code by *tazir*, is sufficiently severe. But some small offences, particularly adultery, and breaches of the peace, had perhaps better go unpunished than be punished by a short imprisonment. *It is the common misfortune of public punishments that they degrade the sufferer in his own eyes, as well as in the eyes of the world, that a man, particularly a woman, who has been the object of punishment, loses all self-respect, all regard for a forfeited character, and that evil communication in jail, added to the obloquy of the world after release from jail, is likely to lead into a life of dishonesty, persons of original good principle.*³²⁶

Heinous crime, in short, was the only public crime; and it can be seen in the patterns of legislation which followed that a designation of heinous crime was the difference between

³²⁵ Rao, “Problems of Violence, States of Terror”, 159.

³²⁶ Colebrook was a judge of the Court of Circuit in Murshidabad, Bengal. Mr. E. Colebrook's report to James Stewart, register of the Nizamat Adalat, 17th September, 1801. “Proposition for Remedying some defects in the Mahomedan Law.” Extract from the Bengal Judicial Consultations, IOR/P/128/58.

visibility and invisibility. Colebrook had even argued that justice was not the end of a state system of punishment, and that “moral guilt” was not the proportion of its severity:

The proper end of human punishment is the prevention of crimes, not the satisfaction of justice, *for if the impunity of offenders were followed by no danger or prejudice to the state, what would it be to the magistrate that offences went altogether unpunished?* The goals and end, the motive and occasion for punishment are founded not in the guilt of the offender *but in the necessity of preventing the repetition of the offence...* a crime from which injury accrues to society must be prevented by some means or other; and consequently whatever means should be found necessary to this end, whether they be proportionable to the guilt of the criminal or not, must be adopted; on this principle equal crimes may undergo unequal punishments, or the less crime the greater punishment...³²⁷

In furtherance of these principles, by 1811, native police officers in the Ceded and Conquered Provinces had lost the ability to deal directly with even minor charges and offences. Regulation VII of AD 1811 directed “the attention of the Darogahs and of the Zemindars entrusted with the charge of the police” exclusively to “to the adoption of the prescribed measures for bringing to justice persons accused of the commission of *those species of crimes which are most injurious to the peace and happiness of society.*” Section II of the Regulation specified that “no police officer...shall hereafter receive any charge of adultery fornication, rape, calumny, abusive language, slight trespass, or inconsiderable assault”, provided that “this restriction shall not be considered applicable to cases of mayhem, actual affrays, or tumultuously assemblies of people requiring the immediate interposition of the police for the maintenance of the public tranquility.”³²⁸ Regulation III of 1812 sharply curtailed official inquiries into ‘petty’ crimes on the grounds of cost and wasted time: “with the view of further restraining the institution of prosecutions for adultery, fornication, calumny, abusive language, trespasses, and assaults, which

³²⁷ “Proposition for Remedying some defects in the Mahomedan Law.” Extract from the Bengal Judicial Consultations, IOR/P/128/58.

³²⁸ Regulation VII of 1811, *Regulations Passed by the Governor General in Council of Bengal, Vol. III, 1804-1814* (London: J.L. Cox, 1829), 452-3.

ordinarily proved to be unfounded, misrepresented, or greatly exaggerated, the Magistrates are hereby strictly prohibited from issuing any process on these, as well as charges for more heinous offences, without previously examining the prosecutor as to the specific facts of the case, and satisfying themselves that adequate grounds exist for proceeding against the accused party.”³²⁹ To prosecute petty crimes, then, the plaintiff had to pay *talabana*, or maintenance charges, for peons who served process, and also support his own witnesses. If the charge was unfounded or vexatious or malicious he could be punished. In contrast, the living expenses of witnesses who travelled to testify to heinous crimes, especially instances of organized violence, were directed to be fully paid for by the Company.

This colonial distrust of the police reveals that Indians had found workarounds to sidestep the growing personal power and discretion of the British magistrates and judges, and use the system to their own ends: most frequently to bog down long-running land or familial disputes, and to protect their own communities from those who threatened their spaces or social status. Leycester’s report, for instance, alerts us to local practices of preventative confinement, which other scholars have documented as a “middle stage between conviction and acquittal”. “In the lists of persons confined for security by the magistrates orders at Fatehgarh,” he reported, “I even find it stated that the prisoner is considered a fit subject of commitment, but *as it is pretty certain the Court of Circuit would release him, and his being at large would be dangerous to the community, he is therefore punished with six months’ imprisonment*, and ordered to be detained in custody after that for one year longer unless he gives security.”³³⁰ In this sense, a case in the

³²⁹ Regulation III of 1812, *Regulations Passed by the Governor General in Council of Bengal, Vol. III, 1804-1814* (London: J.L. Cox, 1829), 484.

³³⁰ “Reports on the Administration of the police in the Bareilly Division”. Leycester, Provincial Judge at Mynpooree, 20th March, 1815. See also Radhika Singha, *A Despotism of Law: Crime and Justice in Early*

Company's courts could become a kind of black box into which to shut inconvenient or threatening community members.³³¹ There was in these observations a certain recognition that the categories did not make sense of the social landscape; Leycester wrote: "many of the crimes in this district that are called dacoities, though coming very correctly under that head, are *not committed by professional dacoits*. They consist of attacks made through family feuds for the purpose of satisfaction and vengeance, in quarrels that have been handed down through generations. At the same time, in getting information of the perpetrators of these and other offences, there seems much supineness in the police officers, and I have endeavored to convince them, through the magistrate, that it is not mere form required of them but some actual useful service."³³²

Another problem identified with securing public space, life, and property was the antisociality and non-cooperative spirit of the inhabitants of those spaces themselves. The

Colonial India, Delhi: Oxford University Press, 1998, p. 32, p. 27; Sandria B. Freitag, 'Crime in the Social Order of Colonial North India', *Modern Asian Studies*, Vol. 25, No. 2 (May 1991), p. 230-231.

³³¹ One Moradabad magistrate, recommending that prosecutors and prisoners should be sent together to litigate a case, noted: "the evil is not confined to mere delay; for, as the prosecutor is not compelled to accompany the prisoner, it is by no means uncommon for a person to prefer a complaint against another, whom he wishes to away, to a *thanadar*, promising to attend the court in a week or 10 days, in the meantime the supposed culprit is apprehended and sent to the court: at the expectation of the time limited (if the magistrate has leisure to look into the cause) another summons is sent for the prosecutor, who again delays on the plea of indisposition, urgent business, attending a *tehsildar*, or any other frivolous excuse; when at last he does attend the court, he names several persons as witnesses, who repeat the same course of delays, and perhaps, at the expiration of several months, the magistrate discovers that the charge was wholly unfounded and vexatious...[the prosecutor] is generally too wise to attend at the finale, and conceals himself till the story is forgotten, or if punished it can be no compensation to the innocent person, who has been falsely imprisoned for a length of time by his machinations." "Reports on the Administration of the police in the Benares Division". *Records of the Board of Commissioners of the Affairs of India*, Vol. 520. IOR/F/4/520. J. Sandford, Judge of the provincial court at Benares, to Governmentt Secretary of the Judicial Department on 14th March, 1815.

³³² "Reports on the Administration of the police in the Bareilly Division". Leycester, Provincial Judge at Mynpooree, 31st July, 1815.

missionary William Tennant, in 1804, remarking on the lack of intermarriage between Indians of different castes, opined: “The separation of mankind into classes so widely distinguished as to admit of hardly any intercourse, or communication, tends manifestly to hurt their interest, by exciting unsocial and discordant passions: envy of their superiors, among the poor; contempt and aversion to the lower orders, among the wealthy and great...inssofar as this superstition tends to estrange mankind, by creating artificial forces of mutual aversion and disgust; so far certainly does it counteract the real interests of society.”³³³ As another Court of Circuit judge, Mr. Elliot, wrote in a letter about the border districts such as Agra, Indians apparently did not cooperate with each other even when their personal safety was at stake: “highway robbery by footpads is common in every part of the division; the climate renders it more agreeable to travel by night than by day, *and the natives are generally so averse to everything like arrangement or combination, that a party setting out for the same place, and at the same time, would separate here they had preceded a mile, whereby their little property becomes an easy prey to any adventurer.*”³³⁴

³³³ Tennant, *Indian Recreations; Consisting Chiefly of Strictures of the Domestic and Rural Economy of the Mahomedans & Hindoos*, 120-122. He continued that the caste system made them especially fractious judicial subjects: “Such distinctions lead not only to a shyness and aversion in the intercourse of society; But they are apparently the cause of many quarrels and animosities. The timidity and gentleness of the Hindu may, in general, prevent his fighting, boxing, or shedding of blood; but it by no means restrains him from scolding and upgrading his neighbors. In this respect they are the most litigious and quarrelsome of all men. Have two persons a misunderstanding, let them meet in the street, and they will upgrade each other for an hour together with every foul epithet of abuse which their imagination can suggest or their language supply... Their quarrels do not amount perhaps to a positive breach of the peace; being generally unaccompanied with violence; yet, as they are extremely frequent, they are a considerable annoyance to society; for they add to the asperity of human life, and strengthen the malevolent passions.” Tennant, *Indian Recreations*, 125.

³³⁴ “Reports on the Administration of the police in the Bareilly Division”. Judge Elliot to the Register to Nizamut Adalat, H. Turnbull, for the District of Agra, May 31st, 1815.

On the opposing and complementary side, William Fraser, a judge in the Delhi Territory, noted that culpability for colluding or cooperating in social violence often could not be uniformly distributed among its perpetrators in the same way that responsibility to reimburse or return stolen property, for instance, was apportioned to villages rather than individuals. “When the inhabitants of two villages,” he wrote, “upon a quarrel between two and three in the fields, rush out, men, women, and children, and join in what is called an affray; *is the woman who runs out with the hoe*, or the youth that runs out with his wooden pitchfork, and gives and receives blows, *equally guilty with the man who flies at another with a drawn sword*, and cuts off his arm or plunges it into his body?”³³⁵ Here, we see that a capacity to commit deadly violence is the sign of full agency which must be checked and curtailed to make way for the legitimate force of the rule of law—and that if women were defending themselves with agricultural implements in the fields during affrays, the risks of such public outbreaks of violence must certainly have included their own rape, abduction, and murder.

2.2: Precarious life: the privatization of household violence

If the Omlah was corrupt and obedient only to personal authority, *maulvis* and *pandits* misinterpreted their own laws, and natives in general lacked a socially cooperative spirit, Indians nevertheless had to be recruited to the legal system in more enhanced capacities in order for it to

³³⁵ “Papers regarding the administration of justice in the Delhi Territory, Vol 3-4.” *Records of the Board of Commissioners of the Affairs of India*, Vol. 1156. IOR/F/4/1156/30390. Proceedings of the second Sessions Court of Delhi Territory from 1st May to 30th June, 1822, by W. Fraser, Judge of Delhi Court.

function. Eventually the Company, overburdened by its judicial duties and seeking to reform and rationalize laws, created a sharper distinction between criminal law for public justice and civil processes for personal wrong, splitting the difference between these approaches and enabling itself to limit its jurisdiction to exclude matters of moral and social regulation it saw as immaterial to its interests. Company Regulation VI of 1832 enabled “European functionaries to avail themselves of the assistance of respectable natives in the administration of civil or criminal justice” in order to dispense with *fatwas* by Muslim law officers, the *qazis*, in certain trials.³³⁶ It provided three modes for so doing: “a Panchaet [caste/community council] of such persons, who will carry on their inquiries apart from the court and report to it the result”; two or more native assessors, who could each give separate opinions; or a jury of any number of local elites, who would “attended during the trial of the suit” and suggest “such points of inquiry as occur to them.”³³⁷ By expanding the range of interlocutors a magistrate could consult, the aim was to expand his discretionary power, giving him access to the prevailing social opinions of elites without being bound to them.

The lead-up to this distinction between public and private, however, was a process of substantive political capture of all domains that *might* prove material.³³⁸ While for the most part

³³⁶ “It is also offensive to the feelings of many persons who are subject to the government of this presidency and do not profess the Mohammedan faith, to be liable to trial and punishment under the provisions of the Mohammedan Criminal Code.” Regulation VI of 1832, 31st July 1832. Richard Clarke, *Digest or consolidated arrangement of the regulations and acts of the Bengal Government from 1793 to 1854* (London: Cox, 1855), 34.

³³⁷ Regulation VI of 1832, passed 31st July 1832. Richard Clarke, *Digest or consolidated arrangement of the regulations and acts of the Bengal Government from 1793 to 1854* (London: Cox, 1855), 34-35.

³³⁸ Singha, *A Despotism of Law*, 4. Ashwini Tambe has noted that “the colonial state’s legal system became ever more powerful precisely because property was awarded in dispute settlements. More and more people chose English courts in urban centers over caste *panchayats*, as the stakes in disputes were raised...adultery cases in early-twentieth-century Bombay [demonstrate] that grievances were taken to court when they hinged on issues of property or money. Thus, the attitudes and predispositions of English judges set precedents on questions otherwise subject to community standards.” Ashwini Tambe, *Codes of*

British administrators saw violence against Indian women by Indian men as a social concern internal to native culture, they helped enforce the sphere of domestic regulation.³³⁹ In other words, to steady, secure, and uphold a gendered order of things, early colonial law took upon itself to preserve private male sex-right, “the punitive authority which kept females chaste”.³⁴⁰ As Sandria Freitag has argued, the transformation of the South Asian social order that followed arose from “an increasing willingness by such Indians to embrace British notions of authority, which acceded to these leaders cultural control and local patronage functions, while retaining for the state the right to promulgate a single definition of moral behavior.”³⁴¹ Its own position of precarity required that the Company collaborate with multiple social constituencies in order to spread its jurisdiction: collaboration served as a way to “establish legitimacy and disguise their presence, and later as a way to secure co-optation of the ruled and exercise their power more forcefully.”³⁴² Anxiety about the competence of native men to maintain control over their households made its way not simply indirectly, but explicitly, into Company Regulations: “Regulation 7 of 1819 is revealing,” Singha observes, “for the way in which it linked the magistrate’s office to two spheres of personal authority, buttressing the ‘guardianship’ of the

Misconduct: Regulating Prostitution in Late Colonial Bombay (Minneapolis: University of Minnesota Press, 2009), 8.

³³⁹ Singha, *A Despotism of Law*, 145, 123.

³⁴⁰ Singha, *A Despotism of Law*, 145. Singha’s chapter on patriarchal authority tracks how this authority had to be “re-conceptualized in conformity to rule of law, as the condition for authorizing its sway over a ‘personal’ and ‘domestic’ sphere. In place of a wider kin authority over the women of the family, criminal regulations outlined a narrower commitment to the husband’s conjugal rights in the person of his wife. [although embedding within social and moral order implicitly gives authority to male household head to manage more diverse relationships.” Singha, *A Despotism of Law*, 7.

³⁴¹ Freitag, “Crime in the Social Order of Colonial North India”, 232.

³⁴² Kugle, “Framed, Blamed and Renamed”, 259.

head of the household over wife and minor daughter and the master's authority over servants and workers who quit work 'without good and sufficient cause'.³⁴³ In these ways, Singha argues, "the protection of bodies, especially women's bodies, remained cordoned off from the public interest."³⁴⁴

Yet despite efforts to relegate the control of women to a native 'customary sphere' and establish a 'rule of law' otherwise, rape and other crimes against women could not be entirely hidden from the Company's jurisdictional responsibility—as became evident in 1811, when a British artilleryman named John Gilliard was convicted of the rape and attempted murder of Heera, an Indian woman in Agra, "whom he confined, repeatedly raped, and then stabbed with a bayonet in the stomach, belly, and back."³⁴⁵ The cases of violence against women that found mention in criminal reports could by most measures be considered heinous crimes that regularly affected the security of life and could not be resolved or settled extra-judicially. Yet these were rarely seen as actually heinous, and instead dealt with casually; Judge Fraser reported from Delhi in 1822, for instance, that a man had been tried for murder when "in a fit of rage for some abusive language on the part of his wife, [he] cut her throat." The perpetrator confessed to the fact three or four times, was convicted by the Sessions Judge, and sentenced to transportation for life, but was then released by the Delhi Board of Commissioners, "for reasons which I have

³⁴³ Radhika Singha, "Making the Domestic More Domestic: Criminal Law and the 'Head of the Household', 1772-1843," *The Indian Economic & Social History Review* 33, no. 3 (September 1, 1996): 309–43, <https://doi.org/10.1177/001946469603300304>, 326.

³⁴⁴ Singha, *A Despotism of Law*, 29. During this early period of land reform and rationalization, women's claims to property were quickly devalued. Women were thus marked, Rochisha Narayan has shown, "as incommensurable beings whose subjecthood under law was rendered both inferior and unstable." Rochisha Narayan, "Widows, Family, Community, and the Formation of Anglo-Hindu Law in Eighteenth-Century India," *Modern Asian Studies* 50, no. 3 (2016): 866–97, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/24734784>, 869.

³⁴⁵ Kolsky, *Colonial Justice in British India*, 63.

never been able to divine.”³⁴⁶ Company officers were well aware that the ‘heinous crime’ category of “homicide not amounting to murder”, which was sometimes used to prosecute domestic killings of this kind, accounted for neither the publicity nor the premeditation of such crimes: in a letter to the Nizamat Adalat in April 1815, the Police Superintendent of Meerut reported “an extraordinary case of the bodies of a man and two women found in a hole with a stone over the aperture. These persons are said to have been killed by the father of the women in the Allahabad district in consequence of their licentious habits, and the bodies to have been conveyed across the Yamuna to prevent detection.”³⁴⁷ Yet it was rare indeed for such crimes to be traced and redressed, and convenient for them to be considered “extraordinary”.

In this period, when women typically almost only appeared before criminal courts in connection to the *hadd* offence of *zina*—crimes involving morally unlawful sexual intercourse—like adultery, rape, and fornication, the judiciary did not want to waste resources judging these crimes when magistrates’ time could be ‘better’ allocated.³⁴⁸ However, rape was gradually separated out from the other *zina* offences and designated a “heinous crime” that had to be

³⁴⁶ “Papers regarding the administration of justice in the Delhi Territory, Vol 3-4.” *Records of the Board of Commissioners of the Affairs of India*, Vol. 1156. IOR/F/4/1156/30390. Proceedings of the second Sessions Court of Delhi Territory from 1st May to 30th June, 1822, by W. Fraser, Judge of Delhi Court.

³⁴⁷ “Reports on the Administration of the police in the Benares Division”. *Records of the Board of Commissioners of the Affairs of India*, Vol. 520. IOR/F/4/520.

³⁴⁸ Crimes that fell under *zina* had to be addressed somehow because a complete withdrawal of punishment for immoral acts was seen as something that might defame the administration’s respectability. It was also difficult to relegate all crimes related to the possession of women to the civil courts or to personal laws. Singha, *A Despotism of Law*, 138-143.

From these judicial regulations we see that “disputes over domestic authority constantly put pressure on the line between civil and criminal jurisdiction...patriarchal authority had to be properly ‘domesticated’ before it could be endorsed in colonial law. Certain manifestations of patriarchal prerogative were rejected as ‘excessive’ because these were bound up in an older political order which clashed with the ideological, fiscal and pacificatory imperatives of the colonial state.” Singha, “Making the Domestic More Domestic”, 310.

referred to the Nizam Adalat for sentence if the lower court found the prisoner guilty of the charge. Regulation 17 of 1817 permitted British judges in the Courts of Circuit to convict for *zina* offenses by bypassing the consultation of an Islamic law officer and formulating independent legal opinions for the Nizam regarding punishment. Adultery, thus, became a private injury which only a husband could prosecute, while rape became a public offence that could be prosecuted even without complaint—though a magistrate was instructed to have discretion for feelings of the victim and her family. The complaint of rape was judged heinous by degree of penetration, not physical injury, and once this complaint was made, a victim could not pursue an alternative avenue of justice by asking for or presenting a *razinamah*, or out-of-court settlement. The sentence for rape could be two to fourteen years, depending often explicitly on the ‘respectability’ of the victim. Elizabeth Kolsky has shown that women who had suffered rape were cast less as victims than as a special class of witnesses to whom special standards of truth or verifiability applied.³⁴⁹ “A victim’s claim and credibility,” she writes, “required corroborating ‘circumstances of fact,’ all of which centered attention on her character, body, and behavior before, during, and after the rape.”³⁵⁰ In 1828, a British Parliamentary Act set the age of consent

³⁴⁹ In English law, the prominent jurist Matthew Hale instituted influential, strict evidentiary requirements in rape cases that concentrated on the victim. Elizabeth Kolsky writes: “a woman's prior sexual history, fresh complaint (an immediate police report), and marks of physical violence were all crucial pieces of evidence required by Hale to dispel the presumption that the victim had consented to sex and then lied about it.” This had an impact on colonial adjudication as well. “In the final analysis,” Kolsky concludes, “the colonial legal treatment of the “unsensational” crime of rape was itself rather unsensational. It largely reflected contemporary trends back home in England, which raises important questions as to what, if anything, was distinctively colonial about it. In the case of rape, it was the rule of colonial indifference that prevailed.” Elizabeth Kolsky, “The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805-57,” *The Journal of Asian Studies* 69, no. 4 (2010): 1093–1117, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/40929285>, 1095-1097.

³⁵⁰ Kolsky, “The Rule of Colonial Indifference”, 1097.

in India at just eight years of age.³⁵¹ The idea that Oriental women matured early, Radhika Singha notes, was frequently used by British magistrates to overqualify them as offenders and underqualify them as victims, especially for crimes such as rape and other forms of sexual violation.³⁵²

A notion of the sexual danger of being female in this milieu is first visible within colonial law in cases of domestic murder for jealousy and honor, and in sexual attacks upon unmarried, minor girls in public. For instance, Judge Fraser's previously-mentioned 1822 report also contains the first instance of a rape punished regularly in Delhi's court: Mann Singh, a 40-year-old Gorkha, was tried for assaulting an unnamed girl aged seven in the Hill Provinces on the Sutlej. As only 'injurious force', but not penetration, could be proved, he was punished with 4 years of hard labor in irons.³⁵³ From the instant of its appearance, this sexual danger is accompanied by a pervasive discounting of punishment: as in 1815, when the Register of the Nizamat Adalat in Calcutta ordered the Circuit Court that administered Mirzapur, Allahabad and Bundelkhand to explain "the grounds on which the judge was led to pass so lenient a sentence" in the case of a man named Koosla who was convicted of rape, with "the punishment of fifteen

³⁵¹ Rape, sodomy, and sexual intercourse with a girl under eight were capital felonies, and intercourse with a girl between eight and ten was a misdemeanor punishable with imprisonment. In England, it was a felony to have intercourse with a girl under ten and a misdemeanor to have intercourse with a girl between ten and twelve. The majority of the rape cases in this period involved girls ranging in age from three to ten years. Girls were more than twice as likely to win their cases than women were. Kolsky, "The Rule of Colonial Indifference", 1099.

³⁵² Singha, *A Despotism of Law*, 139.

³⁵³ *Mann Singh, Gorkha, 40, against Bhanee Chund, unknown*, 28, 10th June 1822. "Papers regarding the administration of justice in the Delhi Territory, Vol 3-4."

stripes and two years' imprisonment, adjudged in this case, appearing to be inadequate with reference to the heinous nature of the offence of which the prisoner has been convicted.”³⁵⁴

Simultaneously, those who defended others from rape and inflicted violence in the process could face punishment themselves, unless *they appealed for an exception*. Charles Metcalf, the Civil Commissioner of Delhi, wrote to the Judicial Secretary in Calcutta to confirm the sentence he had passed upon a plaintiff named Roop Das Bairagi, who was charged with wounding a man named Sitaram in February 1826, and convicted to be imprisoned for life, with hard labor in irons, in the jail of Alipore near Calcutta.³⁵⁵ Roop Das had claimed to be defending his wife from rape, which had caused him to wound Sitaram, but Metcalf did not believe he had supplied sufficient evidence to prove so. Eventually, his superiors overruled him, but as an exercise of mercy rather than rule: “Adverting to the *fatwa* of the Law Officer, the strong presumption afforded by the confession of the prisoner, and the evidence of his wife before the *thanadar* and the Magistrate, that the prisoner committed the crime with which he is charged under the strong provocation of finding the prisoner Sitaram in the same room with his wife at night, *who accused him of having had criminal connection with her by force*, the Vice President in Council deems the present to be a fit occasion for the exercise of mercy and is pleased to resolve that the

³⁵⁴ *Mann Singh, Gorkha, 40, against Bhanee Chund, unknown, 28, 10th June 1822. “Papers regarding the administration of justice in the Delhi Territory, Vol 3-4.”*

³⁵⁵ Case sentenced on 15th July 1826. Shakespeare, Secretary of Government in the Judicial Department, writes back to Charles Metcalf, Civil Commissioner of Delhi, on 1st March, 1827. “Papers regarding the administration of criminal justice in the Delhi Territory - question of the powers of magistrates, etc. etc.” *Records of the Board of Commissioners of the Affairs of India*, Vol. 1316. IOR/F/4/1316/52131.

sentence based upon the prisoner Roop Das Bairagi be remitted, and that he be released from confinement.”³⁵⁶

These interactions, and legal reforms in the late 1820s and early 1830s, reflect the Company’s deep frustration with the particularities and inefficiencies of the system of province-based Courts of Circuit and Appeal. A Regulation passed in 1829 to place the judicial administration of the regions furthest north from Calcutta under the control of the Delhi Resident stated that these courts, “partly from the extent of country placed under their authority, and partly from there having to discharge the duties of both civil and criminal tribunals”, had “failed to afford that prompt administration of justice which it is the duty of government to secure for the people”, leaving “a great arrear of cases under appeal...accrued in all the courts to the manifest injury of many individuals, and to the encouragement of litigation and crime. The Judges of Circuit...do not possess sufficient powers, nor have they the opportunity of acquiring sufficient local knowledge to enable them adequately to control the police or protect the people.”³⁵⁷

Generalized judicial chaos is evident, however, as another Regulation just two years later appointed a separate court of Nizamat Adalat for the Western (later called the North-Western) Provinces in the city of Allahabad, and transferred authority over these northernmost districts—Meerut, Saharanpur, Muzaffarnagar, and Bulandshahr—back away from the Delhi Resident. Just one more year later, in 1832, the entire Delhi Territory was annexed to the jurisdiction of the

³⁵⁶ “Papers regarding the administration of criminal justice in the Delhi Territory - question of the powers of magistrates, etc. etc.” *Records of the Board of Commissioners of the Affairs of India*, Vol. 1316. IOR/F/4/1316/52131.

³⁵⁷ Regulation I of 1829. Richard Clarke, *Digest or consolidated arrangement of the regulations and acts of the Bengal Government from 1793 to 1854* (London: Cox, 1855).

Nizam Adalat at Allahabad, creating the incipient outline of what would become the North-Western Provinces and Oudh, the modern-day state of Uttar Pradesh.³⁵⁸

From the 1830s on, British colonial rule in India underwent a dramatic restructuring and centralization more generally, heralding a period of sustained and intensive legal codification that lasted over fifty years, continuing after the transfer of power from the East India Company to Queen Victoria's government in 1857. Codification was made possible by the Company's Charter Act of 1833, which instituted major structural, substantive, and procedural changes. In place of regional legislatures, a centralized Legislative Council was created to make laws for all the inhabitants of India. Comprised of the Governor-General's Executive Council and the newly created position of Law Member, the Legislative Council was empowered to pass territory-wide laws as "Acts of India." Provincial governments lost their legislative authority, and the Regulation period—in which the Bengal, Bombay, and Madras Presidencies passed separate and often conflicting rules and regulations—came to an end.³⁵⁹ Thomas Babington Macaulay, the framer of what would become the Indian Penal Code of 1860, served on the Council as India's first Law Member and head of the first Indian Law Commission, which convened at the British Parliament's expense to examine, reform, and codify the colony's criminal law. Terming the colonial administration's prior accommodation of Islamic judicial principles and jurists "defective and inconvenient", the Law Commission under Macaulay produced a first draft of their reimagined criminal code in 1837—the preface of which notably criticized the Regulations of the Bombay Presidency for classing "all assaults which cause a severe shock to the mental

³⁵⁸ Regulation VI of 1831 and Regulation V of 1832. Richard Clarke, *Digest or consolidated arrangement of the regulations and acts of the Bengal Government from 1793 to 1854* (London: Cox, 1855), 18-32. The India Act XXIV of 1837 appointed a separate Superintendent of Police for the province as well.

³⁵⁹ Kolsky, *Colonial Justice in British India*, 75.

feelings of the sufferer” with “the atrocious crime of rape”.³⁶⁰ This draft formulated a universal legal definition of rape for the territory of India, and assigned it a punishment of imprisonment between two and fourteen years as well as a fine:

359. A man is said to commit “rape” who, except in the case hereinafter accepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions;

First, against her will;

Secondly, without her consent, while she is insensible;

Thirdly, with her consent, when her consent has been obtained by putting her in fear of death, or of hurt;

Fourthly, with her consent, when the man knows that her consent is given because she believes that he is a different man to whom she is or believes herself to be married;

fifthly, with or without her consent, when she is under nine years of age.

Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. Sexual intercourse by a man with his own wife is in no case rape.³⁶¹

In one of the only detailed treatments of early colonial rape law in South Asia—albeit in the eastern province of Bengal—Elizabeth Kolsky makes the important observation that this law, which passed almost unchanged into the enacted Penal Code in 1860, introduced sentencing guidelines that were more lenient than both the existing law in India (which punished rape with death) and England (death till 1841, and transportation for life after).³⁶² Thus, although the Code was ostensibly established to restrict the judicial discretion of magistrates within more regular and procedural bounds, the wide latitude given to sentencing those convicted of rape was defended by the Law Commissioners precisely in order to align punishments with subjective assessments of the social position of litigants: “On the one hand... The chaste high caste

³⁶⁰ *A Penal Code Prepared by the Indian Law Commissioners, and published by command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press, 1837), 3-4

³⁶¹ *A Penal Code*, 92.

³⁶² Kolsky, “The Rule of Colonial Indifference”, 1099

female...contaminated by the forcible embrace of a man of low caste, say a Chandala or a Pariah. On the other hand...the woman without character...easy of access. In the latter case...the offender ought to be punished; but surely the injury is infinitely less in this instance than in the former.”³⁶³

Codification, therefore, “was not intended to correct or control ‘common’ forms of gender violence” in a uniform way, Kolsky argues; instead, its most “important and discernable impact” is that it “created a set of evidentiary requirements and a body of legal decisions that were *as harsh* on rape victims as the precolonial Islamic system was presumed to be”. With its stringent requirements for proving *hadd* crimes such as *zina*, Islamic law was found to be unworkable in Company magistrates’ practice, while at the same time, as I have outlined, wave upon wave of legal regulation was intended to target the perceived inconsistency, leniency and permissiveness of the ways in which the Indian law officers who assisted the Courts applied and interpreted Anglo-Muhammadan law. The Company’s push for codification along modern lines and British legal principles sought to define and prove crime in ways that increased conviction through efficient procedure as well as by disincentivizing malicious and false complaints. Yet what happened in fact, Kolsky shows, is that “conviction rates in rape cases continued to decline into the twentieth century as the colonial legal system was modernized and rationalized.”³⁶⁴

³⁶³ C. H. Cameron and D. Elliott, *Second Report on the Indian Penal Code* (Calcutta: W. Ridsdale, Military Orphan Press, 1847), Vol. 28, 79.

³⁶⁴ Kolsky, “The Rule of Colonial Indifference”, 1097.

2.3: “Coolly proceeding on her journey”: A victim’s testimony

Subsequent chapters of this dissertation will trace this declining access to justice for rape over the course of the nineteenth and early twentieth centuries, and will build on the analysis of the particular conjunction and internal contradiction within colonial discourses of law and order that I have been interweaving in this chapter so far: namely, the simultaneity of indifference to rape and attention to securing life and property in public space. Amid the declining conviction rates for rape that Kolsky has documented even in the first half of the nineteenth century, I close this chapter with an analysis of a rape trial that not only succeeded in winning the offender’s conviction, but also offers detailed evidence of its causes of success. Here I will discuss the 1843 trial in Ambala of Devi Singh, a Jat landowner from the town of Chhachhrauli in the foothills of northern Haryana, which is the only case record I was able to find for the early colonial period in Delhi’s hinterlands which contains the direct testimony of the victim herself, along with a full transcript of the Sessions Court trial—which was conducted with the aid of five Indian jurors, including a *maulvi*, and featured several witnesses—rather than a summary version presented before the Nizamat. *Goolabee vs. Devee Sing* illustrates both how the risk of rape disrupted everyday life for working women, as well as the level of social support that was required to endure logics of judicial discretion that “treated the woman in question as the polluted vessel of family honor and identified the men of her family as having to deal with the public face of humiliation.”³⁶⁵

In the summer of 1843, on a day in early May, sixteen-year-old Gulabi had left her home village of Maund Kheri at noon and walked to Chhachhrauli, about three and a half kilometers

³⁶⁵ Singha, *A Despotism of Law*, 249.

away. She was carrying a linen sheet that had been given to her father by a trader from another nearby town, Malikpur, to be dyed, and had been sent to town to deliver it as well as to buy work supplies for her father. This sheet, which was torn and ruined when Gulabi returned home, ended up being a key piece of evidence to back up her story. On the 8th of November, in the district court of Ambala, she deposed in front of John C. Erskine, the Sub-Commissioner of the North Western Frontier region, and relayed what had happened:

I met the prisoner Devi Singh on the way. He asked me where I was going, I replied to Chhachhrauli—The prisoner seized me in his arms, and carried me into the thicket, where he forcibly violated my person in spite of my screams. The prisoner threatened to take my life. After this I went over to Chhachhrauli to the house of my maternal uncle. My cousin Darbari purchased me four *pice* worth of alum and logwood and my cousin Jumna, took me along with him back to Maund Kheri. The *thana* at Bilaspur became apprised of the affair, and the *thanadar* forwarded prisoner and myself to the court. I had a nose ring valued at ₹3. I am not certain whether I lost it in the struggle, or whether the prisoner took it.³⁶⁶

When Gulabi eventually arrived at the house of Sukhlal, her uncle in Chhachhrauli, her cousin Jumna recounted that “she said nothing in my presence”, but that she “may have related her story to Sukhlal and to some other women.” She also told Sukhlal’s son, her other cousin Darbari, that Devi Singh had assaulted her; and what she conveyed to Jumna was “her inability to return alone to her house.” He accompanied her home to Maund Kheri two hours later via the same road she had taken earlier that day. In her cross-examination by the Indian jury, we see that although Gulabi was married and not a virgin, her testimony was given credit because she immediately

³⁶⁶ “Respecting the Trial of Davee Singh for Rape and Theft of a Nose Ring”. *Extract from the narrative of the proceedings of the Honorable the Lieutenant Governor of the North Western Provinces in the Foreign Department for the months of October, November, and December 1843 under date the 15th May 1844*. Government of India: Foreign, IOR/F4/2065, No. 94733, para 30-32. John C. Erskine, Sub-Commissioner Northwestern Frontier, to Lieutenant Colonel Richmond, Agent to the Governor General North Western Provinces, dated 14th November 1843. Erskine forwards the English translations of the proceedings of the case. “The small voice speaking in a certain undertone, as if in pain, is pitted, in this instance, against the privative mode of statist discourse, a commanding noise characteristically male in its ‘inability to hear what the women were saying.’” Ranajit Guha, *The Small Voice of History: Collected Essays* (Bangalore: Distributed by Orient Blackswan, 2009), 313.

complained to her male relatives about what had happened, and because her husband, who lived in Raipur and had not co-habited with her for over a year, visited her immediately after the incident occurred—suggesting that the support or concern of these male kin indicated she enjoyed social respect and had honor to lose.

When did you relate to Darbari the violence which prisoner committed upon you?
I arrived crying. Darbari asked me what was the matter; I replied, that Devi Singh Jat, had violated my person by force.
Are you married?
I have been married these five years since.
Have you cohabited with your husband?
Yes, and returned from my husband to my father's house...
Where was your husband on the day Devi Singh committed the violence?
My husband also arrived with his father at Maund Kheri.³⁶⁷

Gulabi's father Gusseetoo, a 50-year-old linen printer and dyer, backed up her story using the language of *zina*: "My daughter Gulabi on the instant told me face to face, that Devi Singh had *forcibly committed adultery* with her." He testified that Devi Singh lived about a hundred paces from his and Gulabi's own family home, which was "situated behind the place appropriated to public business", but had never visited it. He had been ordered by Devi Singh's mother and sister to dye his wedding garments, for which he required the materials he sent Gulabi to fetch. When she came back and related what had happened, he testified, "I desired her to keep quiet; the affair, however, became 'noticed' in the village. I remarked to Jeet Ram *chowdhery* [the village headman of Maund Kheri] *that our daughters and daughter-in-law went alone through the village*, and asked him to call Devi Singh, and question him on the subject. Jeet Ram did not do so in my presence." Despite the headman's disinterest in escalating the case, it appears that social pressure in Maund Kheri to hold Devi Singh to account, likely from the male relatives and kin of Gulabi, eventually forced the authorities' hand. Noor Khan, the

³⁶⁷ "Respecting the Trial of Davee Singh for Rape and Theft of a Nose Ring".

chowkidar or village watchman of Maund Kheri, testified that “the whole village was in an uproar because prisoner Devi Singh Jath had forcibly violated the person of Musammat Gulabi in the jungle.”³⁶⁸ He could not find Devi Singh, and so reported the incident to Bhajan Lal, the *jamadar* of the police *thana* in the market town of Bilaspur, who mobilized police to apprehend and take him away. It was “the time for threshing and winnowing the spring harvest”, and Bhajan Lal noted that Devi Singh was “a Jath whose threshing floor is distinct from the others”—perhaps indicating both his higher status and the fact that villagers could not vouch for his presence at the harvest to provide him with an *alibi*. Bhajan Lal also noted “that the whole village was indignant at the outrage. The *thanadar* told me that the case was heinous, and directed me to proceed instantly. I accordingly went to Maund Kheri and summoned the *zamindars*. All the people of the village were collected together, saying that such an outrage should not be permitted in the village, or it would go to ruin. I inquired who was the perpetrator of the violence, all replied that Devi Singh Jath was...”

Devi Singh had ‘confessed’ at the *thana*—his statement from the 4th of May reads “I did not obtain her consent. I seized her, and forcibly committed the act in the jungle. She screamed, but there was no person nigh”—but pleaded not guilty at Erskine’s court. He claimed that he was “collecting the produce of my fields” at the moment of the crime, and alleged that Bhajan Lal had asked him for a ten-rupee bribe, which he refused to give. The root of the case, Devi Singh contended, was a dispute over the cost of services: “My wedding garments had been given to Gusseetoo father of prosecutrix to be dyed. The day previous to my apprehension my mother had had an altercation with Gusseetoo, and the latter through malice, referred a complaint to Jeet

³⁶⁸ Testimony of Noor Khan, son of Sultan Khan, caste Rajput Mussalman, inhabitant of Jamalpore Ilaqa Ludhiana, *chowkidar* of Maund Kheri. In “Respecting the Trial of Davee Singh for Rape and Theft of a Nose Ring”.

Ram Chowdharee that I had committed a rape upon the person of his daughter, and had me made prisoner. Jeet Ram prior to this bore enmity against me.” However, both his character witnesses—Jat men from Maund Kheri—abandoned him, stating identically: “He was guilty of no offence before. I don't know what has happened this time.” Although Erskine and his jury dismissed Devi Singh’s allegation of malice and his story of conflict over the cost of a commissioned service, it appears that he had raped Gulabi in a clear act of retaliation against her father, in order to show him his place.

The jury had two questions for the witnesses: whether Gulabi “[complained] of sustaining any loss at the time she related the violence done to her person”, and whether they had observed “that any portion of her dress was torn”. The terrain was described to them as “thicket and underwood”, but many witnesses, including Gulabi’s cousins, could not recall whether her dress had been torn or her nose ring had been stolen and missing when they saw her. Moreover, the witnesses who had countersigned Devi Singh’s confession to the police—two *mahajans* of the nearby town of Bilaspur—revealed they had not even read what the confession said, and were unclear what crime he had committed. As a result, they recommended that Devi Singh be found not guilty: “there being no eyewitness to the actual commission of the rape by prisoner, we are of the opinion that the charge is not proven. However, *in consequence of the suspicion which hangs over prisoner as to his having committed the offence laid to his charge, his liability to punishment rests with the state.*”³⁶⁹ This clearly indicates that elite Indian communities being called upon to advise in these cases were sticking to the evidentiary standards of *zina* as a *hadd* crime rather than those of rape as a heinous crime, but making allowances for community feeling

³⁶⁹ The jurors were Bishen Das, Gholam Hyder, Dowlut Ram, Geendah Raie, and Moulvee Faiz “Respecting the Trial of Davee Singh for Rape and Theft of a Nose Ring”.

that placed ‘suspicion’ on an offender, deeming this worth a discretionary punishment.

Lieutenant Colonel A.F. Richmond, an Agent to the Governor General for the North Western Frontier, wrote to the government of the North Western Provinces that he agreed with the jury that the charge of rape, which required proof of force, was not substantiated: “indeed had it been by violence, it is more than probable that the prosecutrix would have at once returned to her family and made her complaint instead of *coolly proceeding on her journey* and completing her purchase at Chhachhrauli as detailed in the evidence.”³⁷⁰

In Sub-Commissioner Erskine’s opinion, however, the jury appointed to assist him had not considered that the witnesses, both shopkeepers press-ganged from the local town market, were indifferent to the case’s outcome due to inconvenience: “this class of persons are notoriously averse to being called on as subscribing witnesses to thana depositions. The personal inconvenience attending, which although unavoidable, is apparent...induces them to say as little as they possibly can when called to verify their signatures in court.”³⁷¹ He asked the Nizamat to overturn the jury’s recommended verdict and imprison Devi Singh: “a case of rape can very rarely be proved by the evidence of eyewitnesses to the fact: and the substantiation of the charge therefore must depend generally upon circumstantial or presumptive evidence, otherwise 99 out of 100 culprits charged with offences of this description would evade the penalties they have rendered themselves obnoxious to.” Erskine went on to present the circumstantial evidence that

³⁷⁰ “Respecting the Trial of Davee Singh for Rape and Theft of a Nose Ring”. Colonel A.F. Richmond, an Agent to the Governor General for the North Western Frontier, to R.N.C. Hamilton, Secretary to the Government of the North Western Provinces, dated Camp Ludhiana, 28th November, 1843.

³⁷¹ Erskine also added: “Moreover it is nearly incredible that these witnesses should not have heard at the thana of their own village, the particular offence charged against prisoner: and impossible to believe that they should not have ascertained the point, while waiting for several days in company with their neighbors to give their respective depositions before the sessions court.”

he considered most pertinent to prove Gulabi's version of events: "*she is of a different caste from the latter*, while no enmity between the parties is alleged beyond the unsupported statement made before this court by prisoner". The malicious furtherance of a dispute over the cost of clothes—what I treat in the next chapter as a form of 'punitive self-harm'—"would be quite insufficient to induce prosecutrix and her father who fill a respectable position in society, falsely to proclaim to the world such an act of disgrace to the family as the violation of the person of prosecutrix."³⁷²

In these early chapters, I have outlined and explored the British colonial state's disciplinary orientation toward the Ceded and Conquered Provinces—and later Punjab, the North-Western Provinces, and Oudh—as lawless badlands whose populations, from aggrieved princes and landlords down to organized criminals, were collectively invested in cycles of honor-driven feuding that violated the orderly and productive extraction of economic surplus by instilling conditions of fundamental public unsafety. Although such feuds regularly featured abductions and attacks upon women, and could create specifically gendered climates of insecurity, the problem and presence of sexual violence was typically excluded from categories of criminal events that justified exercising state power through forms and conditions of legal exception. In this early period, rape was only glancingly depicted as an instrument of group violence or collective feud in colonial courts—and barely showed up at all in early crime reports from Judicial Commissioners or dispatches from local British Residents. The social risks taken by plaintiffs to prosecute rape under the laws of the new regime were obscured by the assumption that rape was an arbitrary and inevitable crime whose impacts were felt solely by a victim and her family. The erasure of social negotiations surrounding the commission and

³⁷² "Respecting the Trial of Davee Singh for Rape and Theft of a Nose Ring".

punishment of illicit sex, and the absence of attention to structures of group complicity in rape—hyper-present in legal campaigns against phenomena such as thuggee, dacoity, infanticide, kidnapping, sati—changed the paradigm within which sexual violation could be claimed or redressed, and transformed the stakes of maintaining and protecting female chastity, cementing the imperative to seclude respectable women from public life. Collectivized grievance surrounding an act of rape eluded legal accommodation: in criminal law, there was only the victim and the state, admitting no smaller social enclosures sustained or enforced by the policing of women.

Chapter 3: Repetition and Compulsion

The previous chapters narrated the transition between pre-colonial legal regimes and the establishment of the Company's rule of law, exploring how the perverse incentives of colonial law critically influenced rape's meaning and rape's consequence. I argued that the East India Company's arrogation of all power of legitimate violence to itself as a paramount sovereign did not effect a reduction in social violence, but provoked its proliferation in the spaces and conditions of abandonment that fell outside the boundary of the visible universe of heinous crime—that is, crime that was worth reducing as a matter of state interest, and therefore 'public'. In these conditions, rape was governed as nuisance and distraction: a crime that only occurred in public—ideally in the presence of several witnesses—but was not a public crime. Incompletely differentiated from adultery and other 'moral' offences against private persons under the hybrid Anglo-Muhammadan regime of law, it long lacked definition, ensuring that the prosecution of rape was wholly contingent on local magistrates' discretion. But a 'rupture' of sorts was incipient; when the Indian Penal Code was passed into law in 1860 after more than twenty years of revision by the Indian Law Commission, it formally established an English common-law definition of rape as the law of the land. The age of consent for statutory rape was raised to ten and the punishment for rape was set as either transportation for life or imprisonment for up to ten years.³⁷³ The impacts of this age of codification upon the problem of rape in India's modern history have been definitive and long-lasting in both rule and precedent: for instance, Section

³⁷³ Elizabeth Kolsky, "'The Body Evidencing the Crime': Rape on Trial in Colonial India, 1860–1947," *Gender & History* 22, no. 1 (2010): 109–30, <https://doi.org/10.1111/j.1468-0424.2009.01581.x>, 109.

155(4) of the 1872 Indian Evidence Act, which remained in force until 2002, allowed defense lawyers to present evidence about a rape survivor's character and sexual history in order to suggest that non-virgins could not be raped.³⁷⁴ Similarly, it was only in 1945 that the old 'eyewitness requirement' which had carried over into modern law in ghostly form from Anglo-Muhammadan law—mandating that the testimony of girls raped by strangers be corroborated by at another witness—was dismissed, with a High Court pointing out that “children who alleged being raped by strangers could have no ulterior motives and were no less believable than children who alleged being robbed by strangers.”³⁷⁵ Modern law, in other words, carries repackaged, transfigured strains of the archaic, elevating them to a perhaps unprecedented level of determinative power and sanction in Indian social life. The form of modern law is a form whose presence is apparent less as rupture than as re-production.

This chapter addresses cases of rape from the 1850s that were beginning to be recorded and signified in the forms and frames of modern law. During the war-filled decade running up to the dissolution of the East India Company, the emergence of the British Raj, and the legal era of the Indian Penal Code, the heretofore patchworked and irregular judicial practice of the district and Nizamat courts began to 'modernize' in anticipation of a uniform criminal statute that constituted the territory of India as a single juridical field with a standard legal procedure. By exploring how this modernization proceeded in the decade before the IPC became law, I attempt to give a sense of how long the rape-normalizing logics chosen to be implicitly admitted into India's legal system have maintained a hold on the due process of the law, even as their manifestation has ebbed and flowed along the gradients of state priority and power. Before 1860,

³⁷⁴ Kolsky, “The Body Evidencing the Crime”, 118.

³⁷⁵ Kolsky, “The Body Evidencing the Crime”, 119.

the basic incorporation of these logics had already been fixed through distinct processes of legal adaptation, and a network of institutions and epistemic practices were well underway in producing the ‘modern law’ that has prevailed over the land ever since. Elizabeth Kolsky has argued that the East India Company’s statutory Regulations—the predecessors to the IPC—had already imported the assumptions of the 17th-century English jurist Matthew Hale into the Indian context with little to no discernible change. Hale instituted deeply strict and influential evidentiary requirements for rape cases within English law—requirements that concentrated on the victim, who was evaluated less as a victim than as a special class of witness to whom singular standards of affective authenticity and truth-verification applied in order to “dispel the presumption that the victim had consented to sex and then lied about it.”³⁷⁶ This importation reflects what Nasser Hussain, in his study of the emergence of a modern rule of law in colonial India, observes to be the only point of scholarly consensus on modern law: that its “content and character” are “essentially normative”. He continues: “That is not only to say that law consists of rules stipulating expected behavior but also that such rules are themselves validated out of a theory of power that *is itself normative, that inscribes itself deep into social life and seeks its legitimacy and validity by regulating that life in an expectant and improving direction.*”³⁷⁷

In this chapter, I turn to the deep entanglement of the normative power of the colonial state and its law with local networks of retributive punishment and coercion—a social world in which rape was both a crime and a routinely-prescribed penalty for previous crime or offence.

³⁷⁶ Elizabeth Kolsky, “The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805-57,” *The Journal of Asian Studies* 69, no. 4 (2010): 1093–1117, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/40929285>, 1095.

³⁷⁷ Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law*, electronic resource, (Ann Arbor: University of Michigan Press, 2019), <http://www.columbia.edu/cgi-bin/cul/resolve?clio17645693>, 126.

The tracelike archival presence of these tacitly-approved networks of punishment suggests that many colonized Indian communities, and the state intermediaries and enforcers tasked with ruling them on the ground, were primed by legal dysfunction to impart social messages in the language of sexual violence as a matter of policy, norm, and the everyday accepted practice of power. But as I have noted before, from the beginning of this project, I have been confronted with questions of archival feasibility: whether it is possible to derive a complex social model of rape, or even a complex definition of rape, from the allegedly scanty source materials of state-centric colonial archives. The verdict of these archives themselves, their dominant discourse, is almost exclusively authored by state-appointed experts of colonial difference who insisted that in India, most rape was not ‘real’. This general principle was fueled and augmented by the rising importance of the medico-legal and forensic disciplines in the criminal justice system in colonial India from the 1850s onward. In 1856, a critically influential medico-legal treatise, *A Manual of Medical Jurisprudence for Bengal and the North Western Provinces*, was published by Norman Chevers, the Secretary of the Medical Board in Calcutta, who had served as a Civil Surgeon in Company courts. The widespread use of Chevers’ manual reflected the growing importance to Company officials of legal precedent, professional opinion, and expert testimony relative to other forms of evidence for crimes upon the body in a territory inhabited by subjects who were seen as inveterate liars. Characteristically, the text dismissed Indian social life as a degenerate aggregation of “ingenious, calm-tempered, indolently pertinacious sensualists” who showed a “ruthless disregard of the value of human life”, redirected the law to ‘scientific’ standards of

evidence and investigation, and constricted the reality of rape to the correct reading of female body parts.³⁷⁸

The first passages of Chevers' chapter on rape, for instance, focused on menstruation as a sign that the victim was of a consenting age and a measure of her ability to tolerate sexual intercourse without the need of forcible penetration. He advised medical officers that though a new, higher fixed age of consent was soon to be established as law in the IPC, they would be asked in courts not how old the rape victim was, but whether she had reached puberty.³⁷⁹

Chevers also authoritatively established that laceration of the vagina and other severe injuries to genitalia were the required standard of proof for the rape of children under the age of consent or under puberty. Even with this high threshold of violent injury, he nevertheless held that physical injury alone could not prove that any victim "accustomed to intercourse" had experienced rape in a society where girls married so young; he wrote in regard to rape that all allegations except those perpetrated upon the youngest children required "utmost vigilance":

³⁷⁸ Norman Chevers, *A Manual of Medical Jurisprudence for Bengal and the North-Western Provinces* (Calcutta: F. Carbery, Bengal Military Orphan Press, 1856), 1-8.

³⁷⁹ "The rule practically carried out in the courts of this country would appear to be that consent on the part of the female, when under puberty, cannot be received as any mitigation of the crime. It may not be considered that this arrangement takes place with the consent of these unhappy children, indeed we have some very strong evidences to the contrary; Still, while such a custom exists in the country, the rule, although not less strictly enforced in the cases of unmarried children, should be and indeed is somewhat more cautiously dispensed in the cases of those who are known to have lived in their husband's houses—whatever their ages may be." Chevers, *Manual of Medical Jurisprudence*, 455-67. He also linked early marriage to the fast arrival of puberty around the ages of 11 and 12, and noted that some Nizamat judges held that this practice meant that the assent of children must be a material factor in decisions about whether rape was committed, since female children were sexually active with their spouses. In *Defining Girlhood*, Ashwini Tambe argues that "Imperial ideologies deeply shaped this reasoning: the notion that menstruation and sexual maturation occurred earlier in warm climates was popular largely because it was consistent with the broader imperial narrative of the greater sexual proclivity of "tropical" people. Early sexual maturity was coded as a sign of fecundity, equated in prevailing ideologies with moral lassitude. Describing "tropical colonies and Eastern countries" as sites of early puberty affirmed a link between sexual precocity and civilizational inadequacy". Ashwini Tambe, *Defining Girlhood in India: A Transnational History of Sexual Maturity Law*, First (Urbana: University of Illinois Press, 2019), 18.

The class of cases which is likely to occasion the medical officer most uncertainty in this country, is that in which, *although the great body of the evidence tends to establish the fact that girls past the age of puberty and accustomed to sexual intercourse have been violated, some of the statements of the prosecutrices and their friends are not susceptible of confirmation by medical evidence.* In many of these instances, it appears highly probable that much additional colouring is given to the facts, *with a motive which is self-evident.* This mixture of falsehood with truth, however, calls for the utmost vigilance on the part of the medical officer in a large proportion of his medico-legal investigations.³⁸⁰

Chevers laid the groundwork for medico-legal writing on rape in the colony to focus—when courts focused on rape at all—on female dishonesty and false complaints. Diagnosing Indian women as hysterical liars and unchaste sensualists in their courtroom testimony, medical experts exposed and projected the social and mental pathology of colonized people at large:

“Examinations of victims were guided as much by scientific methods and the search for physical facts as they were by ethnographic observations and ideas about Indian culture. Instead of narrowly addressing the scientific ways in which a physician could establish whether a particular female had been raped, colonial manuals meditated at great length on the abstract question of whether Indian women of particular castes and classes could be raped and proposed various ways to determine when they were lying.”³⁸¹ This scholarly and archival picture of rape in the mid-nineteenth century, which foregrounds the systemic distrust, testimonial smothering, and medico-legalization of victims, is one that questions not only the feasibility of finding an alternative picture, but also the necessity or point of doing so. If the spaces and social contexts within which rape occurred were evoked almost exclusively to assert rape’s non-reality, what could this possibly tell us about *their* own reality? If the objective of historical work that engages

³⁸⁰ Chevers, *Manual of Medical Jurisprudence*, 473. On p. 468-71, Chevers discusses whether children are even physiologically capable of being completely penetrated, and whether degrees of penetration matter for a charge of rape, concluding that “proof of penetration of the vulva, [even] without rupture of the hymen, is sufficient to substantiate a charge of rape” in the Nizam courts of the Bengal Presidency.

³⁸¹ Kolsky, “The Body Evidencing the Crime”, 113.

fragmentary evidence is to “find a way to craft a history that would speak to the conundrum of the archival trace, not to decode it (because we cannot) but more to embrace its roving and fractal complexity”, what would it mean to begin by acknowledging a pure absence of complexity in the state’s treatment of rape, which engenders an archival surplus that “repeats itself in a historical calculus so minor, so unspectacular, that it does not appear to excite historical recuperation”?³⁸²

This chapter focuses squarely on that question. Significantly, the 1850s was the decade in which the Nizamat Adalats of both Bengal and the North Western Provinces began to systematically publish records of all the cases they had reviewed as final courts of appeal, where they had previously published only selected and precedentially influential cases.³⁸³ Previous scholarship that focuses on Bengal has utilized the increased number of rape cases that appear in these records statistically, documenting a declining rate of successful convictions for rape. I have chosen to focus here not on the representativeness of numbers, but on juxtaposing the experience of reading a random sample of this archive with that of seeking out an archival exemplar, a fragment or trace of non-state logics that can be salvaged to reveal “a warehouse of the imaginaries of property, caste, and sexuality”.³⁸⁴ The chapter begins by outlining an archetypal narrative of rape that the Allahabad-based Nizamat Adalat of the North Western Provinces produced in abundance in the decade before the new Indian Penal Code was made law, and

³⁸² Arondekar, *Abundance*, p. 67 and p. 17

³⁸³ Kolsky, ‘Rule of Colonial Indifference’, 1104. Kolsky argues, mirroring Hussain, that “the growing insistence on alternative forms of evidence to verify a woman's charge accompanied the rationalization and modernization of law, raising important questions about the gendered consequences of colonial modernity.” She also documents a change in the kinds of evidence sought by the courts, which “increasingly focused on the caste tribe, strength, attractiveness, and supposed intelligence and respectability of female victims to determine the probability of a rape having occurred.”

³⁸⁴ Anjali R. Arondekar, *Abundance: Sexuality’s History*, (Durham: Duke University Press, 2023), 72.

explores what work this archetype did to obscure the social landscape of rape. Second, it narrates one of a few scarce but compelling counter-cases—a case at whose heart lies a story of rape prescribed, threatened, organized, aided and abetted; a case that never counted and was never named as rape, through it lay adjacent to rape cases in the same archive—and speculates as to whether this counter-case offers a more robust window into the work of sexual violence in everyday life. In short, I argue that the run-up to codification, and the thick contexts of rape that escaped it, created a hyper-precedented legal form that anticipates both the relentless and proliferating recurrence of rape in modern India and the ‘stuckness’ that many of us experience when we survey the global normalization of sexual violence.

3.1: The case of the case: rape in the *Nizamat Adalat*

By the early 1850s, the form of the successful rape case appeared already so fixed that such cases were reported to the Nizamat Adalat in a thoroughly self-referential narrative framework. The judicial consultation of the Nizamat was mandatory for certain categories of serious, or ‘heinous’, crime, in which the law required the higher court to confirm and approve the sentence of punishment recommended by the judge who originally tried the case. By the 1850s, other violent crimes falling within this category tended on the whole to receive relatively lengthy and detailed contextual exposition in Sessions Judges’ letters of reference—with each case individuated from another by attempts to discern plausibility, motive, milieu and social environment from the particular circumstances of the crime—even as they were interpretively re-

agglomerated by the axiomatic assumptions of colonial difference, such as the ethnological touchstone ‘native mendacity’. Reports of rape, on the other hand, are distinctly *non-different not only from British precedent, but also from each other*. It is impossible to miss their trend to identity; each is a study in brevity, uniformity, and substitution. In these judicial letters, ostensibly concerned with showing the specific reasoning behind each recommended sentence, rape is collapsed into serial repetition, with scores and scores of entries for these cases each rarely exceeding the length of a page, differing from one another in little more than the names of the complainant, the defendant, and the district. One has only to scan the headlines, as it were, in order to know what inevitably follows, what one would rather not read—again.

This must be, can perhaps only be, a waste of time. As Anjali Arondekar has argued, area studies scholarship and histories of non-Western “elsewheres” operate in an implicit framework of “incommensurability”—“a geographical location garners (lost) historical value through its (untranslatable) relationship to the West”, and is meant to perform “necessary scenes of nonrepresentability and reprieve” that *differ* from those found in the West.³⁸⁵ But here, there is an asymmetry not only of the quantity of available information, but of information that stands out as new, revelatory, or salvific in any way. I imagine myself confronting the same question that was levelled at Arondekar: “Why is this not just a failed archive? If it has not been read and is so evidently available, surely there must be nothing there.”³⁸⁶ These compressments of information produce, if anything, illusions both statistical and juridical: the expectation, first, of

³⁸⁵ Arondekar, *Abundance*, 4-5. Thus, “even as histories of sexuality appear provisional, open to transformation and to the velocities and inscriptions of *other* worlds, geopolitical sites (particularly in the global South) continue to be hailed as obdurately and enticingly incommensurate—literally ungraspable, undecipherable forms.”

³⁸⁶ Arondekar, *Abundance*, 17.

any robust estimate of the wider prevalence of rape being recuperated; and second, of seeing any essence of discretion or judgement on display. Neither, in truth, is available; this archive's only verifiable presence is proceduralism, an air of open-and-shut: by the book and between the legs. Each entry effects a register of epistemic well-troddenness, a sense of itself doubling back onto familiar-story territory, that is irreducible simply to the contemporary hindsight that the form and logic of the "duplicate" arguably "founds the very evidentiary models of the colonial/postcolonial state in South Asia".³⁸⁷ Take, for example, the manner in which *Maheedeah v. Beharee*, decided at Saharanpur on August 20, 1851, is reported: "This case of rape on the person of a child of six or seven years' old is abundantly proved by every kind of evidence required." What, one wonders, might be 'every kind of evidence required'? As Arondekar phrases it: "What are the evidentiary mandates that provoke histories of sexuality into presence?"³⁸⁸ The judge enlightens us by invoking a series of images that he clearly already takes to constitute the most hackneyed convention, a *rasa* of violence self-evidently signifying in the scene and the landscape:

The lonely spot; the cry of distress heard by the passer-by, the revolting act witnessed by them as they came upon the scene, that is, their evidence that the prisoner was on the child's body, and they pulled him off; the evidence of others who came up and saw the poor little victim panting on the ground and streaming with blood; the evidence again of the state in which the parts were found on examination by a midwife; and finally the Civil Surgeon's professional opinion on oath that the injury could not have been effected by the child falling, as the prisoner stated in his defence before the Magistrate, that she did. Every thing both in the Civil Surgeon's letters and deposition points to its having been caused by violence, such as the prisoner stands charged with having committed. Defence, the prisoner has not.³⁸⁹

³⁸⁷ Arondekar, *Abundance*, 9.

³⁸⁸ Arondekar, *Abundance*, 7.

³⁸⁹ *Maheedeah v. Beharee*, August 20th, 1851. In North-Western Provinces (India) Nizamat Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces*. (Agra: Secundra Orphan Press, 1851), 368.

The Sessions Judge concluded this note with a recommendation that Beharee be sentenced to ten years in prison with labor and irons—a sentence with which the Nizamat concurred.

Maheedeah is an exemplary meta-text of the evidentiary economy of rape within British colonial law. It contains exactly what is required, with some hidden extra to spare—which is hidden *because* it is extraneous, because it has the potential both to muddle and to clear the story up. For instance, the victim underwent two ‘medical’ examinations: for rape cases, as Chevers wrote in his manual, “it frequently happens that the reports of native midwives, or of other and probably less intelligent females have to be taken.” He characterized these midwives, or *dhaees*, as giving their statements “with great confidence and fullness”, but advised that “it must be evident that much caution should be observed in receiving the opinions of native women upon them, and that it would be safe to expect from these females so much explicitness of detail as to render the reports of their evidence available for submission to competent medical authority.”³⁹⁰ The promise of more evidence than needed—of a rape case being ‘abundantly proved’—is both a guard against, and a guarantee of, facts on the ground rearranging themselves into terrain that is more indistinct, more unreliable. These hovering traces of uncertainty are dispersed by the sharp assertion that the judge knows exactly what happened. Plenitude is therefore asserted by a mechanism of exclusion, a careful adherence to the confines of summary. The ‘every kind’ of evidence that a case such *Meheedeah* possesses—a surplus, but also an excess—thus appears to us rigidly constrained, divided, collapsed into a checklist. ‘Every kind’ constitutes no more and

³⁹⁰ Chevers, *Manual of Medical Jurisprudence*, 475. “One joint magistrate of Delhi, trying a case in 1833 in which no Civil Surgeon was available to conduct a medical exam, contended that “the evidence of the experienced women, called *dhaees*, whom he employed, he considered preferable to that of the native doctor stationed there. Unless there were an order existing... Making it necessary to expose the body of a female suffering from rape to a person of the other sex, he should always think it best to avoid doing so [!] The female herself, if possessed of any modesty, would generally object to such a course as well as her friends...” (476-7).

no less than the following: unmistakable sensory marks of violent injury and struggle; the corroborating testimony of multiple direct eyewitnesses, preferably to the act *in flagrante*; expert medico-legal opinion deduced via timely genital inspection; and categorical exclusion, overwhelmingly via age, from consenting subjecthood. These kinds constitute the entirety of the admissible universe—the only phenomena observable, to extend a precarious analogy, to the telescopic lens of the law.

Each and every of these kinds must conjoin precisely to elicit a legal pronouncement of rape by the single court that is authorized to make such an utterance—replacing the alleged inadequacy of the pre-colonial legal category of *zina* with an even more grueling judicial process structured by evidentiary requirements that were as if not more difficult for a victim of sexual violence to meet. This was not least because, for all their regimentation, these requirements mask a judicial regime of absolute discretion, bounded relatively lightly by regulation. Quoting Carl Schmitt’s argument that for a legal order to make sense, “a normal situation must exist, and he is sovereign who definitely decides that such a normal situation actually exists”, Nasser Hussain contends that “the decision on the exception appears to be *as much a decision on normal conditions* as it is on those abnormal conditions that would require a suspension of legal order.”³⁹¹ Here, it is this rubberstamping anti-decisionism in rape—a decision not to engage, to differentiate and contextualize, other than to doubt the victim and examine the body—that produces normalization. The resulting legal process is a kind of dismembering—a reduction to bodily parts and their signs that ejects the victim from social solidarity at the very point of their

³⁹¹ He details the crucial role of deciding and dispensing exception as a legal form through which state judicial actors are empowered to exercise sovereign discretion to structure and reshape social life: “*This decision and the space of exception that it brings forth take us to a ‘borderline concept’ that contains the ‘whole question of sovereignty’*...At its core, we may read it as an alternative conception of power, one that is decisionist and antinormative.” Hussain, *The Jurisprudence of Emergency*, 130.

having to approach the colonial court for redress. The body's boundaries are transformed into evidentiary scenes that are legible only when conforming to a certain type. Outside this highly specific conjuncture, the meaning or reality of rape is almost totally invisible.

It is, of course, common for law reports to contain little information about crime other than what concerns the minimum requirements of proof: whatever it is a duty to report, and rarely what is a choice. However, as the legal historian Jonathan Connolly, among others, has asserted in the context of related colonial legal regimes such as indenture, these summary habits are by no means neutral in their effects. Statutory and judicial precedents obviate the need for social analysis, disincentivizing attention to the social impacts of particular laws in particular places, upon particular subjects—and they do so all the more when the same set of laws is replicated and transplanted into several different colonies, contending with a myriad of diverse social environments. In the British empire, these legal transplants generated internal as opposed to social forms of legitimacy—with particular kinds of statutory precedent giving internal momentum to the system, allowing it to see itself as over and above the contingencies of the society it policed and punished.³⁹² However, it is nevertheless interesting that—unlike with similarly hyper-precedented, and often deeply gendered, cases of wife murder or armed robbery, infanticide or poisoning, in which some whiff of the exotic invariably cuts through the legal congestion and inspires backlogged magistrates to cough up some excursus on the Provinces' unsavory social landscape—the rape case is a source material from which the digressers and dilettantes of colonial difference can barely exert themselves to extract a tangent. Rape—at least, that sliver of it that can be verified as such in this court—is an exceptionally settled matter:

³⁹² See Jonathan Connolly, *Worthy of Freedom: Indenture and Free Labor in the Era of Emancipation* (Chicago: University of Chicago Press, 2024), <https://press.uchicago.edu/ucp/books/book/chicago/W/bo214752216.html>.

further elaborations upon its occurrence are superfluous as an aid to legal logic, and nearly immaterial to colonial sociological assessments of north Indian criminality. Collateral, too, are its victims to the sovereign interests of the colonial state, which exercised itself with responsibility towards women's bodily and social integrity solely in pursuit either of maintaining race hygiene or invasively disciplining the social reproduction of the native household.³⁹³ Chevers' medico-legal manual actually argued against a strict rape law or the vigilant prosecution of rape on the grounds that it would only generate more violence: "It is to be feared that the existence of a severe law, while it may possibly act as a restraint upon the brutality of some men, in other instances leads to the commission of murder; or to the concealment, until too late, of serious injuries where otherwise timely assistance may be sought for and obtained."³⁹⁴ What happened to Indian women outside, at the hands of 'strangers', on the roads and in the fields, therefore, was represented as unimportant to the internal legitimation of the state in a way that it had perhaps never been before.

Whether these omissions must be taken as characteristic or unusual for a colonial legal system, I forbear to say. Hussain's characterization of the law in *Jurisprudence of Emergency* is most appropriate: "eclipsing agents and action, the rule of law evokes a hermeneutic insularity, a ghost like landscape where law rules and rules are law... Indeed, *the ghostlike landscape I invoke here is not inappropriate*. It certainly catches the sense in which a rule of law reflects the high postulates of Western civilization: the victory of reason over will, the universal over the

³⁹³ Durba Ghosh, *Sex and the Family in Colonial India: The Making of Empire*, (New York: Cambridge University Press, 2006); Elizabeth Kolsky, *Colonial Justice in British India*, (Cambridge ; New York: Cambridge University Press, 2010); Rachel Lara Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights* (New York, NY: Cambridge University Press, 2012), <https://doi.org/10.1017/CBO9780511851940>.

³⁹⁴ Chevers, *Manual of Medical Jurisprudence*, 483.

contingent, and idea over matter. If the ethereal images of distance, mediation, and universality are embedded in the expression the rule of law, they are entirely opposite of the images associated with emergency: direct force, singular cases, final judgments, and so on.”³⁹⁵ Either way, this archive of pure template, replete self-evidence, and proliferating copy attests to rape’s negative abundance. The aspirationally broad vantage of a historical study is confronted with the opaqueness of a window: more than with any other crime, this legal treatment carves narrow, precise contours for the figure of the rape victim to fill in, and dissects the harm done to her from the networks, systems and practices in which rape is entangled and which rape maintains. Nor has this feature of the Nizamat Adalat archive—its similarity to other legal regimes of gender, if not its own self-similarity—gone unremarked, creating “a paradoxical sense that there must be little to recover if much discursive effort is needed to signal such historical absences.”³⁹⁶ “In the final analysis,” Kolsky concludes, for instance, “the colonial legal treatment of the “unsensational” crime of rape was itself rather unsensational...which raises important questions as to what, if anything, was distinctively colonial about it. In the case of rape, it was the rule of colonial indifference that prevailed.”³⁹⁷ There is no contradiction here to what is already established: that the only exposition, the only variable, that these cases were obliged to entertain was the nature of the girl or woman at the heart of the trial. In what manner must she appear in order to facilitate the perception of her innocence, her simplicity? How quickly does she hit the required threshold of self-contradiction, the lowest common denominator of a liar? What is

³⁹⁵ Hussain, *The Jurisprudence of Emergency*, 136.

³⁹⁶ Arondekar, *Abundance*, 71.

³⁹⁷ Kolsky, “The Rule of Colonial Indifference”, 1094.

skimmed off, misheard, excised, pronounced incoherent thereon? If all there is is what can be used against her, why would I be reading these pages looking *for* her?

There really is, then, perhaps little left to do. This is just the formalism of the law, the indifference of the law, the disdain of the law for private, petty, gendered harms. To cite just two of the cases judged by the Nizamat within the six-month stretch that included *Maheedeah* is to observe an interchangeable sample of textual clones which offer only the barest ingress into dozens of other, unexceptional, female victimhoods that the law, as it attempts to colonize everyday life, captures and organizes. The very same judge, writing from Saharanpur on April 18, 1851:

On the morning in question, about 8 o'clock, he saw the girl Koorea, a *chumarin*, who was cutting grass, and he forced her into a wheat field, where he made her take off her clothes, and effectually committed a rape on her person. The cries of the girl brought four women, *chumarins*, who were going along to their work, to the spot, and they pulled the man off the girl. He was well known to them all, as he was in the habit of collecting coolies...for the Canal Work. The girl was very much injured, and they were obliged to carry her into the town or village on a *charpoy*: she is about thirteen years of age.³⁹⁸

The rapist is dismissed as follows: "The defense of the prisoner is very lame". Seven years, labor and irons. Another judge, reporting from Agra three weeks later on May 23, 1851: "The rape in this case was committed on the person of a girl of seven years by the prisoner, who, meeting her in the fields, drove away a lad, who was at the spot, and effected his purpose. He then fled from the village and some time elapsed before his apprehension could be effected. The proof of the offence charged is full and complete; there is the evidence of the boy who witnessed the first assault, and that of the child's parents, the medical evidence, and the confessions of the prisoner..." Five years, labor and irons. As the East India's Company's claims upon absolute

³⁹⁸ *Hookmee v. Goolamnubee*, April 18th, 1851. In North-Western Provinces (India) Nizamat Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces*. (Agra: Secundra Orphan Press, 1851), 42-3.

judicial discretion materialized a dysfunctional proceduralism based upon detailed classifications of social types and fixed definitions of acts, the potential eventedness of such repeated and gruesome sexual attacks upon children appears to have been merely another manner of making actors stand in for one another, constituting “a domain of deauthorized subjects, presubjects, figures of abjection, populations erased from view.”³⁹⁹

It is as if rape is perfunctorily inserted in minor variation as an interlude to the real story of crime that proceeds in the other records of the Nizamat: a story with a cast of aliens and sociopaths, full of sage and voluble insights about native criminal character and the vagaries of deducing the truth. Here, by contrast, we have abstraction: ‘the spot’, usually an agricultural field marked, by the presence of bystanders, as a semi-public space or an accessible commons, where rape is ‘effected’, and judged to have occurred ‘effectually’, by the passing observation that resultant injuries are bloody and incapacitating. Sometimes, ‘the spot’ is graced by further classification: it is a garden, a bay-tree grove.⁴⁰⁰ Only in one instance in this particular stretch of cases is the physical scene sketched in detail, possibly to persuasively compensate for the adult age of the victims: Heemlee and Suroodah went “to the jungle of *mouzah* Nezaullah, 2 1/2 *cos*, north-west of Sirsa” in Haryana, where Kussoodah and Wahab, camel-grazers, “carried them off towards the basin of a *jheel*, then covered with brushwood”, each man choosing the shade of a separate *jal* tree five paces apart to force his victim to the ground and “[commit] the act

³⁹⁹ Rachel Sturman, “Gender and the Human: An Introduction,” *Gender & History* 23, no. 2 (2011): 229–34, <https://doi.org/10.1111/j.1468-0424.2011.01635.x>, 230.

⁴⁰⁰ *Government v. Sreekishan*, July 11th, 1851. In North-Western Provinces (India) Nizamat Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces*. (Agra: Secundra Orphan Press, 1851), 225–6; *Mara v. Luchee*, September 12th, 1851, Saharanpur. In North-Western Provinces (India) Nizamat Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces*. (Agra: Secundra Orphan Press, 1851).

charged”.⁴⁰¹ Sometimes we know what the victim was doing in such a space, and it is always basic subsistence: grazing oxen, cutting grass, collecting firewood, picking berries.⁴⁰² Sometimes “to rape [is] added robbery”—either of these subsistence items, or of wealth in the form of ornaments—and five years, labor and irons doubles to ten years, labor and irons, telling us something about the comparative criminal infamies of rape and theft.⁴⁰³ Even when bystanders intervene, as opposed to simply witnessing the act, rape has already been carried out. Some know, even without the rapist driving them off, to flee before they see it: “the prisoner was also there, and two of his nieces, who, it appears, ran away on seeing him seize the girl, but without remonstrating with him.”⁴⁰⁴ Perhaps it was because they, too, had been his victims. “His appearance is wild and savage,” wrote the Saharanpur Sessions Judge, “and he evinced more than even the usual apathy and indifference of native criminals when the trial was going on, but there is no doubt as to his sanity.”⁴⁰⁵ This projection of “apathy and indifference” masks incomprehensibility; the knowledge that a sane and rational choice has been made, but that the structuring conditions of its sanity and rationality cannot be too closely interrogated. In place of

⁴⁰¹ *Nanuck and Koombha, Prosecutors, v. Kussoodah and Wahab, prisoners*, June 27th, 1851. In North-Western Provinces (India) Nizamut Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces*. (Agra: Secundra Orphan Press, 1851), 182-3.

⁴⁰² *Government v. Sreekishen*, July 11th, 1851. In North-Western Provinces (India) Nizamut Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces*. (Agra: Secundra Orphan Press, 1851), 225-6; *Mara v. Luchee*, September 12th, 1851, Saharanpur. In North-Western Provinces (India) Nizamut Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces*. (Agra: Secundra Orphan Press, 1851).

⁴⁰³ *Mara v. Luchee*, September 12th, 1851, Saharanpur. In North-Western Provinces (India) Nizamut Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces*. (Agra: Secundra Orphan Press, 1851).

⁴⁰⁴ *Mara v. Luchee*, September 12th, 1851.

⁴⁰⁵ *Mara v. Luchee*, September 12th, 1851.

further inquiry, there is a script: a rape script that swaps out and substitutes for each story of what really happened.⁴⁰⁶ One is always already able to recite it: a young girl, usually under the age of ten, working alone in the fields or jungle, is attacked at seeming random by a local disreputable character; she cries and fights as she is raped, attracting the attention of witnesses, frequently other children or women; when the rapist runs off, she is found senseless and bleeding profusely, and her injuries are attested by midwives, native doctors, and civil surgeons; regardless of his defence, the rapist has usually already been forced to confess in Mofussil or Faujdari interrogations, and is sentenced to five to seven years' rigorous imprisonment—twelve if the girl dies.

Almost always, however—at least in this archive—the victims of 'successful' rape cases did not die. It's possible that their rapists thought they had killed them, or at least inflicted pain, shock, and trauma suddenly and brutally enough to silence the victim and render her experience legally incommunicable—a confident bet, as I will soon show, when the raped were children who were too young to understand or give testimony under oath. The relatively short sentence of punishment for death caused by rape, setting aside the pervasively misogynistic discounting of female loss of life, also likely reflects the notion that girls were killed not intentionally, but accidentally, by their rapists: the category of crime was lust, not bloodlust. Here, I wish to highlight two features of this archive that are perhaps too often taken for granted. First, that in

⁴⁰⁶ To adapt Sharon Marcus' extremely useful concept to the colonial regime of gender, a rape script openly imposes sexual difference along the lines of violence, along a partitioning of bodies. Bodies are forced into place in "a binary anatomical cartography": the masculine body and subject is defined by its possession of a penis, the feminine body and subject is defined by the penis' absence, and "outside of this binary, there are only pathology and disability." Violent patriarchy reifies the rape of any body as an irrevocable appropriation, a permanent loss of value, because "a single sexual organ identifies the self, that organ is conceived of as an object that can be taken or lost, and such a loss dissolves the self." Sharon Marcus, "Fighting bodies, fighting words: a theory and politics of rape prevention", in Judith Butler and Joan Wallach Scott, eds., *Feminists Theorize the Political* (New York: Routledge, 1992).

colonial India of the 1850s especially, the law admits and understands few motives external to its own. In the case of ordinary crime, normalized crime, the law can rarely tell us anything about *why* that crime happens: this impinges little upon its functioning. In this record that just predates the golden era of criminal and human sciences in the colonies, then, the rapist possesses a criminal stereotype—wild, savage stranger of the outdoors—but no inner world, no psychological depth, no variety of motive or intention. There is merely a recommendation that a medical officer be called upon to prove “the manner in which the criminal may have *prevented his victim from offering valid resistance, and from crying loudly*. In several of the recorded cases, it appears to have been clear that the females were either held by accomplices or had their hands tied, or placed under them. In a very large proportion of the cases it was declared that the females’ cries were stifled by wrapping a cloth across their mouths.”⁴⁰⁷ There is no psychic life of rape, nothing to give substance beyond category to what was wanted, intended, resisted, experienced, by either party. There is a corresponding absence of techniques to gauge sexual consent other than physical capacity, the marks the body bears. By many a categorical separation, therefore, rape’s uneasy and messy configurations with death—death actual, and death social—are represented in this system of criminal sentencing as a narrow range of estimations spanning mindless, cold-blooded injury and circumstantial accident. As I myself have reiterated before, the social problem of rape is one “best left to natives themselves”; the law of rape corrals these arbitrary, endemic, inexplicable brushes with physical demise into neatly fenced divisions between the destruction of life and the destruction of bodily value.

Second, I wish to highlight that this law is, despite itself, attached to a place. How might we understand the only local particularity within this universal story that is allowed a substantive

⁴⁰⁷ Chevers, *Manual of Medical Jurisprudence*, 473.

presence in this record—a colonized ‘outside’, a landscape of conquered fields and jungles that are figured as unsafe, unaccountable, ungovernable? What empowered rapists to use these broadly public, common, accessible spaces to commit rape? How was a certain kind of space conceptualized and represented as the obvious, ordinary, undifferentiated, habitual scene of rape, a place self-evidently reflective of the likelihood of rape, in a landscape where rape continually happened and was expected to happen? How might we track the emergence of this form of space—the one that must be traversed and inhabited by necessity, yet whose ordinary and everyday condition is catastrophic sexual danger—that is now acknowledged to be *most* of the space of both rural and urban India? The presence of this evenly-spaced default story of rape in the archive—itsself punctuational and almost disclaimer-like—is a story fundamentally underwritten by the form of the space it assumes. These perfunctory redressals are a twisted token of state abandonment, a refusal by the law to apprehend—even hold itself responsive to—the work of rape, the politics of rape, the thick contexts and specific environments of rape. Given the minuteness of the hole through which we peek at the social fabric, we have no more nuanced picture of rape’s harm—the harm felt, lived, or expressed by its victims and their communities—than its asymptotic convergence with death.

3.2: A child’s body: justice, protest, and punitive self-harm

How to push through the indifference of this archive? How might one chase after the trace? The interchangeable seriality of rape is of course inevitably punctured by rare flashes of

alternative legal affect; gestures that provoke one to feel as if one is picking up another language in which harm was registered, experienced, and expressed. One instance occurs in *Bhuggea v Sheobheekwa*, in which nine-year-old Angnya, tasked with delivering food to her brother on a cold February day in 1851, was snatched up by a farmer, raped in a sugarcane field in front of her youngest sister, and left unconscious on the ground. When Angnya's sister led their mother Bhuggea to the scene, she laid her daughter on a charpoy—a sign, as we have seen elsewhere, that the girl was badly hurt. At this point, however, Bhuggea did not take her to a healer or to the Allahabad district police. Instead, she carried the charpoy to the door of the rapist's house, and left Angnya exposed there for hours, for their entire village to see.⁴⁰⁸ Such a detail—not entirely rare, but always fragmentary—is an instantaneous confrontation both of imagination and impulse. It triggers a characteristic “narrative ritual” that Arondekar observes in historical treatments of sexuality: having discovered “an archival trace that compresses or even obfuscates historical content, legible only through reconstructive hermeneutics”, the reader counters the fragmentariness of evidence with a “hermeneutical performance of plenitude as you mine the archival trace for the promise of historical precedence and futurity.”⁴⁰⁹ One reads, or tries, in resistance to the inexorable presence of *a* read; my read, my sense of having received, or intercepted, some message from the devastation of Bhuggea's gesture.⁴¹⁰ Habeas corpus, it seems to declare, in a way; you shall have the body. Angnya left home and could never return as she did

⁴⁰⁸ *Mussummat Bhuggea v. Sheobheekwa*, April 16th, 1852. In North-Western Provinces (India) Nizamut Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces, Vol. II* (Agra: Secundra Orphan Press, 1852), 318-20.

⁴⁰⁹ Arondekar, *Abundance*, 23.

⁴¹⁰ Lauren Berlant, “History and the Affective Event”. In Lauren Gail Berlant, *Cruel Optimism* (Durham: Duke University Press, 2011), 51–94. See also Kathleen Stewart, *Ordinary Affects* (Durham, NC: Duke University Press, 2007).

before. Now her body will disbar you, and compel you to do the same. The doorstep of your household is a threshold that society respects, and beyond which no arm of power might extend or rule other than your own.⁴¹¹ By placing her here, I show you, and everyone else, what bounds you have crossed. Perhaps at this entrance, in this shadowy opening through which you pass every day, this body will reconstitute a limit. Will you move right through her again? Do you dare?

Allow oneself brief fits of fabulation, and they pass; the ghostly possibility of really knowing what was being communicated, or what it might have meant then.⁴¹² Perhaps the one thing that *is* clear is that the choice to place Angnya's body on the threshold provokes and repurposes a distinctly noncolonial social vocabulary through which individuals and groups claimed and commensurated injury: most famously, that of what Mitra Sharafi has called punitive self-harm.⁴¹³ In the late eighteenth and early nineteenth centuries, officials tasked with applying Company administration in some of the earliest areas to which it was extended—such as the Benares *zamindari*—observed that subjects who believed their complaints would elicit no

⁴¹¹ “Even as regulations to punish offences against the person extended colonial magistracy into the household, a countervailing set of regulations defined a boundary against intervention. These excluded certain issues from the criminal process or gave them a secondary status within it.” Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford: Oxford University Press, 2000), 75.

⁴¹² “To write good histories of sexuality is to seek out that perfect, elusive archival trace, the vastness of a history glimpsed and compacted in an enticing, fragmentary form. Most times, such an archival trace coheres as a narrative form precisely when it contains the stories we want to hear, stories that restore presence and vitality to an often-diminished past... A history worth telling, one might even insist, depends on exemplary and representative readings of such archival traces: narrative weavings of particularity and wholeness, of details erupting into insights, insights into veracity.” Arondekar, *Abundance*, 66.

⁴¹³ See Mitra Sharafi, “The Imperial Serologist and Punitive Self-Harm: Bloodstains and Legal Pluralism in British India”, In Ian Burney and Christopher Hamlin, *Global Forensic Cultures: Making Fact and Justice in the Modern Era* (Baltimore, Maryland: Johns Hopkins University Press, 2019).

adequate redress from the law were known “not only to lay hands on themselves, but even systematically to put to death other innocent persons, in resentment for their disappointment, from whatever cause”.⁴¹⁴ For dominant, especially priestly, castes this was strategy was an extreme extension of the practice of sitting *dharna*—a storied repertoire of cosmic blackmail adapted to favour the grievant’s interests in the increasingly drastic, zero-sum disputes precipitated by the colonial rule of property, pacification, and common law. In her history of crime in Company-ruled India, Radhika Singha has also documented such invocations of blood-guilt by oppressed subjects, finding “two cases in which a low caste man put his infant daughter to death to protest his treatment at the hands of the locally powerful.”⁴¹⁵ Ontologically, if not legally, the blame for these deaths was widely understood to fall upon those who had mistreated the murderer, cursing them unless the guilt was expiated by redressal of the original offence. These self-harming murders were acts of desperation “directed to reproach a more powerful adversary”, but also, Singha notes, both “a register of injustice and a power-laden selection from the weakest in the family.”⁴¹⁶ Sharafi extends documentation of this practice to the early twentieth century, arguing that changing repertoires of punitive self-harm show “noncolonial modes of disputing”—reflecting alternative notions of “collective identity, punishment, and causation”—“being bent to meet the new requirements of the colonial legal system.”⁴¹⁷ With that

⁴¹⁴ Singha, *A Despotism of Law*, 58.

⁴¹⁵ “Similarly, some communities guaranteed contracts by using this extended version of punitive self-harm. The Bhats and Charans of western India were known for making themselves—and their relatives—available for hire as human security for contracts. Written contracts that were Bhat-guaranteed bore the sign of a dagger.104 When the relative of a Bhat or Charan was killed to punish another person’s breach of contract, the violence was sometimes processed by the state as a prosecution for murder.” Singha, *A Despotism of Law*, 83.

⁴¹⁶ Singha, *A Despotism of Law*, 61.

⁴¹⁷ Sharafi, “The Imperial Serologist and Punitive Self-Harm”, 72.

system increasingly dependent for its enforcement on new forensic technologies of verification, she writes, aggrieved Indian subjects found that “there was little difference between killing a relative and dumping the body at the doorstep of one’s adversary in response to a wrong, and doing the same thing but *also planting animal blood at the adversary’s doorstep* and on his clothing...In the latter scenario, he might also be convicted of murder.”⁴¹⁸

The body on the threshold is a potent sign—a staged clue, a flaming arrow, a performance—and one which most onlookers to the scene would, I believe, have been well-positioned to recognize. What Angnya’s mother did with her daughter’s living body, then, was to repurpose this sign to attest to a chain of causation that should have been direct, straightforward, and obvious, but which has never been reliably treated as such by a judicial structure in South Asia that I am aware of to this date. Quite simply, it seems to say: rape happens because men rape, and nobody holds them to account for it. It places Angnya’s grievously injured body, a raped body, upon a physical boundary-marker that hosts a wide continuum of public and cosmic protest against the obstruction or dispersal of blame: from live, valuable bodies prodigiously and prestigiously starving at the door of an institution that has angered them, to dead, expendable ones that are either dramatically slain at the offender’s doorstep to demonstrate the extent of harm, or secretly murdered and dumped upon it to frame him. It is an exhortation to cut through scandal and muddle and prevarication: this is who is to blame. This is what they’ve done. Give us justice that accounts for the sin of causing a death. One understands all too well why such an exhortation issued immediately upon the discovery of rape; many remain endlessly compelled, still, to do the same today.

⁴¹⁸ Sharafi, “The Imperial Serologist and Punitive Self-Harm”, 73.

My interpreting the material of the case in this manner is not to say that I, too, think rape demands a justice that approaches or equals death, or that these categories are always fundamentally tied to one another in ways that should be specifically highlighted and recognized by state law.⁴¹⁹ Rather, I am attempting to read one of the few perceptible communicative gestures available in these case records that appears to make a statement to prosecuting authorities about the scope of harm: a kind of unauthorized victim-statement, performed not at the trial sentencing in the aftermath of a guilty pronouncement, but around a public square, a scene of protest. Relocated to this scene, it performs many functions other than and in addition to complaint: functions designed to incapacitate the rapist before both society and the law. Angnya's rapist, a man named Sheobheekwa, returned to find her body at his doorstep and immediately ran away, absconding at his brother-in-law's house for six weeks before he was caught—thus inadvertently incriminating himself in a kind of public sting-operation, as Bhuggea likely intended. Another problem this gesture solved was that of furnishing evidence under oath, which neither Angnya nor her sister were mature enough to provide: “otherwise, her plain and lucid statement of the matter would render the evidence for the prosecution quite complete.” Having seen her body “lying senseless” on display, however, two adult villagers, Soneyee and Hunooman, were able to convincingly testify in Angnya's place.⁴²⁰

This is a tactical political choice, then—but considering what it is up against, it should not be reduced to one. For comparison, I offer the tactical choice made by Sheobheekwa before

⁴¹⁹ I also do not suggest that a view of rape as a fate equal to or worse than death was a universal social reality in northern India; only that it is the most perceptible one, the one most closely implied and invisibly accommodated by colonial judicial decisions. These decisions endorsed and acknowledged this social state of affairs partially, collaterally, at points where the sovereign interests of the state and the violent enforcement of caste hierarchy intersected.

⁴²⁰ *Mussummat Bhuggea v. Sheobheekwa*, April 16th, 1852. In *Decisions of the Nizamut Adawlut*, 318-20.

the authorities in his defence: “The prisoner stated at the thannah before the Joint Magistrate and before me, that the girl Angnya had gone into his field, where he found her eating some of the cane, that he gave her a slap, which caused her to fall to the ground, and that in falling she came in contact with the sharp end of one of the canes, and thus injured herself. The jury deemed the evidence insufficient for conviction and acquitted the prisoner. I do not concur in this finding...”

If one side, invoking a vocabulary of self-harming protest, asserts that rape is a killing in every operable condition of the word, the other merely shrugs, and counters that what appears to be rape’s injury is *simply a work injury*: a potential harm to which some bodies assent merely by engaging in making a living. Sheobheekwa— like many other rapists brought up before these courts—attempted to frame the hurt caused to Angnya as an occupational hazard: just something to be expected to happen to someone who isn’t supposed to be there, who has trespassed from her rightful place. The grim price of this incursion, this bold presumption of safe access, is extorted by the fruit of the land itself: the rapist is merely the indirect instrument of a hostile environment into which danger is sown deep, in which one may suffer injuries for which no human agent can be blamed. Foolish, careless children run around impaling themselves upon stalks of sugar cane all the time, naturally. This is the unrepentant core of claims to impunity: not understanding why such a version of events would be disputed, despite being an obvious lie, when it lets everybody off the hook. It, too, discourses in self-harm, this time as a mode of false charge: trying to punish rain for falling, or two hands for clapping; dragging the land itself, basic nature, to court. That this barely coherent misogynistic pablum was sufficient to convince a local jury of the rapist’s innocence helps us to understand why the victim’s mother anticipated the need for a counterclaim that transcended purely physical comparison. To these glib procedural equivocations that analogize rape to an unfortunate tumble in a garden—why did the girl even

have to be outside?—she replies: if she can never be outside without fearing sexual attack, then you, her rapist, must fear your own doorstep. Is this threshold the place for her—the place where what happens on the roads or the fields can finally be clearly seen by all? Is this the beginning or the end of her torment, marking the boundary between seen and unseen, alive and dead?

The Sessions Judge, with the Nizamat's approval, punished Sheobheekwa with the usual sentence: seven years, labour, irons. In his so doing, we see that Angnya's mother was able—at the cost of drastically and publicly prolonging her daughter's ordeal—to protest the ubiquitous social and political evasions which render any statement about rape valid other than one that holds the rapist himself liable. But it seems clear that all of this shame and pain was ultimately staked to map out, and struggle against, a phenomenon greater than any of its singular agents: the habitual resort to sexual violence as a mechanism for the delineation of common and uncommon space, and of one's own placing and gendering—in one's most basic ways of life and access—within that space. A colonial sociology of death and honor that concentrated almost exclusively on violence within the domestic sphere attended to public rape by non-kin only as a supplementary and afterthought.⁴²¹ In colonial criminal sentencing, for instance, rape was delinked from the equally numerous but more nebulous and discursively fertile criminal category of culpable homicide—a category largely populated by murderous domestic violence against

⁴²¹ As a variety of scholars building on the work of Tanika Sarkar have argued, the colonial project of monopolizing legitimate sovereign violence was, insofar as gender and sexuality was concerned, preoccupied with the private patriarchal right of husbands to kill their wives, households their subordinate members, and families their female kin. Colonial criminal sentencing acknowledged rape as a serious crime, but not as a critical legal and epistemological ingress into governing a sexually deviant and socially degenerate society (though one that paradoxically valued women's honour and chastity as its moral golden standard). See Durba Mitra, *Indian Sex Life: Sexuality and the Colonial Origins of Modern Social Thought* (Princeton, New Jersey: Princeton University Press, 2020); and Ishita Pande, *Sex, Law and the Politics of Age: Child Marriage in India, 1891-1937* (Cambridge, United Kingdom ; New York, NY: Cambridge University Press, 2020).

wives suspected of having extramarital sex. The perceived misuse of the patriarchal right of death provoked more death-like punishments for those charged with culpable homicide, such as life in prison, transportation, or hanging. But by laying down a procedural framework in which victims who survived rape could not seek death-equivalent punishment, the law exacerbated the bodily insecurity of women in public. A pro-forma punishment of up to seven years reflects an internal legal logic that could not assimilate the quantum phenomenon of female honor: something lost in a blink of an eye, vanishing by its very measurement and accounting under oath before an alien regime. Treated as ancillary to the right to kill, unacknowledged as the infliction of a form of death, rape was in a way ‘discounted’ relative to its social terrain: one could inflict a critical loss of honor, a death-equivalent loss of honor, a half-life, without incurring a sentence of death oneself. Representations to the state in the form and mode of recognizable murder were a gamble to force a reconsideration of rape’s harm in a legal environment in which the act of actually causing a person’s death to stake a claim to justice was a criminal offence under colonial law.

As we have seen in the previous chapter, this criminalization of punitive self-harming homicide had been achieved early in the nineteenth century, even as British agents regularly identified the killing of oneself or relatives as a form of resistance to state or social oppression. Cruelly, however, as Radhika Singha has documented, this recognition of death as a legitimate instrument of protest against oppression was skewed not only by whether such acts occurred in the territories of the ‘tyrannical’ and ‘despotic’ native princes who were governed indirectly by the Company, but also the gender of the victims who were murdered or killed themselves. As Singha writes:

What worried the magistrate of Mirzapur about the high rates of suicide in pargana Bhadohi, in the family domains of the Banaras raja, was that only half of these were

committed by women. ‘*We all know that women in India jump down wells for very trivial domestic reasons, but where men take to this mode of avenging themselves, there is generally oppression or extortion at the bottom, and despair at obtaining justice...*’ The statement also reveals that there was another context in which suicide could assume the form of a protest against injustice *but was not dignified with this presumption*. This was where some woman committed suicide, or killed one of her children, not on behalf of her family or to follow her husband into death, but to protest some wrong done to her by these very parties.⁴²²

We see from the report of this magistrate that the causes that drove women to threaten, perform, or evoke death were dismissed as “trivial” and “domestic” without a second consideration. It was not only their words, their accounts of what had happened, but also their subsequent acts in pursuit of redress that were obscured by the evidentiary focus on the body, its parts, and their marks of violence. The particular bodies that appear in the archive itself are evidence of the totality and strength of this colonial testimonial smothering, as are the gestures of the victims that tried everything to evade it and resist abandonment. In Arondekar’s words: “The historical inheritance of loss, as is now obvious, is formidably recursive and iterative.”⁴²³ Ultimately, the hyperprecedented rape case proves opaque, unreadable—scattering and deflecting my eye to other invocations of female ruination and disgrace in the record, compelled despite itself by the historiographical mandate to “seek out that perfect, elusive archival trace”.⁴²⁴

⁴²² Singha, *A Despotism of Law*, 67.

⁴²³ Arondekar, *Abundance*, 22.

⁴²⁴ “To write good histories of sexuality is to seek out that perfect, elusive archival trace, the vastness of a history glimpsed and compacted in an enticing, fragmentary form...*A history worth telling, one might even insist, depends on exemplary and representative readings of such archival traces: narrative weavings of particularity and wholeness, of details erupting into insights, insights into veracity.*” Arondekar, *Abundance*, 66.

3.3: The event and the everyday: rape as common/place

As the previous chapter suggested in touching on the high priority given to organized violent crime in the colonial legal system of Delhi and the North Western Provinces, magistrates and medico-legal experts were well aware that deadly cycles of feuding and retribution between castes, clans, and communities more or less assured the prevalence of ‘honor-killing’ as a practice of punitive self-harm. Chevers wrote, “I am informed that, in the inveterate feuds which prevail among rival families and villages up country, it is still by no means a very rare thing for an aged person to allow himself to be taken, a willing victim, into his opponent's land, where his people murder him, and charge his crime upon their adversaries.”⁴²⁵ Typically, however, the selection of the victim skewed along lines of social unimportance: “The men who had been insulted, and various other members of the family, would offer to wound or stab themselves, but someone or something would prevent them. The offer eventually acted upon would be that of an old woman or widow, or the choice would fall on a female infant.”⁴²⁶ This move of displacement upon a non-productive female dependent who accrues value only in symbolic disposal exemplifies “the strange—and expedient—transfer of subjugation and dishonor from the men who’ve experienced defeat to the women who will suffer the consequences of that defeat and bear its scars on their bodies.”⁴²⁷ To continue my discussion of the visible need of some victims who survived rape to commensurate rape with death in their subsequent justice-seeking actions, I

⁴²⁵ Chevers, *Manual of Medical Jurisprudence*, 456.

⁴²⁶ Singha, *A Despotism of Law*, 68.

⁴²⁷ Karthika Nair, *Until the Lions: Echoes from the Mahabharata* (Todmorden: Arc Publications, 2016), 3.

will now consider a case in which the credible and certain *threat* of rape triggered the family so threatened to launch a complex conspiracy of punitive self-harm that culminated in the murder of the head of its own household. The cascading effects of this threat of rape, and the efforts made to head it off, offer us a window onto local forms of jurisdiction and territoriality, the communal mode of power, and the priorities of a nakedly extractive state that often coerced its subjects most effectively by abandoning them to the social forces of scapegoating and outcasting.

More unusually for analyses of self-harm, I center the lengthy record of a Nizamat case in which the fear of sexual disgrace precipitated an entire kin network— dozens of people and their retainers, subordinates, and relations—to conspire to the sacrifice not of a low-ranking, unproductive female victim, but of its patriarch. The fact that such catastrophic effort was made to head off even a threat of sexual violence shows us that searching for rape not as a central event, but as a supplemental, implied structure of threat, offers a powerful epistemology for understanding a variety of other conjunctions between organized crime, everyday violence and state power, linking them together in a catalytic fashion. If the narrow colonial legal definition of rape was fixed and held stable both through and against the widespread prevalence of sexual attacks and threats against women that became excluded from its purview, this case lays out some of the insidious logics that sustained that unredressable prevalence, particularly the logics at work when retributive or corrective rape was authorized by panchayats and local police. The singular aspect of this case that might immediately jump out is how neatly it illustrates the complex nexus between police brutality, panchayat politics, and cattle politics in the North Western Provinces at a relatively early period, while also advancing an important alternative narration of the loss of sexual honor and social status that is openly agonistic towards the colonial state's predetermined archival script.

My primary material for this section, *Govt v Bhuwane, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, suggests that the testimonial smothering of the threat of gender violence could produce social resistance in the form of a staged attack, a sting operation, a ruse—with this staging of the record opening up “an archival space of *radical representability*, self-consciously replete with the figurations necessary to event-making and loss”, in which “the archive defines itself through a deliberate hermeneutics of perfidiousness.”⁴²⁸ *Govt v Bhuwane*, a case of was tried on October 18, 1854, in the Sessions Court at Meerut. The case was advanced by A.O. Hume, a joint magistrate assigned to a special investigation in the nearby district of Bulandshahr, where a government mail-cart had been waylaid and robbed by unidentified dacoits who stole a large quantity of high-value gold *mohur* coins.²⁹ Local police in Meerut district, pressured by their superiors to make arrests, extort confessions, and retrieve the money, had begun to look for culprits to scapegoat for the robbery of the mail-cart, targeting *zamindars* as well as “persons of indifferent repute” from the neighboring villages. The *kotwal* of the town of Bhojpur, Khurshid Ali, joining in these efforts, singled out a local Rajput man named Khoobee—a small shareholding cultivator in the nearby village of Kursi—as a potential suspect with knowledge of the crime. Khoobee, who was suspected of being connected with cattle stealers and had already fallen afoul of Bhojpur’s community *panchayat*, was eventually driven by this persecution to mobilize his kin in a conspiracy “so extraordinary,” Hume wrote, “that it is necessary, in reporting the case, that I should enter somewhat into detail.” The summary of this case in the Nizam Adalat Reports alone spans a few dozen pages.

The picture that emerges from it is one of pure scapegoating: Khoobee had come to be considered disposable enough by his community to be conveniently labelled a person of

⁴²⁸ Arondekar, *Abundance*, 41-2.

“indifferent repute”. In February of that year, when bullocks belonging to a man in Bulandshahr were taken from a halting-ground, the *panchayat* had ordered Khoobee to search for and recover them. When he appeared at the police *thana* in Bulandshahr with the stolen cattle less than a month later, Khoobee claimed to have recovered them from a Gujjar named Kanjee after ransoming him fifty rupees’ worth of jewels, and he requested that the police apprehend Kanjee. On Khoobee’s returning to Bhojpur on the second of March, however, “the *panch* [*panchayat*] there assembled came to the opinion, that Kanjee, the person accused, was innocent, and that Khoobee and his relatives were the actual thieves. The *kotwal* of Bhojpur then told Khoobee, that the only chance he had off escaping punishment for the cattle theft, was his finding out the mail cart robbery”.⁴²⁹ At the trial for his murder, Khoobee’s widow, Cheyn Kour, narrated what Khoobee had told her had happened during that encounter: “the *kotwal* had disgraced him, and spat upon him, and accused him of being concerned in the mail cart robbery, *and threatened, if he did not produce the gold mohurs, to apprehend all the women of his family, and parade them naked through the bazaar of Khoorja.*”⁴³⁰ Consenting under duress from this threat, Khoobee claimed to have some knowledge of where the stolen money was kept, and that he would lead the police to it after making enquiries. At Khoobee’s own request, and at the instigation of the *panch*, Kewul and Mardhan, two residents of Bhojpur, were unwillingly volunteered to accompany him and keep watch. When they arrived at Kursi that night, Khoobee fed them dinner, and then went to his own house to confer with his relatives. An hour later, Kewul and Mardhan made to return

⁴²⁹ *Government v. Bhuwantee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, Oct 18, 1854. In North-Western Provinces (India) Nizamat Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces, Vol. IV* (Agra: Secundra Orphan Press, 1854), 38.

⁴³⁰ *Government v. Bhuwantee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 39.

to Bhojpur, and encountered Bhuwanee, a Jat man who had just been appointed to the service of the *lambardar*, or the holder of Kursi village's revenue titles, four months ago. "I went about 20 paces with them," he recounted at the trial, "and asked the reason of their coming to the village; they said they had come about the mail cart robbery. Mardhan called out to Khoobee Singh, that it would be better if he would come back with them; that if he did not, he would be disgraced in the morning. I heard Khoobee's voice in reply, telling them to go on, and he would follow..."⁴³¹

These statements by the *panchayat*'s men indicate the deep interweaving of non-colonial mechanisms of social compulsion with the grass-roots investigative capacity of local agents of the colonial state. In respect to the tracking of cattle theft, collective responsibility, and the local modes of investigation it entailed, Gagan Preet Singh has argued that nineteenth-century Indian subjects in Punjab and Haryana often avoided the police and tried to rely entirely on local and indigenous systems of tracking thieves, relying on non-state specialist trackers called *khojis* to trace cattle across districts. This stemmed from immense distrust of the state, which was seen as beholden to an exclusivist idea of capitalist property ownership rather than facilitating the more overlapping forms of property that prevailed in villages.⁴³² More famously, Ranajit Guha treated the operation of informal patriarchal legal entities in the vital essay 'Chandra's Death', describing the invisible and inexorable cultural force of what he called *samaj*: a social edifice which imagines a certain pool of subject members, administers rules, orders, and punishments to them, and sustains itself foremost upon the communal policing of sexuality, through which it

⁴³¹ *Government v. Bhuwanee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, Oct 18, 1854. In North-Western Provinces (India) Nizamat Adalat, *Decisions of the Nizamut Adawlut, North-Western Provinces, Vol. IV* (Agra: Secundra Orphan Press, 1854), 38.

⁴³² See Gagan Preet Singh, "Property's Guardians, People's Terror: Police Avoidance in Colonial North India," *Radical History Review* 2020, no. 137 (May 1, 2020): 54–74, <https://doi.org/10.1215/01636545-8092774>.

exercises forms of acquisition, ownership and disposal that have interacted extensively across South Asian history with the formation of statelike institutions.⁴³³ One form of the operation of *samaj* is the *panchayat*: “a tribunal that functioned independently of and parallel to the network of colonial courts. Constituted at the village level of Brahmin priests acting individually or collectively, or by the leadership of a caste or sub-caste, it operated by ‘a system of rules defining the permitted and forbidden, the licit and the illicit’, in a manner that had little to do with the codes and procedures of the *sarkar*’s *a’in* and *adalat* (government’s law and courts).”⁴³⁴ While some of the most ambitious colonial *panchayat* experiments skirted north India, the ideal of outsourcing trivial issues to local self-government, as we have seen, did not, and *panchayats* were exemplary of the self-constitution of social groups that contested or enabled the putative dominance of colonial law over social life. We see that then, as now, *panchayat*-administered

⁴³³ Building on the work of Tanika Sarkar and Ranajit Guha, Prathama Banerjee has invited us to think of *samaj* as both a “juridicalized” phenomenon and a multiplicity of horizons of sociability: *samaj* is a key element of a generalized ‘social constitution’ in a region in which, prior to colonization, “political power was not seen in any conceptual antinomy or transcendental relationship to social life”: a *samaj*, therefore, is (or was) “sociality but not society as such.” See Tanika Sarkar, “Talking about Scandals: Religion, Law and Love in Late Nineteenth Century Bengal,” *Studies in History* 13, no. 1 (February 1, 1997): 63–95, <https://doi.org/10.1177/025764309701300103>; Ranajit Guha, ed., *A Subaltern Studies Reader, 1986-1995* (Minneapolis: University of Minnesota Press, 1997); and Prathama Banerjee, “The Abiding Binary: The Social and the Political in Modern India,” in *South Asian Governmentalities: Michel Foucault and the Question of Postcolonial Orderings*, ed. Deana Heath and Stephen Legg (Cambridge: Cambridge University Press, 2018), 81–105, <https://doi.org/10.1017/9781108571982.004>.

⁴³⁴ Ranajit Guha, “Chandra’s Death”, in *A Subaltern Studies Reader*, 146. The latter-day postcolonial avatars (such as *khap panchayats*) of this nebulous communal apparatus—which has either been rendered timeless, studied only in the context of personal law, or ignored entirely—have been imagined to operate upon the following assumptions: that sexuality precludes reform, and that those who bear the burden of sexuality must be controlled or violently exorcized; that the lust of men is the natural product of sexual difference, and that the ‘consent’ that inheres in the sexual contract is a process of positioning the male to do what comes naturally; and finally, that retributive and restorative justice are often one and the same. The judicial discourse that is produced from a *samaj*’s interaction with the state is “a crossroads for multiple transactions by which a particular way of talking about rape sorts women into categories that bring law and social practices into congruence with one another.” Veena Das, “Sexual Violence, Discursive Formations and the State,” *Economic and Political Weekly* 31, no. 35/37 (1996): 2411–23, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/4404561>, 2419.

retributive justice, in arranging and aligning women, and “positioning them in relation to men as either available for sex or protected within systems of alliance”, found a particularly productive opening through which to compel subjects to self-incriminate.⁴³⁵

But in this instance, the *panchayat* appeared to have overplayed itself. On the morning of the 4th of March, Rambux Shah, *chowkidar*, was returning from Kursi to Bhojpur, when he found Khoobee lying dead on the side of the road, near the sand hills with two sword cuts on his neck, one of which nearly separated the head from the trunk.” Mehtab, the son of Khoobee, accused the *panchayat*-appointed enforcers, Kewul and Mardhan, of his father’s murder, leading to their arrest. The *kotwal*, Khurshid Ali, was suspended, and ordered to give an account for his neglect in tracing out the case of the robbery of the mail cart as well as for the murder of a possible informant. Police investigators observed, however, that “the position in which the body was found made it unlikely that Khoobee Singh, a powerful man, armed with a sword, had been killed by hostile assailants. The corpse lay on its face, without marks of a struggle near, neither clothes disarranged, nor limbs discomposed, the blood confined to the spot on which the deadly wound had been received. The dead man's sword was absent; Hostile assailants would have had no object in secreting, or getting rid of, that weapon, which could prove nothing against them”.⁴³⁶ Months later, in July, Hume was finally able to get the *chowkidar* Rambux Shah, in

⁴³⁵ Das, “Sexual Violence, Discursive Formations and the State,” 2420.

⁴³⁶ *Government v. Bhuwane, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 40. Kureem Buksh, native doctor, attached to the jail hospital at Bulandshahr, deposed that he examined Khoobee’s body on the 5th March: “That his death was caused by a sword cut on the back of the neck, dividing the spinal bones and all the large blood vessels, and nearly separating the head from the trunk; that this wound was the cause of death; that there was another trifling wound just below the fatal wound.”

exchange for a formal legal pardon, to reveal a different story, in which the unsuspecting Bhuwanee had been compelled to play a grim role.⁴³⁷

Four hours after he had seen the *panchayat's* men leave town, late at night, Bhuwanee had heard a voice calling out four or five times, “Hurdeo and Debee Singh, come to me.”⁴³⁸ This was the voice of Khoobee, who had gone out of the village, taking his sword with him, and was heard calling for his nephews from the sandhills, a few hundred yards from the village. Bhuwanee was then further stopped short by “the jingling of a woman's foot ornaments” and began “to wonder what woman could be going towards the *bhoor* [brown hills] at that time of night.” Following her, he found that it was Dia Kour, a Brahmin woman, who was known in the village as Khoobee’s long-time mistress. She had been begged by Khoobee’s own wife, who lived in *pardah* and could not leave the house, to follow Khoobee out of the village and dissuade him from suicide. Bhuwanee eventually came upon Dia Kour and a band of Khoobee’s male relatives, including his son and nephew, scrambling before Khoobee’s naked sword:

Khoobee Singh entreated Hurdeo, Oomrao and Pran to kill him; that he should then be free, otherwise they all would be apprehended; that he had promised to produce the property stolen from the mail cart; that if they killed him, suspicion would attach to Kewul and Murdhan; that they could accuse them, and all the family would be saved from disgrace; he then, gave the sword to Hurdeo, and told him that he, Khoobee, had taken opium; that he was in that state of mind, that he cared not for his wife and children, or anything in the world; that Hurdeo might kill him without any apprehension. I endeavored to deter him and asked Khoobee why he gave his life; that it would cause

⁴³⁷ *Government v. Bhuwanee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 40. Rambux Shah was put into custody on the 19th of July and on the 22nd of July, “after having a pardon tendered to him under regulation X of 1824, [he] gave a full detail of the circumstances of the murder, to which he had become privy on the night it was perpetrated. On his evidence, Mussummat Dia Kour, *brahminee*, an eyewitness to the murder, was sent for, and a pardon extended to her also. On the depositions of these two witnesses, the prisoners (names of all listed) were apprehended; from the investigation held before Mr. Hume, the following circumstances regarding the murder of Khoobee Singh war brought to light...”

⁴³⁸ *Government v. Bhuwanee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 40.

great disturbance. Khoobee addressed me, saying, ‘You ill-bred *Jat*, what business is it of yours, what are you doing here?’⁴³⁹

At this point, accounts of what happened diverged: almost every witness in the village, as well as Khoobee’s family members themselves, claimed that after everyone else had refused to turn Khoobee’s sword on him, Khoobee had “laid hold of Bhuwanee’s legs, and told him to kill him, or that he would kill him. Bhuwanee took the sword and struck two blows...the second blow proved fatal.”⁴⁴⁰ Bhuwanee strenuously denied this, claiming that now he, too, was the victim of a scapegoating campaign, a transference of punishment, since he was a newcomer to the area and had no social protections to shield him from the conspiracies of a higher-caste household. In truth, Khoobee’s own son had done the deed. Caught out, Khoobee’s relatives asserted again and again at the trial that “the kotwal threatened to *be-izzut* [dishonor] Khoobee and his female relatives; that they therefore were the persons who *really* were the cause of his death.”⁴⁴¹ Mehtab, the son of Khoobee, testified in his own defense on a charge of being an accomplice to the murder, and confessed that “he became aware of the real circumstance of his father's murder, but that he concealed it at the instigation of Goolab Singh, a relative of the *zemindar*; that by this person's advice he accused Kewul and Murdhan of having murdered his father; that he now tells the real truth. His father was a proud man, and his desire to kill himself arose from the fear that his women would be disgraced by the police.”⁴⁴²

⁴³⁹ *Government v. Bhuwanee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 40.

⁴⁴⁰ *Government v. Bhuwanee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 40.

⁴⁴¹ *Government v. Bhuwanee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 50.

⁴⁴² *Government v. Bhuwanee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 50.

To prevent the commoning of ‘his’ women—their being stripped naked and paraded in the marketplace—Khoobee was willing to commit suicide. This illustrates the extent to which the colonial legal production of domestic space as the private sphere and domain of the native male householder obscures the talismanic status of such space as “one of the primary arenas within which influence, authority, and rank were visibly articulated and expressed” in elite and dominant-caste society.⁴⁴³ Malvika Kasturi has argued that mid-nineteenth century agrarian north India experienced heightened social stratification: “widening economic divisions within proprietary groups as a consequence of dwindling sources of potential income, indebtedness, and the sale of land had tremendous implications for the ‘symbolic capital’ of Rajput lineages.”⁴⁴⁴ With a growing internal social gulf between prosperous landowners—like the *lambardar* of Kursi village who employed Bhuwanee, or the members of the *panchayat* at Bhojpur—and poorer shareholders, “the pressures of age, gender, and wealth were equally important in creating boundaries within lineages... in a period during which social structures became far more polarized and caste and lineage boundaries less permeable.” While they ordinarily guarded their household privileges as an “inner domain of sovereignty”, caste groups such as *biradaris* and *panchayats* “consciously and selectively appropriated colonial legal codes to transform

⁴⁴³ Malavika Kasturi, *Embattled Identities: Rajput Lineages and the Colonial State in Nineteenth-Century North India* (New Delhi; Oxford: Oxford University Press, 2002), 9.

⁴⁴⁴ Kasturi, p. 60-70: “certain generalized economic processes affected the entire Province. The commercialization of agriculture, monitored by the colonial state and based on the growth of opium, cotton, sugarcane, tobacco, and indigo was partial at best, for it was closely linked to the requirements of external markets, trade and demand. The main social groups profiting from the fruits of commercial production and the high revenue demand included traders, moneylenders, and zamindars who improved their estate management. Those outside this charmed circle suffered by comparison. Additionally, apart from devastating famines such as that of 1836-37, short- and long-term scarcity cycles forced the Rajput lineages to fall into revenue arrears. In such situations, they were either enmeshed in a cycle of debt or were forced to sell their lands. Further, the problems relating to a growing population and the consequent sub-infeudation also threatened all districts.”

relationships in the ‘inner world’.”⁴⁴⁵ At the investigative behest of the colonial state, the *panch* was empowered to reach beyond the threshold between public and private—indeed, between brother and outcaste—and compel anyone they wished to cross it, by suspending the protection of caste membership and inflicting the durational torture of impending sexual humiliation. As a Rajput man faced with being effectively ejected from his community, Khoobee chose to curse it with a premeditated self-sacrifice. He appears in the archive as accomplice and abettor, complicit in all, attempting a last disentanglement, washing his hands of it. He saw no *outside* for the women of his family; he headed for the hills so that they would not have to bear being dragged to the market, so that they would never be compelled to step over the threshold into a public domain that signified only disgrace. (It is no insignificance, either, that his mistress Dia Kour, the only woman among the conspirators who were allowed to see him die, was a woman already dishonored by her open adultery with a man from a different caste—a woman who stood to accrue no further dishonor from what was threatened against him.) Just as he saw no outside, so I see no outside. We are all in it: a boundaryless killing-field of violent caste enforcement in which rape is not only likely, but imminent, impending, *expected*.

Yet even as I write these words, it dawns on me that a conspiracy of punitive self-harm is also, whether intentionally or not, a calculus that spares female life—that holds the women of Khoobee’s household valuable in being alive, not dead. A death that could be blamed on cronies from the *panchayat* could only happen in public upon a likely public target, ensuring that Khoobee’s daughters and wife could not offer themselves in his stead. Unlike in most cases of punitive self-harm, in which it was men who made threats of suicide and women, the elderly, or hired *charans* who died, it is almost as if the head of household chose, in a bizarre way, to take

⁴⁴⁵ Kasturi, *Embattled Identities*, 9; 29.

accountability for the situation he had landed his family in. Yet, if Khoobee had hoped that his death, as opposed to the death of his women, would shine a spotlight on police brutality and the wide networks of social collaboration that enabled it, his relatives scrambled to frame an outsider for the murder when their original conspiracy unraveled, drawing blame away from the cruelty of the in-groups that had sanctioned public stripping and molestation as a technique of blackmail to begin with. The presiding Sessions Judge at Bhawani's trial wrote: "I have searched in vain, in the reported trials, for cases which have any similarity to this, as a guide to me in recommending punishment." He had expected to hear that Khoobee's shadowy accomplices in the mail-cart robbery had killed him to ensure his silence, "but I have never heard of an instance of a man quietly submitting, and requesting to be killed, as the evidence of this case proves that Khoobee did. That Khoobee had taken a large quantity of opium, I consider very probable; that he and his relatives had some knowledge of the property stolen from the mail cart, is to be inferred from his promise to the *kotwal* to produce or point out the gold *mohurs*, [as] this promise was made in the presence of a large number of people."⁴⁴⁶ Regardless of Khoobee's motives or guilt, the Judge argued that "it is not to be credited that three able bodied men could not, if they chose, have prevented Khoobee either from killing himself, or from forcing them to commit the murder." He sentenced three of the conspirators, including Khoobee's nephews, to life imprisonment with transportation overseas.

There is a glaring lack of culpability assigned in the Sessions judgement to the *kotwal* Khurshid Ali, who allied with the *panchayat* to issue the threats against Khoobee's female kin and profiled him as a guilty character despite his restitution of stolen goods. Sessions Judges and

⁴⁴⁶ *Government v. Bhuwanees, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 50.

magistrates of this period would have been intimately aware of the prevalence of police brutality in the provinces; this was a struggle that would plague the administration for its entire existence, largely due to the nature of the police itself as a reactionary force tasked with protecting propertied interests and elites.⁴⁴⁷ And yet, perhaps because Khoobee had become an embarrassing casualty to the freewheeling use of discretionary and exceptional power in the state's quest to reconstitute a theft of state revenue—a priority for which no stone could refuse being upturned—the Nizam Judge reviewing the case in Allahabad arrived at a similar final verdict. He wrote: “By whosoever's hand the deceased was killed, and whether or not he was criminally implicated in the mail robbery, or had been menaced with duress (though innocent) by the police, I entertain no doubt that he was killed, as stated, at his own solicitation and command; and that all his family, and perhaps others, were cognizant of and Privy to the fact”. He made some allowance to the claim that Khoobee's male relatives had been compelled by violent threats from their patriarch himself:

I inclined to regard the peculiar circumstances as extenuatory in a degree, of the criminality of the act. The features of malice, and vindictive murderous purpose, do not enter, as ingredients, into such a deed. Some allowance should be made for the moral influence of the head of the family, driven to desperation, and perhaps some also, for the physical superiority of the deceased, described both in the native doctor's, as well as in

⁴⁴⁷ See Deana Heath, *Colonial Terror: Torture and State Violence in Colonial India*, First edition (Oxford: Oxford University Press, 2021). As early as 1832, a Select Committee on East India Affairs had examined the prevalence of torture and suggested that the colonial police force be reformed and modernized to curtail the use of corporeal violence. The Company's Court of Directors would issue a “Judicial Despatch” regarding the prevalence of torture in the Bombay Presidency in 1826; Bombay's highest criminal court, the Faujdari Adalat, had issued over ten circulars regarding the rules governing the extraction of confessions by native police. These reports spoke of “brutal acts committed by native officials in utter secrecy, unknown to their European superiors”. Rao has highlighted some of the practices they documented: a church official from Mangalore noted that chilli pepper was applied to women's bodies to extract confessions from them; a joint magistrate of Nellore mentioned the case of a woman named Subbee, who upon being accused of having stolen a sepoy's knapsack was subsequently hung by one arm from the branch of a tree, suspended above the ground, and “whipt with tamarind switches on her private parts.” See Anupama Rao, “Problems of violence, states of terror: torture in colonial India”, in Steven Pierce and Anupama Rao, eds., *Discipline and the Other Body: Correction, Corporeality, Colonialism* (Durham: Duke University Press, 2006).

Musammat Dia Kour's evidence, as being a large, powerful, man, the latter witness declaring that he would make three or four men like Bhuwanee...⁴⁴⁸

Taking these factors into account, the Nizamut reduced the prison sentences of all the men present at the scene of Khoobee's murder. The two men most likely to have killed him, Bhuwanee and his son, had their life sentences shortened to fourteen years in banishment.⁴⁴⁹

Taking its cues from the social landscape, the law focused on Bhuwanee, an outsider sacrificed to local conflicts, and ignored the role played by the panchayat and the police in precipitating death as a matter of routine investigation. This is the implicit agreement between the highest echelons and the dispensers of dirty work on the ground: we agree not to hold *you*, systemically, to fault; we hold a scapegoated individual at fault. It is this compact that invites us to fall for "the seductions of a memorable archival event", "the orchestrated attack with a full cast of characters", that obscure "a more ordinary, relentless, and brutal ecosystem—the very opposite of a dramatic, scripted, and highly visible attack."⁴⁵⁰

⁴⁴⁸ *Government v. Bhuwanee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 58.

⁴⁴⁹ Debee and Mohun Singh got imprisonment for seven years, and Mehtab imprisonment for five years, all with labor in irons. "Pran's minor guilt will be adequately visited with imprisonment for two years without irons, and a fine of rupees 40 in lieu of labour, payable in a month from the date of communication of the sentence." *Government v. Bhuwanee, Hurdeo, Debee, Mohun Singh, Pran and Muhtab*, October 18th, 1854. *Decisions of the Nizamut Adawlut*, 58.

⁴⁵⁰ Arondekar, *Abundance*, 42.

Chapter 4: A Predator's Tracks

4.1 Second class

On the night of September 4th 1903, a British medical missionary named Christina Mayne took a late train from Lucknow, capital of India's United Provinces, to the nearby town of Ayodhya—then named Fyzabad. Sound asleep in her second-class carriage compartment, she woke with a start when she felt a man's fingers close about her throat in the dark. She was astonished to see that he had "a fair face".⁴⁵¹ He spoke in English: if she screamed, he would throttle her. He wore tweed; he stank of drink; he caught her arm in a bruising grip. He didn't want money—he wanted her. His voice was "most terrible". "I cannot get his way of saying it out of my head," she recounted later. She thought of God and screamed her resistance: *you brute! You beast, I'm a doctor!* He flung her to the side, and although the train was still moving, he escaped through the window.⁴⁵²

Miss Mayne immediately made the crime known. She halted the train, screamed for guards, and commanded the responding Indian watchman to take her to the brake van, where the guards travelled, for the remainder of the journey. When they reached the rear compartment,

⁴⁵¹ "Petition from Mrs. Maria Wallace praying for remission of the sentence of five years imprisonment passed on her son, Mr. D. H. Wallace for attempted rape." Judicial and Public Annual Files 1089-1181, L/PJ/6/807, No. 1175, 28th March, 1907: *Emperor v. D. H. Wallace*.

⁴⁵² "Petition from Mrs. Maria Wallace": *Emperor v. D. H. Wallace*.

however, she stopped dead and exclaimed “absolutely involuntarily”: “Why, that’s the man!”⁴⁵³ He was the only other European on the train, she would later learn: a Mr. Duncan Harry Wallace. He also happened to be a Sergeant of the Railway Police, stationed at Benares and off duty. He had put on a *topi* and a blue coat, but his eyes were bloodshot, and—as the district magistrate trying the case noted later—he was “perfectly aware of what the charge was, though the nature of it had never been mentioned in his presence.”⁴⁵⁴ He came up very close to her and warned, “You had better be careful what you are saying, madam.”⁴⁵⁵ Witnesses recounted that he threatened her with defamation; his body language seemed to be threatening more. In the face of these threats, Miss Mayne backed down—briefly. She asked to go to the ‘*zenana gari*’, the lower-class compartment reserved for Indian female travelers. She then waited until the train stopped at Barabanki and demanded that it not move “until the biggest *Sahib* in the place had come”: no less than a deputy commissioner or a magistrate.⁴⁵⁶ This demand was totally ignored.

“You will all suffer for this,” Mayne screamed at “some *khitmatgar* [servant]” as the train rolled on.⁴⁵⁷ At each subsequent station she sent telegrams to the police commissioner at Fyzabad and a clergyman based in the city, at one point shakenly handing away her entire case of calling cards. But no matter how commandingly she threw about her weight as an aggrieved white passenger, the messages seemed not to be going through. “I now began to feel uncertain,”

⁴⁵³ “Petition from Mrs. Maria Wallace”.

⁴⁵⁴ “Petition from Mrs. Maria Wallace”: *Emperor v. D. H. Wallace*.

⁴⁵⁵ “Petition from Mrs. Maria Wallace”.

⁴⁵⁶ “Petition from Mrs. Maria Wallace”.

⁴⁵⁷ “Petition from Mrs. Maria Wallace”.

she said, “as to whether the officials were being threatened or bribed.”⁴⁵⁸ When she disembarked at Fyzabad, her dress dripping wet in the monsoon rain, she saw neither of the allies whose presence she had demanded. They had not been informed of what had happened. She recounted:

I wondered if there was anything in the delay, and said if there was, they would all be severely punished. Some one at the station told me the man had been left at Bara Banki, and I wanted to know why, when I had not made any absolute accusation. Then *they* said, ‘Oh no, he’s here,’ and *they* brought him. I can’t tell you who *they* were. This time he said nothing, but lifted his *topi* slightly. Then they asked should they detain him. I said ‘No, certainly not,’ but I expected them to follow his whereabouts. They were all awfully frightened and cringing at both Daryabad and Fyzabad....I heard some one say at one of the stations, “*aur koi Sahib hai nahin* [there is no other Sahib].”⁴⁵⁹

That there *is* no other Sahib—that for the many and varied survivors of sexual violence on the colonial Indian Railways, recourse for the harms they suffered was circumscribed by total institutional complicity—is also the premise of this chapter. This reality, much as it rankled government bureaucrats, remained critical to the quotidian operation of this vast infrastructural network, and was effectively unchallenged at a local level. The district magistrate in whose court the case above was tried, for instance, diagnosed a “great want of discretion” in the uncooperative Assistant Station Master and the Railways Police Sub-Inspector whom Miss Mayne had threatened and cajoled at Barabanki—but reasoned that this was inevitable: railway men were either crazy, or complicit, or both. “The latter’s action”, he mused, “may be due to his having lost his head, or to a desire to do nothing likely to contribute to the difficulties of his fellow-officer.”⁴⁶⁰ This plainly evident desire to do nothing, as we have seen, so unsteadied Mayne that she hesitated even to ask that Wallace be followed: that he be subjected to anything

⁴⁵⁸ “Petition from Mrs. Maria Wallace”.

⁴⁵⁹ “Petition from Mrs. Maria Wallace”.

⁴⁶⁰ “Petition from Mrs. Maria Wallace”: *Emperor v. D. H. Wallace*.

even approximating the systemic scrutiny with which women of all classes contended as they entered public space, and navigated the elaborate infrastructure which existed to police and secure social boundaries that risked dissolution in the liminal spaces of long-distance rail travel.

4.2 From bad lighting to bad character

Studying acts of sexual violence committed by Railways employees—and the cultures and spaces of impunity they proceeded within—does more than merely offer another example of perverse institutional functionality in colonial India, or highlight yet another sphere of official complicity allied with and adjacent to, if not centered on, the ritual excesses of the Indian police.⁴⁶¹ Rather, studying these acts disrupts ‘the Railways’ both in its default status as the singular icon of putatively benevolent imperialism, and in its suppressed infamy, as a site upon which violence manifests only as in its most extreme avatar—a site defined by the moment of Partition, at which the colonial promise of the Railways to connect and unite India was broken by carriages and stations overflowing with raped and butchered bodies.⁴⁶² Everyday impunity on

⁴⁶¹ See Anupama Rao and Steven Pierce, eds., *Discipline and the Other Body: Correction, Corporeality, Colonialism*. Duke University Press, 2006; and Deana Heath, *Colonial Terror: Torture and State Violence in Colonial India*, Oxford University Press, 2021, for histories of police violence and abuse in colonial India. For contemporary India, see Jinee Lokaneeta, ‘Rule of Law, Violence, and Exception: Deciphering the Indian State in the Thangjam Manorama Inquiry Report.’ *Law, Culture, and the Humanities*, Vol. 0, 2018, pp. 1-21; and Pratiksha Baxi, *Public Secrets of Law*. Oxford University Press, 2014.

⁴⁶² See Veena Das, *Life and Words: Violence and the Descent into the Ordinary* (Berkeley: University of California Press, 2007); Urvashi Butalia, *The Other Side of Silence: Voices from the Partition of India* (Durham, NC: Duke University Press, 2000); Samia Vasa, “2002: A Reading Appeal,” *Differences* 30,

the Railways troubles this binary, exposing the co-constitution of benevolent authority and arbitrary violence in colonized spaces, and the particular effects of those conjunctions upon women.

This paper attempts a close historical study of the spatial politics of this everyday impunity. It aims to show how rapists with institutional power magnified disparities of agency and credibility between themselves and their victims by relying on their particular knowledge of and control over a public environment. While safe and efficient travel may have been conceived in the abstract as a litmus test for British superiority, the railways in practice was a hostile and humiliating environment particularly to women passengers, temporarily disconnecting them from customary and contextual social protections and exposing them to the arbitrary power of Railways employees across the spectrum of caste and racial hierarchies.⁴⁶³ This paper attempts to more closely interrogate the near-total confidence and audacity with which this arbitrary power was wielded, and to document its effects upon women and public space. The much-promoted image of the Railways as the technological gift of colonial rule tended to produce a greater outcry against cases of railways rape than such crimes would generally warrant otherwise: as one scholar argues, Indian newspapers insisted “that increasing assaults on Indian women were causally related to the leniency afforded to offending European or Eurasian employees”, who occupied most of the positions of power within the institution.⁴⁶⁴ The systemic failure of redress

no. 3 (December 1, 2019): 34–62, <https://doi.org/10.1215/10407391-7973988>. The latter addresses the 2002 Godhra riots and railways atrocities in that context.

⁴⁶³ Ritika Prasad, *Tracks of Change: Railways and Everyday Life in Colonial India* (Delhi: Cambridge University Press, 2015); and Laura Bear, *Lines of the Nation: Indian Railway workers, bureaucracy, and the intimate historical self* (New York: Columbia University Press, 2007).

⁴⁶⁴ Ritika Prasad, “Smoke and Mirrors: Railway Travel and Women in Colonial India,” *South Asian History and Culture* 3, no. 1 (January 1, 2012): 34, <https://doi.org/10.1080/19472498.2012.639517>.

for victims of sexual violence on the Railways, a key mode of transport, was portrayed as a form of state-sanctioned rape in the Indian press, and rendered the very concept of women's independent travel stigmatized and precarious. Historically, much stock had once been set in pre-colonial India upon ruling authorities facilitating the ease of women's mobility in order to aid patrilocal practices of kinmaking and alliance-building.⁴⁶⁵ But as the British Raj transformed expectations for public safety and state responsibility, Indian women became progressively less likely to pass as independent travelers with unquestionable motives, and were subject, at any time they were outside and visible, to both compulsive suspicion and an enforced helplessness in the name of their own security. This enforced helplessness, as shall be shown, has been under-analyzed as such.

Scholars of colonial Indian railways have documented how by the turn of the twentieth century, generalized anxieties about sex trafficking, domestic slavery, and prostitution had manifested themselves in the presence of segregated compartments and female waiting rooms at train platforms.⁴⁶⁶ I argue, however, that a singular focus on the protectionist reasoning behind

⁴⁶⁵ See Rosalind O'Hanlon, "Issues of Masculinity in North Indian History: The Bangash Nawabs of Farrukhabad," *Indian Journal of Gender Studies* 4, no. 1 (March 1, 1997): 1–19, <https://doi.org/10.1177/097152159700400101>.

⁴⁶⁶ See Sarah Waheed, "Women of 'Ill Repute': Ethics and Urdu Literature in Colonial India," *Modern Asian Studies* 48, no. 4 (2014): 986–1023, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/24494611>; Durba Mitra, *Indian Sex Life: Sexuality and the Colonial Origins of Modern Social Thought* (Princeton, New Jersey: Princeton University Press, 2020); Ashwini Tambe. *Codes of Misconduct* (Minneapolis: University of Minnesota Press, 2009); and *Defining Girlhood in India* (Chicago: University of Illinois Press, 2019). See also Philippa Levine, *Prostitution, Race, and Politics: Policing Venereal Disease in the British Empire* (New York: Routledge, 2003); Andrea Major, "Enslaving Spaces: Domestic Slavery and the Spatial, Ideological and Practical Limits of Colonial Control in the Nineteenth-Century Rajput and Maratha States," *The Indian Economic & Social History Review* 46, no. 3 (July 1, 2009): 315–42, <https://doi.org/10.1177/001946460904600303>; and Nitin Sinha, "Who Is (Not) a Servant, Anyway? Domestic Servants and Service in Early Colonial India," *Modern Asian Studies* 55, no. 1 (January 2021): 152–206, <https://doi.org/10.1017/S0026749X19000271>.

this exclusionary infrastructure and the hierarchies of respectability it sanctioned deflects attention from a far more primary problem: a culture of sexual assault that was signature to the predatory enforcement practices of the Railways workforce. Drawing from India Office proceedings and native newspaper reports, I undertake a detailed reading of three cases from an archive of Railways rape that features superintendents, station masters, constables, guards, ticket inspectors, signalmen, and even station cooks as perpetrators, which shows that it was the very personnel that held responsibility over these protective gendered spaces who took the greatest and most frequent opportunities to deploy them against women. I proceed on the assumption that as fine as possible a detailing of these exploits—their technique, their sentiment, their *post-facto* justification—is worth having. This assumption is borrowed from Indian newspapers of the time: it was press attention—bent on reading a broader terrain of power dynamics in small details of gesture, attitude, motivation, and speech which were widely seized upon and circulated as affective symbols of colonial domination—that cajoled, preserved and extracted the minor details of railways rape trials from the opacities of government ministries and courts.⁴⁶⁷ By reading the social, political and emotional terrain of railways rape against the conjoined hypocrisies of both colonial functionaries and Indian men, my aim is to expose the hollowness of their stakes. The outcomes of rape trials ultimately functioned as a form of political messaging over the balance of power between men, not as genuine loci of legal redress. This is because there was never any substantive attempt to challenge the social consensus that Indian women who were raped were worthless, regardless of whether someone was found guilty of raping them

⁴⁶⁷ The most comprehensive treatments of nationalistic and anticolonial sentiment in early north Indian newspapers can be found in Charu Gupta, *Sexuality, Obscenity, Community* (Delhi: Permanent Black, 2001).

or not: the concrete matter of bringing them justice was conspicuous only in its collective abandonment. Despite my attention to these cases, I have no means to reverse that abandonment.

Instead, a key reason that the outcomes of rape cases against Indian women became immaterial, I argue, was because the Railways workforce deployed institutional knowledge as a relentless incursion on the boundary of tolerable impunity, expanding its absolute claim to the space of the Railways by pushing up against the limits of reasonable self-incrimination. Because they harassed and assaulted women so brazenly—and so openly mobilized the railways environment and their fellow colleagues to facilitate assault—criminal courts trying these employees struggled to accurately assess and interpret the risks taken by perpetrators in order to commit rape: risks that mocked the standard of ordinary rationality, which assumes a fear of being found out and facing penalties. With actions driven by impunity simultaneously assuming and entrenching the negligible likelihood of adverse consequences for sexual violence, criminal trials of Railways employees thus failed to substantively contend with the distorting effects of state power and official authority upon class behavior and membership.

In this respect, it has been argued that Anglo-Indians—a tiny minority of mixed-race, or ‘Eurasian’, British subjects—formed a ‘railway caste’, not only monopolizing higher-level posts on the Indian Railways, but turning the space of the Railways into their own absolute possession and fiefdom.⁴⁶⁸ I document how, despite racial and communal tensions, the Railways workforce often acted in mutual solidarity beyond the internal loyalties of the dominant ‘railway caste’: white, mixed, and native men often joined forces in coercing, threatening, raping and silencing the female passengers they were ostensibly charged with keeping safe, to shared benefit. A closer look at the space and habitus of petty railway officialdom—with its special provisions of

⁴⁶⁸ See Bear, *Lines of the Nation*.

technical expertise and environmental ease—thus reveals the incentives and affordances of gender-based complicity. If they used their knowledge of the Railways environment to aid and abet the sexual exploitation of female passengers, men of lower status could share in the Anglo-Indians’ techno-bureaucratic license. However, this misogyny was fundamentally unstable, and reveals the instrumentality of sexual violence in locations like the Railways to the processes of political contestation that generate social constituencies and groups.⁴⁶⁹ Under the scrutiny of the press and the courts—though a pale echo of the scrutiny faced by female survivors—the differential treatment of white and native rapists fractured the solidarity of the Railways workforce along racial lines, with Indian publics seizing on the potential infamy of sexual violence on the railways to advance an inflammatory discursive linkage between rape, conquest, and civilizational degradation, cementing the political cachet of nationalistic metaphors equating sexual violation with invasion, social death, collective humiliation, and the extermination of communities.⁴⁷⁰ Nihilistic representations of rape on the railways by Indian newspapers foreclosed the possibility of women’s travel in general: as long as Europeans occupied and ruled it, Indian women could never safely go outside or participate fully in public space.

I move now to decenter Miss Mayne, with whose experience of attempted rape I intentionally opened. By virtue of her social and racial position, she did not remain in thrall to intimidation for long. Despite a rocky arrival at Fyzabad, she was eventually able to access the house of a Reverend J.A. Elliott (who had received her frantic telegrams several hours late)—

⁴⁶⁹ See Mrinalini Sinha, *Colonial Masculinity: The “manly Englishman” and the “Effeminate Bengali” in the Late Nineteenth Century* (Manchester, New York: Manchester University Press, 1995).

⁴⁷⁰ Charu Gupta, ed., *Gendering Colonial India: Reforms, Print, Caste and Communalism* (New Delhi: Orient Blackswan, 2012); and Megan Eaton Robb, “Women’s Voices, Men’s Lives: Masculinity in a North Indian Urdu Newspaper,” *Modern Asian Studies* 50, no. 5 (2016): 1441–73, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/44157758>.

from where she recovered enough to file a police complaint.⁴⁷¹ From that point on, things went her way; Wallace was promptly arrested and charged less than ten days later. Witness statements from his trial show that Mayne may have gotten several details wrong and contradicted herself—the suit was grey, not blue; the would-be rapist escaped via the door, not the window; Wallace had not smelled of alcohol, whereas the assailant had. Mayne was found to be reluctant to prosecute, and claimed she “could not swear absolutely positively” that Wallace, presented in daylight, was the man who had assaulted her. Nevertheless, the officer was near-unanimously found guilty by jury trial—and sentenced to five years in prison for attempted rape—on the strength of a torn tie.

“The lady behaved with the greatest courage and pluck, and it is to this fact that she owes her Providential deliverance,” wrote Fyzabad’s deputy commissioner in his remarks on Mayne’s case. Of course, the only true source of deliverance in this instance was an injured white woman’s ability to override colonial administrative apathy, combined with the institutional support rendered to her by the missionary agencies to which she belonged. I have noted that Miss Mayne, in some perverse sense, ‘did everything right’: enough to prevent the institutional advantages of Railways employees from eroding her credibility. She is the exception. As the rule, credibility and claims upon protection vanished into asymmetries of knowledge between women passengers and their abusers. From bad lighting to bad character, a hostile built infrastructure of station sheds, police outposts, and officer bedrooms with which perpetrators were intimately familiar was collusively mobilized to terrorize victims and discredit their testimonies of sexual violence—though not, as I shall show, without significant resistance, put up largely by female survivors’ counter-knowledge of the railways environment, their

⁴⁷¹ “Petition from Mrs. Maria Wallace”: *Emperor v. D. H. Wallace*.

willingness to testify in explicit detail, and their refusal to conform either to Indian or to colonial scripts of modest and honorable character.

4.3 The *zenana gari*

Indian women, recent scholarship has argued, were never real interlocutors with those who governed their experience on the railways.⁴⁷² They were a perennial bone of contention between elite Indian and European men, neither of whom necessarily aimed to ‘save’ them. Europeans considered the everyday pervasiveness of sexual violence a social problem for savages, something tiresome and essentially false to colonial law, and best left to Indians themselves to solve.⁴⁷³ Indians, in contrast, seized exclusively upon rape committed by Europeans or in European institutional spaces, hysterically insisting that India’s only experience with rape was at the hands of invaders—and that its honor remained spiritual, intangible, in the face of foreign incursion.⁴⁷⁴ This politics of rape, divorced as it was from women’s own experiences, was potent. Anticolonial Indian leaders from Surendra Nath Bannerjee in the 1890s to Mohandas Gandhi and Gopal Krishna Gokhale in the 1920s launched their intellectual and

⁴⁷² See Prasad, *Tracks of Change*.

⁴⁷³ See Mitra, *Indian Sex Life*; and Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India*, (New Delhi: Oxford University Press, 2000).

⁴⁷⁴ See Partha Chatterjee, ‘The Nationalist Resolution of the Woman Question’, in *Empire and Nation: Selected Essays* (New York: Columbia University Press, 2010); and Tanika Sarkar, “A Prehistory of Rights: The Age of Consent Debate in Colonial Bengal,” *Feminist Studies* 26, no. 3 (2000): 601–22, <https://doi.org/10.2307/3178642>.

political careers campaigning to shield Indian women from being captured by colonial technologies of transport—whether these were overstuffed railway carriages stalked by white guards or the packed holds of ships bearing the indentured across the ocean.⁴⁷⁵ Ultimately, the public attention they brought to women’s safety and mobility proved to be elitist, repressive, and paternalistic, aimed at withdrawing women from the ambit of colonial male scrutiny at the cost of their freedom of movement, the question of which was to be deferred to after the nation’s independence.⁴⁷⁶

From the moment that women began to travel on the Indian railways in the 1860s, sharp distinctions of class and caste among female passengers were flattened by corporate considerations of profit and cost. Actual physical mobility—which by necessity was visible and undertaken in public—jeopardized social mobility, which was invisible, accessed as seclusion. The impulse to seclude female travelers initially resisted democratization: early associations of elite Indians had maintained that lower-class and -caste female railway passengers remain

⁴⁷⁵ See Charu Gupta, “‘Innocent’ Victims/’Guilty’ Migrants: Hindi Public Sphere, Caste and Indentured Women in Colonial North India,” *Modern Asian Studies* 49, no. 5 (2015): 1345–1674, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/24495433>; and Radhika Vyas Mongia, *Indian Migration and Empire: A Colonial Genealogy of the Modern State* (Durham: Duke University Press, 2018). Laura Bear also documented the moderate Indian nationalist Surendra Nath Banerjee’s 1891 press campaign against the harassment of women on the railways: “The stories were framed by descriptions of how the loss of a ticket, an accidental overrunning of a destination, the lack of money to pay an excess fare, and the separation of a husband and wife into male and female compartments produced devastating violations. The perpetrators were always Europeans or Eurasians, and they were marked by the signs of colonial authority—wearing the cap of their office or dressed in the uniform of the Railway Volunteer Force. The Indian women, however, appeared as respectable widows, young brides, and innocent village girls. They would often be rescued, if they were truly respectable, just in time... Yet these women would only deserve this protection if they remained “feminine” and outwardly virtuous... These narratives of rescue were not predominantly about the violence of rape... Stories about the offering of meat and drink by railway guards to female passengers were placed in the same category as more violent acts and were intended to provoke as much outrage.” *Lines of the Nation*, 55.

⁴⁷⁶ Here, again, Partition scholarship has addressed the state agencies recruited to round up and ‘give back’ women who had ended up on the wrong side of the border. See Das, *Life and Words*, and Butalia, *The Other Side of Silence*.

unsegregated, “always visible to everyone”, and that only women “of birth and breeding” required a respectable form of transport.⁴⁷⁷ However, over 90% of Indian passenger traffic was third-class traffic—even intermediate class ridership, the rung below first and second, never exceeded 3.5% of total traffic throughout the colonial period.⁴⁷⁸ Hardly any of India’s railway companies thought it financially viable to provide true *zenana* compartments, available only to upper-caste and elite women who lived fully in seclusion. Instead, by 1890, a Railway Act had mandated that every company was required to provide women’s compartments only in the lowest class of every passenger train—a mandate essentially identical to accommodation for female railway passengers in Britain.⁴⁷⁹ Thus, as one review of railways scholarship puts it, “the notion of protection over females cut through the notion of class and race to create a co-terminus space of both seclusion and ‘irritant’ mingling.”⁴⁸⁰

Despite its potential for social contagion, however, railway travel had become central to everyday life. By 1900, over 25,000 miles of track had been laid, and a staggering 175 million passengers used the railways each year.⁴⁸¹ This produced profound reorientations of public and national space. In the words of Ritika Prasad, “railway space spurred public conversations about contact and access, rights and privileges, and inclusion and exclusion...the public nature of

⁴⁷⁷ Petition by the British Indian Association, North-west Provinces, to Viceroy and Governor-General of India, Aligarh, 16th October 1866. In Prasad, *Tracks of Change*, 5.

⁴⁷⁸ Prasad, *Tracks of Change*, 5.

⁴⁷⁹ Prasad, “Smoke and Mirrors”, 33. Until the early 1900s, these third class carriages resembled cargo-holds, with barely any ventilation, no opportunities to leave carriages during intervening stops, and zero toilet facilities.

⁴⁸⁰ Nitin Sinha, “Histories of Transport and Communication in South Asia: A First Review,” *The Journal of Transport History* 42, no. 1 (June 1, 2021): 142–69, <https://doi.org/10.1177/0022526620971461>.

⁴⁸¹ Great Britain, *Statistical Abstract Relating to British India from 1894-95 to 1903-04. Thirty-Ninth Number*. (Cambridge, England: Proquest LLC, 2007), 138-40.

railway spaces allowed people to simultaneously pursue ideals of a horizontal society *and* reinstate hierarchies of difference.”⁴⁸² In such circumstances of unprecedented social mingling, separate compartments and waiting spaces for women appeared only as a form of security theatre, ineffective not only against male violence, but also against a seemingly universal aversion to any blurring of internal difference within the category of gender. Known as *zenana garis*, or harem carriages, after World War I, these third-class women’s carriages were often shunned by *ashraf* (elite Muslim) and *savarna* (high-caste) Indian passengers, who kept ‘respectable’ women under the direct supervision of male family members in the general compartment while traveling in order to avoid having them sit next to women of lower social status such as sweepers and *ayahs*.⁴⁸³ As will be seen, the upshot of this social atomization was that despite sometimes being mingled together in third class regardless of their particular social origin, women could rarely help each other, even by some passive power of collective presence; even, as shall be shown, when they tried. The occasional presence of ‘respectable’ women in third class did not elevate the general level of respect and status women passengers could command; rather, it levelled them all. In the segregated railway carriages, they were goods for the taking—unguarded, a free giveaway. On the railway platform, they were whores willing to transact their bodies for a ticket.

Railways legislation provided the illusion of safe, separate space, but had no specific provisions for offences against women by employees. Clause 101 of the 1890 Railways Act

⁴⁸² Prasad, *Tracks of Change*, 59.

⁴⁸³ Waheed, “Women of ‘Ill Repute’”. As Prasad notes, elite Indian women were not exceptional in shunning spaces segregated by gender alone: “it was because many women refused to travel separate from their male escorts that some railway companies in north America allowed male escorts to accompany their female charges in ladies’ cars; female travelers in Britain—‘certainly of the upper and middle classes’—also accepted the need for a male escort when travelling.” *Tracks of Change*, 69.

prohibited endangering passengers by disobeying stipulated rules of functioning, but this law was aimed more at preventing accidents and collisions than interpersonal harassment. Legislation in 1890 and 1906 sought to penalize men intruding into women's carriages with a hefty 100-rupee fine, but relied for its enforcement upon Railways employees and police officers, who faced no such prohibition upon entering women's spaces.⁴⁸⁴ Attempts to prosecute white employees too zealously for infractions committed on the Railways could, and sometimes did, lead to retaliation against the prosecutor himself.⁴⁸⁵ Threadbare provisions for safety and privacy thus bore up against the combined hostility of railway space and employee license. The scholar Laura Bear has described how, after the Indian Mutiny was suppressed in 1859 and authority over India transferred from the East India Company to the British state, reports of wartime attacks by rebel sepoys on railway stations and personnel provoked the militarization of railway space. As the British Raj stabilized its control over India in subsequent decades, the Railways' mandate to facilitate passenger traffic and the state's desire to win over the loyalty and complaisance of Indian subjects won out over explicitly militaristic considerations in station construction and design. But as architecture became less defensive, "something else was happening in parallel. There was a silent, invisible return of the occupying force of the colonial state in the form of the bodies of railway subordinates who were trained to control the behavior

⁴⁸⁴ *The Indian Railways Act, 1890, (Act X of 1890), As Modified Up to 1st June, 1905* (Calcutta: Office of the Superintendent of Government Printing, India, 1905), Section 119.

⁴⁸⁵ "The *Naiyar-i-A'zam* – commenting on 'the inadequacy of sentence on the two Eurasians' who had outraged women travelling on the Soron-Bareilly Railway—insisted that had that same offence been committed by an Indian, and the complainant been 'a European lady', the punishment would have been 'nothing short of transportation for life'. Pointing out that Babu Mohan Lal, who had been instrumental in working out the case against the Eurasians, 'was given to understand indirectly that he must resign, and has since been thrown out of employment', the editor praised him for 'a great national service', concluding with the hope that 'well-to-do Indians' would assist him now in earning his livelihood." *Naiyar-i-A'zam*, Moradabad, 12th October, 1906. Quoted from Prasad, "Smoke and Mirrors", 36.

of Indian passengers.”⁴⁸⁶ Many Eurasian or Anglo-Indian Railways employees were also members of auxiliary defence forces or volunteer army corps; Railways Acts of 1854, 1871, and 1890 granted them correspondingly militarized powers.

Unlike in Britain, railway platforms and adjacent land were railway property: Indians could be arrested as trespassers merely for lingering on the platform without a ticket. They could be accused of intoxication, obscenity, indecency, endangering the safety of persons, or being a public nuisance—and railway employees could bring them before a magistrate without a warrant for any of these offences. As any railway servant was authorized to arrest a passenger, minor offences such as not paying excess fare—or even the suspicion that a passenger had provided false identifying information or was trying to abscond—could provoke tremendous coercion and violence. Railway companies were not held liable for assaults committed by their employees in the course of duty. Section 120 of the Railways Act, which criminalized offences such as obscenity and intoxication, was not even held to apply to Railways men until 1934, and the legal ruling which opened up this liability was overturned just three years later in the name of maintaining passenger discipline.⁴⁸⁷ If employees were penalized for abuses of power at all, this was in the form of transfer postings or discharges on terms that could get them employed elsewhere. The protectionist architecture of the railways was designed to protect one thing: white authority and command, without which the railways would crumble. To wield this command as abuse was the absolute default.

⁴⁸⁶ Bear, *Lines of the Nation*, 41.

⁴⁸⁷ Bear, *Lines of the Nation*, 41.

4.4 The brake van

European operational control of the Railways was considered indispensable, but the illusions of special competence and reliability upon which this axiom rested were routinely perverted to personal ends. An telling example of this can be found in one of the most prominent cases from the time period I study, which culminated in the trial of George Edwin Price, a guard on the Rajputana-Malwa Railway in north-western India, by the Allahabad High Court in May 1893.⁴⁸⁸ The preferential recruitment of domiciled Europeans and Eurasians to upper subordinate Railways posts was a consistent feature of the institution all the way up to India's independence. Unlike other areas of the colonial state, where Indians progressively gained higher roles, almost half the Eurasian community resident in India was either employed by the Railways or associated with it as employee dependents until as late as 1930.⁴⁸⁹ Eurasians conscripted from military orphanages and pensioned European soldiers were often the sole class of recruit considered technically competent to work as railway guards, drivers and stationmasters at large junctions.⁴⁹⁰ It is with irony that we proceed to Price's case, which stands out for its audaciousness. He was accused of coercing a group of Rajput women into the brake van of a moving passenger train in order to separate them from their husbands, in whose company they'd been traveling. He then detached this compartment from the train three miles before it reached Jaipur, and raped a

⁴⁸⁸ "House of Commons questions on sentences of two cases; Private John Rugby fined Rs. 100 for the kicking to death of a coolie, while Railway Guard G.E. Price is acquitted of outraging the modesty of an Indian Rajput woman." Judicial and Public Annual Files, IOR/L/PJ/6/354, No. 1513, 14th August, 1893.

⁴⁸⁹ Bear, *Lines of the Nation*, 9.

⁴⁹⁰ Bear, *Lines of the Nation*, 65.

woman named Ruri in front of her fellow female passengers, including her own mother, as their carriage trailed behind on the tracks.

The brazenness of these alleged acts generated tremendous publicity, drawing attention to other, more quotidian incidents on the railways in its wake. In the native newspapers' telling, the railways would not be safe for Indian women unless they were institutionally shielded from the depredations of white official authority. This focalization of blame on European officers—and a consistent policy of threading that blame upwards to their European superiors—was both structurally clear-eyed and strategically despondent, able to conceive of few pathways for action short of outright regime change, as I will show. As the Allahabad *Prayag Samachar* noted: “If even *men* are so much afraid of Europeans that they run away as fast as they can when they are threatened by the latter, how could a weak, ignorant woman offer resistance to a lusty, young European at a lonely place at night?”⁴⁹¹

Once the Rajputana Railways case went to trial, Price argued in court that an accident had taken place: the train's brakes had stopped working, the train had been moving too fast to slow down, and the attachments between vans had been mishandled and left loose by others, leading to the brake van being cut off.⁴⁹² Women passengers headed to Jaipur who were frightened by the train's speed had run into the van of their own accord; Price had had nothing to do with them. Although a water-carrier at a previous station had seen him putting women into the van, his defence argued that it was unlikely that someone intent on rape would trap and confine five women instead of one, and that many of the women in the compartment had seemed undisturbed and made no complaint when they were eventually found. The accusations of rape had come

⁴⁹¹ Bear, *Lines of the Nation*, 65.

⁴⁹² “Railway Guard G.E. Price is acquitted of outraging the modesty of an Indian Rajput woman.”

months later, not to the Magistrate at Jaipur but to a Sessions Judge at Ajmer, suggesting that the victim had been tutored to add to her statement.⁴⁹³

Ruri was the wife of an artisan who was in the service of the Resident at Jaipur, “not a common woman”, and Indian newspapers argued that it was natural for her not to make a complaint before “she consulted her husband and he allowed her to tell the whole truth.”⁴⁹⁴

Despite the affordances of this social standing, however, the prosecution seemed to take for granted that her case was outlandish and would be nearly impossible to prove, painting both the perpetrator and the victims as unreliable:

Counsel admitted that the act was an act of folly, and, if they pleased, an act of lunacy, for it imperiled his prospect in the railway, and was done at some personal risk. But this was not uncommon in the case of immoral men or men not habitually immoral, who were carried away by passion or temptation. As to the contradictions in the evidence, counsel had never known a trial in which witnesses of this class had not been shown to have contradicted themselves...Many of the contradictions were not falsehoods, but the result of habits of want of observation.⁴⁹⁵

Just as impunity was interpreted and explained away as outlandishness—as “lunacy”, “folly”, and “temptation”, compared to the abstract and emptied standard of the reasonable person—so women were racialized as a class whose testimonial haplessness stemmed not from malignance but from stupidity and dullness. It is also the closest that trial arguments from this period come to not condemning outright the dishonesty of native witnesses, or to acknowledging the fallibility of human memory in conditions of fear.

However, these almost-charitable observations were swiftly negated by the judge, a Mr. Blair, in his directive remarks to the jury charged with delivering a verdict—a jury that was

⁴⁹³ “Railway Guard G.E. Price is acquitted of outraging the modesty of an Indian Rajput woman.”

⁴⁹⁴ “Railway Guard G.E. Price is acquitted of outraging the modesty of an Indian Rajput woman.”

⁴⁹⁵ “Railway Guard G.E. Price is acquitted of outraging the modesty of an Indian Rajput woman.”

majority-white and that contained only two Indian men. At the time, Section 375 of the Indian Penal Code, which criminalized rape, contained a qualifier stating that sexual consent obtained by putting a victim “in fear of death or hurt” was not valid consent.⁴⁹⁶ Latching obsessively onto the order of those words, Judge Blair insisted “that the hurt must be interpreted by the word ‘death’ that came before, and that it must be serious and grievous hurt, and not some small injury which might cause some trifling physical inconvenience.”⁴⁹⁷ In this manner, he sought to collapse the legal space between intense physical resistance—signaling nonconsent—and the nonresistance produced by assent under terror. *The Pioneer* of Lahore, which carried a transcript of the trial proceedings on May 23rd, 1893, diligently paraphrased Judge Blair’s reasoning: “It almost amounted to putting the issue upon that—not that there was any real effective resistance such as they would expect from a woman who was going to be dishonoured, and if dishonoured would be turned out by her husband and become an outcast. He did not think self-protective force was used by the woman, and if that was so...the prosecution...would have to fall back upon *this*, that there was *moral terror* created...[emphasis mine]”⁴⁹⁸

Only *mortal* terror—the fear of death *and* worse, suitably performed and displayed—could properly signify ‘moral’ terror. As a range of feminist historians from Tanika Sarkar to Durba Mitra have documented, imperial judicial reasoning of the 1890s compulsively indexed Indian women’s sexuality to death: the assumed mandate of death for honor took on the status of a first principle, a circuitously-reasoned logical shortcut that could be substituted into—and

⁴⁹⁶ Hukm Chand, *Principles of the Law of Consent with Special Reference to Criminal Law: Including the Doctrines of Mistake, Duress, and Waiver* (Bombay: Bombay Education Society Press, 1897).

⁴⁹⁷ “Railway Guard G.E. Price is acquitted of outraging the modesty of an Indian Rajput woman.”

⁴⁹⁸ “Railway Guard G.E. Price is acquitted of outraging the modesty of an Indian Rajput woman.”

efface—any set of facts involving a woman and a crime.⁴⁹⁹ Tracing the prehistory of this moment, Padma Anagol has shown how the prosecution and trial of infanticidal women in Western India under the newly-established Indian Penal Code in the 1860s and 70s generated powerful stereotypes about ‘deviant’ Indian female sexuality. “In the process,” Anagol argues, “through definitions of the sexuality of infanticidal women, and through continuous registration and observation, a formidable body of negative knowledge about Indian female sexuality was formed that could be deployed in claims to rule.”⁵⁰⁰

Exhorting the jury to this type of misogynistic scrutiny, Blair evoked what Sarkar has described in other contexts as “a hermeneutics of deciphering women’s physical signs, gestures, and emotions”⁵⁰¹ for the purposes of the law, out of which a ‘forensic’ vocabulary of the native woman’s demeanor, comportment, and body—concerned with extracting and consolidating narratives of character out of physical ‘impossibilities’, glaring practical improbabilities, and incontrovertible ‘proofs’—had long since developed:

They had seen Ruri in the witness-box, and he had called their attention to her personal appearance and class. He had asked them to look at her face. He wanted them to form some opinion of her intelligence and her self-respect...for her to undergo examination in this matter had been a great trial to her. He thought she stood that trial uncommonly well. *He must say that in any woman sensitive of her honour, conscious that the matter under discussion was one of an indelicate kind for a woman to discuss, or have discussed before her, he should have expected to find a little more wincing, a little more repugnance to the nasty language that fell from her lips, repeated as having been said by someone else.* He must say she did not prepossess him as a witness who was a specially

⁴⁹⁹ See Sarkar, “A Prehistory of Rights”; Tanika Sarkar, “Intimate Violence in Colonial Bengal: A Death, a Trial and a Law, 1889–1891,” *Law and History Review* 38, no. 1 (2020): 177–200, <https://www-jstor-org.ezproxy.cul.columbia.edu/stable/27036856>; and Mitra, *Indian Sex Life*.

⁵⁰⁰ Padma Anagol, “The Emergence of the Female Criminal in India: Infanticide and Survival under the Raj,” *History Workshop Journal*, no. 53 (2002): 78, <https://www-jstor-org.ezproxy.cul.columbia.edu/stable/4289774>.

⁵⁰¹ Sarkar, “A Prehistory of Rights”, 602.

nice and modest woman and sensitive to the position in which she was placed [*emphasis mine*].⁵⁰²

We see here how, in what it saw as its negotiation with the rights of life and death exercised by communities over women, colonial law-making demurred, till the last, from admitting the woman's voice. When it was admitted, this was on the condition of its being shy, halting, trembling, tearful—reluctant even to state the facts, to describe what had happened in words equal to the violence of that happening. Ruri had held herself together in court: necessarily, therefore, her case had to fall apart. It could only be one or the other.

This understanding, these claims to intimate knowledge, were vigorously countered by native newspapers, which took umbrage at what they saw as the judge's insult to the Rajput woman's character, even as many of these protestations reinscribed the assumed connection between innocence and delicacy. The *Hitavadi* of 25th May commented:

In India women are naturally so bashful that they will not at times let even their husbands know of any diseases they may be suffering from. And it is for the public to consider how far it is possible for one of such women to falsely accuse a person of a crime which will cast a lasting stain in her character and deprive her of her caste and rank. From the refusal of the witness Jayakumari to remove her veil or to tell her husband's name, the Judge might have got some idea of the bashfulness of Hindu women.⁵⁰³

Even as the papers sought to explain and elaborate what would be 'obvious' to a native adjudicator, they reaffirmed racial identity as insurmountable categorical difference, an impassable barrier to understanding, a foregone conclusion. But racialized adjudication was not merely ignorance, nor even willful and structural blindness: in the hands of the press, it was war. Neither mortal nor moral terror could encompass what had been lost; the calculus of death and

⁵⁰² "Railway Guard G.E. Price is acquitted of outraging the modesty of an Indian Rajput woman."

⁵⁰³ "Selections from the Vernacular Newspapers Published in the Panjab, North-Western Provinces, Oudh, Central Provinces and Berar" (Allahabad: N.W.P. and Oudh Government Press, 1878-1881, 6th June, 1893), <https://jstor.org/stable/saoa.crl.25020285>.

honor could not be logically computed, or gesture toward a shared understanding of Indian femininity or Indian dignity—other than as always-already denigrated. As the *Sulabh Dainik* of May 30th put it: “is anarchy prevailing under British rule? The poor Rajput woman *has lost her everything*, has lost that most precious jewel, chastity, which the blood of a thousand Princes will not bring back to her...The only course left open to the people, therefore, is to defend themselves as best they can against such oppressions.”⁵⁰⁴ So, too, the *Samaj-o-Sahitya* of the 28th of May, dramatically invoking a kind of self-willed infanticide: “Why did not the people of India die as soon as they were born? For then their honor, their *ijjut*, their *dharma* would not thus have been trodden under the feet of Englishmen. What is this, the wretched sinner Prince getting Scot-free under the English rule in spite of overwhelming evidence of his guilt! Say, O Mother, Queen of England and Empress of India, where are we to take refuge with our young wives, sisters and daughters?...Or is it because India is under English rule that redress is impossible?”⁵⁰⁵

Perhaps the best example of such discourse is the *Bangnivasi* of May 26th, which carried an article titled ‘The violation of a woman and the escape of the sinner’.

It has become difficult for people, on account of the oppressions which are committed by some demons in human form, and the manner in which some brutal ruffians, devoid of conscience and every sense of right and wrong, are now conducting themselves, to live even under this English Government which is so like the Government of King Ram. Oppression so gross and severe will not last long, and such injustice cannot be committed for ever. Alexander and Bonaparte, Caesar and Charlemagne had each his day in this perishable world...But where are now that spirit and courage, that valour and prowess, those conquests and conquerors? All, all is sunk and swallowed up in the deep dark abyss [sic] of time. And what do we find on this Indian soil? Where are now the unmatched powers of the solar and lunar kings, the spirit and heroism of Rajasthan, and

⁵⁰⁴ “Selections from the Vernacular Newspapers Published in the Panjab, North-Western Provinces, Oudh, Central Provinces and Berar”, 6th June, 1893.

⁵⁰⁵ “Selections from the Vernacular Newspapers Published in the Panjab, North-Western Provinces, Oudh, Central Provinces and Berar”, 6th June, 1893.

the valour of Maharashtra? Where are now the unbounded power of the Moghal and the Pathan, the unmatched splendour of the Emperors of Delhi?⁵⁰⁶

Real human acts, actors, and consequences are vanished into an ‘abysm’ of hyperextended affect. It is a vortex of embellishment; everything is a sign of the times, a chain of breathless signification, at once portent and lament. Undoubtedly some portion of this melodramatic tone can be attributed to distortions of expression under imperial censorship. But as mentioned earlier—and befitting its presence in government reports surveying ‘inflammatory’ native newspapers—this press treatment is notable for the absence of the piecemeal, the moderate, the practical or prescriptive; the chosen response is hopeless, impotent rage, an indictment of the very form and character of governance on a pre-conceded terrain of catastrophized sexuality where every stake is immense and every loss is colossal. As an analysis of the violence of rape, it is co-optive at worst and inchoate at best. The questions with which it ends, however—presumably rhetorically—are questions about male power in relation to imperial power: questions that never failed, in an age of pronounced misogynistic collaboration between colonial state and native society, to yield disturbing answers.⁵⁰⁷

⁵⁰⁶ “Selections from the Vernacular Newspapers Published in the Panjab, North-Western Provinces, Oudh, Central Provinces and Berar”, 6th June ,1893.

⁵⁰⁷ See Mrinalini Sinha, “Giving Masculinity a History”, in Gupta, ed., *Gendering Colonial India*.

4.5 The officers' quarters

I turn here to the Rawalpindi Outrage Case of 1907 as exemplary of the kind of event that provoked such questions and rose them to public prominence. Indian workers, while not employed in superior positions, were nevertheless totally essential to the Railways' functioning. By 1903, the year that Christina Mayne leveraged her racial standing in order to obtain recourse for rape, there were over 27 times more Indians employed on the Railways than Europeans and Eurasians combined—over 387,000, compared to 6000 Europeans and 8,500 Eurasians.⁵⁰⁸ By the 1900s, the East Indian Railway—the primary artery of Northern India, connecting Delhi and Agra in the northwest to Calcutta in the east—assigned Indians to posts as “assistant stationmasters, signallers, pointsmen, ticket collectors, *khalasies*, drivers of slow goods trains, and workmen in the repairing shops and on the line.” Indian workers were not allowed to live with their families while they worked, as Indian women were considered too disreputable; they “could never acquire the domestic and personal characteristics that would make them fully part of its European modernity. Instead, a plethora of community and caste affiliations nested within the railway hierarchy with some jobs broadly associated with particular kinds of Indians.”⁵⁰⁹ It was true, therefore, that institutional power and standing found deeply unequal embodiment in native and Anglo-Indian employees. But despite the sharp delineations of status embodied in who was and who was not of the railway colony, and who could unquestioningly expect the colony's collusion, the next case I consider is a significant example of the joint male power exercised by employees across caste and racial lines.

⁵⁰⁸ Prasad, “Smoke and Mirrors”, 37.

⁵⁰⁹ Bear, *Lines of the Nation*, 82-83.

On October 30th of 1907, a European Assistant Station-Master, J. Moore, and a railway signalman named Fazal Din were tried together under Sections 376 and 511 of the IPC—rape and its abetment—before a European jury in the Chief Court of Punjab.⁵¹⁰ The survivor named in the case was a 17-year-old girl, Musammat Viranwali, married to Rawel Sing from Kala village in the Jhelum district. According to *The Tribune* of Lahore:

The news of the incident, when it first spread like wildfire from place to place in the early days of July sent a thrill of pain and alarm in the Indian community. The complaints of attacks on defenceless and unprotected women in railway trains have unhappily largely grown, but those have mostly been confined to men in comparatively less responsible positions. And the impression has, so far, been fondly entertained that the matter has only to be brought to the notice of the superior station staff to ensure protection and redress. The complaint of the woman at Rawalpindi was far more serious in that things were said which took the case away from the category of ordinary circumstances... That such things can be possible, that a woman passenger can be shamefully approached and seduced in this manner, and by a man in responsible charge at the station cries for condign and immediate punishment.⁵¹¹

Over three days, *The Tribune* carried full-page spreads documenting everything said at the trial, including Viranwali's statement and cross-examination. She had run away from her husband's house because she had made a mistake while kneading flour and subsequently fought with her mother-in-law, Jiwi. She was trying to find Sardar Singh, her father-in-law's brother.⁵¹²

I left Kala at noon. I brought my clothes with me, one loin cloth, one *kurta*, and one *chadar*. I had no money except for railway fare. I had 12 annas and six pies. I did not take it from anybody. I had it with me from the house. I paid that for [the] ticket at Dina. That was the exact amount of fare from Dina to Rawalpindi. I knew that when I left home. When I left home I had no mind to go to Rawalpindi. I had no *pyjamas* on but only a *chadar*. Sardar Singh's father and mother were at home when I went to his house. I did not stay there as I had gone only to see Sardar Singh. It is 3 years since I was married. My husband has got no employment. My father-in-law is a *patwari* [village

⁵¹⁰ "Reports on the 'Rawalpindi Outrage Case': J. Moore, assistant station master, Rawalpindi, and Fazal Din, railway signalman, accused of rape and abetment of rape." Judicial and Public Annual Files, IOR/L/PJ/6/848, No. 453, 15th January, 1908.

⁵¹¹ "Reports on the 'Rawalpindi Outrage Case'".

⁵¹² "Reports on the 'Rawalpindi Outrage Case'".

registrar]. I expected to see him there as I was told he had gone to see his Guru and I would find him there. Baba Hari Singh is his Guru. I knew where he lived but don't know the name of the *mohulla* [neighborhood].⁵¹³

Arriving at Pindi, Viranwali gave her ticket to a station inspector while exiting the train. But it was midnight, and she decided to stay at the station. The dedicated women's shed was far away from the rest of the station. She went instead to the third-class rest shed, which was right next to the station police office and had a door connecting them. Part of this enclosure had also been sectioned off to give women their own space, but barely: it was separated only by a wooden fence with no enclosing wall, like a cattle pen.⁵¹⁴ The women's side was meant to be locked to access from the rest of the room, but it had been left unsecured. There were nineteen other women there, but this did nothing to protect her from what came next.

Perhaps Viranwali looked guilty, or scared—she had, after all, run away with no luggage and no pants on. Her money was spent, and her usual ornaments were missing too, because she had taken them off to mourn the death of an uncle. What is clear is that she was marked out. She had been sitting in the shed an hour when Fazal Din came to her and told her that a telegram had come to the station addressed to her, from her father, who lived a few kilometers from Dina. The Sahib, Moore, wanted to see her, because she was traveling without a ticket. “I refused,” Viranwali narrated later. “Then he said he would handcuff me and take me (*kari mar ke le jawange*).”⁵¹⁵ Afraid of being arrested, she went with him to the station-master's office, where Moore was on duty.

⁵¹³ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵¹⁴ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵¹⁵ “Reports on the ‘Rawalpindi Outrage Case’”.

A moment now occurred at which Viranwali's trajectory might have swerved in a happier direction. She was spotted by two Indian police constables, Ghazi Khan and Makhan Khan, who asked why she was in the *chaukidar*'s company. "We go to see that no man goes to the woman's shed," Ghazi testified, explaining his general rotation.⁵¹⁶ They went to the station master's office, outside which Viranwali had been forced to wait, and asked Moore about the telegram. "We said—show it to us. He searched about and said he could not find it. We went to the Ticket Collector's office to inquire about the telegram. He said no telegram had come. Then we went to the Telegraph Office and found no telegram had come."⁵¹⁷ They told Moore to let the woman go—and he did, for a stretch. Incredibly, however, he was so sure of getting away with it that despite the police being on watch, he tried to rape Viranwali again a mere three hours later—and succeeded.

If the stationmaster's plan had now been better-laid, there were also even more witnesses to this second attempt. The crucial difference is that none of them intervened. Fazal Din came again; again, Viranwali resisted. When asked why, she said she suspected what is translated into "foul play" but actually approximates "he seemed to have dishonor in his heart"—"*ki shayed in ke dil me be-imani ho*".⁵¹⁸ This time, she was taken not to the station master's office but to the gazetted officers' bedroom upstairs. It was right above the police station—but only a higher class of employee was allowed into it. Nabi Bakhsh, the waiting-room attendant, testified that he was ordered by Moore to open the bedroom, air it out, and light a lamp—and that he saw Viranwali being taken out of it afterwards. Haidar Khan, another *chaukidar*, was sitting outside next to the

⁵¹⁶ "Reports on the 'Rawalpindi Outrage Case'".

⁵¹⁷ "Reports on the 'Rawalpindi Outrage Case'".

⁵¹⁸ "Reports on the 'Rawalpindi Outrage Case'".

railway mail-carrier, Babu Desraj, when they both saw Moore go upstairs first and the signalman follow with Viranwali a little later. In the dark, Desraj called, “Who are you?” Fazal Din replied, “*Apna hi aadmi hun.*”⁵¹⁹ It could mean both “I’m your own man” and “I’m *my* own man”: a confident expectance of complicity doubled with a rejection of self-accounting, of having any hindrance upon private exploitative right. In whichever sense it was taken, it roused no further inquiry. It was only when constable Ghazi Khan doubled back to check the third-class shed again at 4 a.m. that he realized Viranwali was gone.

It was too late. The police found her coming down the stairs from the bedroom with Moore and Fazal Din. She began weeping and lamenting (“*hal hal kiya*”), accusing them both of raping her in succession.⁵²⁰ But from the moment even of this immediate accusation, every gap in her words began to be ferreted out to Moore’s benefit, as this trial exchange shows:

Mr Browne [defence counsel]—You said that she told you that she had been raped. What were the exact words she used?

Witness [Ghazi Khan]—She said, ‘*mere nal bura kam kiya hai*’ (*bhaira kam*) (evil deed). We understand it to mean rape.

Mr Browne—She should have used *zabardasti* (by force).

Reid, J. [judge]—That may be your experience but in this court *bura kam kiya* are the words generally used.⁵²¹

The defense’s line of questioning had a clear intent: to “not deny the actual intercourse”, but to prove that what had happened had because Viranwali herself wanted it to. She was ticketless, the lie went; she struck a bargain to make the trouble go away. After the fact, she had been “tutored”: “the general practice of the Police [was] to magnify things”.⁵²²

⁵¹⁹ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵²⁰ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵²¹ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵²² “Reports on the ‘Rawalpindi Outrage Case’”.

In truth, however, they had minimized them. In court, Viranwali insisted that her victim statement had omitted a crucial detail: Moore had threatened to kill her if she screamed. She had recounted this to the police at the scene of the crime, but they refused to take it down. Worse, Viranwali had not known, had had no way of knowing, that she'd long lost a crucial window of proof. After making her accusation, she had led an Inspector of Police and a hospital assistant upstairs to the bedroom, and described in detail what had been done to her there—but they had collected chemical samples from the room alone. She had never been sent to the hospital for a medical examination, although medical reports were frequently considered by courts to be the sole unfalsifiable category of evidence for rape.⁵²³ Instead, she'd been asked again why she had not screamed, and—when she said that her shawl had been stuffed forcibly into her mouth—encouraged to physically re-enact the scene right where it had occurred: “I asked her what was the thing on which she had been ravished. She said there was a Nawar bed inside. We sent for the keys of the room and had it opened. Inside we found a Nawar bed, chairs and a dressing table...I asked her how she was placed on the bed and she showed me the position. *She didn't, of course, lie down.*”⁵²⁴

The jury spent long hours discussing whether a woman such as her possessed adequate discrimination to tell one kind of bed apart from another, and concluded that she “could not have been able to notice all this”, because “village women don't ordinarily know of such rooms”.⁵²⁵ Its verdict, in short, was that she was both wholly ignorant and possessed of all the wrong

⁵²³ See Mitra Sharafi, “Abortion in South Asia, 1860–1947: A Medico-Legal History,” *Modern Asian Studies* 55, no. 2 (March 2021): 371–428, <https://doi.org/10.1017/S0026749X19000234>.

⁵²⁴ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵²⁵ “Reports on the ‘Rawalpindi Outrage Case’”.

knowledge. It decided that her clothes had been ‘insufficiently’ torn; it questioned why she had remained lying there, unable or unwilling to get up, incapable of defending herself, in the minutelong interval between the exit of one man and the entry of another. The language of the court record excels, as do most from this archive, at distancing the primary and most powerful perpetrator from the act, saddling his accomplice and victim with the agency of its commission: “The case put forward was that Fazal Din arranged with the woman that Moore should have intercourse with her, that she consented, and that the complaint of rape was made to the police because the police constable saw her in Moore’s company in compromising circumstances.”⁵²⁶ The stationmaster had taken advantage of his position, yes, but not in *that* way; he was corrupt, but not a criminal.

With his victim’s character on trial instead of his own, Moore could dispense even with the façade of consistency. The chemical examiner had found semen in his underwear, but he claimed he had never had sex that night at all. His statement read: “the woman came without a ticket and jumped out of the railing. I was going to hand her to the police when she pleaded poverty. Later Fazal Din came to me and said that the woman was agreeable...I told him to arrange it if he could. The woman went upstairs and wanted her money first which I had not by me. I went out. There was a knock at the door later and the police came in—that is all I had to do with the woman.”⁵²⁷ Here, the coercive *quid pro quo* of giving in to sex in order not to be arrested is transformed seamlessly into the ordinary dealings of a prostitute: not someone being

⁵²⁶ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵²⁷ “Reports on the ‘Rawalpindi Outrage Case’”.

raped for being unable to pay, but someone being paid in exchange for offering her body.⁵²⁸ And why would it be any different in a place so ‘public’, so full of employees and bystanders, where a dozen people would have raised the alarm if they knew something was *really* wrong? Moore’s defence “urged that the accused *would not have dared* to outrage the woman forcibly *when the police were at hand and on the alert*. It was further urged that the relations between Europeans and Indians at Rawalpindi were strained and *that the police made up the case*.”⁵²⁹

In this accounting of male power and institutional power, the equation of blame is perfectly inverted, and sheer brazenness conceals itself as absurdity, as unreasonableness. Who would dare to rely so heavily on male complicity, or on official complicity, when racial animus fractured them both? The fact that neither man had been in the room to witness the crimes committed by the other obscured the long hours of cooperation they had put into coercing their victim there; they had conspired nothing, but been conspired against. Would the jury let institutional malaise condemn them for a crime they had not committed, just because “the opportunity came of alleging that a woman had been violated by a European”?⁵³⁰ Steeped though it was in racial logic, Moore’s defense nevertheless carried Fazal Din’s as well. While Moore had been allowed to remain out on bail despite his bond having expired, Fazal Din had remained in custody. At 3:15 on November the 5th, the jury trying their case gave the court a unanimous answer: not guilty on all counts. The judge turned to the signalman in the dock and translated:

⁵²⁸ See Jessica Hinchy, *Governing Gender and Sexuality in Colonial India: The Hijra, c. 1850-1900*. (Cambridge: Cambridge University Press, 2019).

⁵²⁹ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵³⁰ “Reports on the ‘Rawalpindi Outrage Case’”.

“*Bari hogaya*”.⁵³¹ You’re out. Both men were, in the end, fired by the Railways. But they walked free.

Indian newspapers portrayed the story as a tipping-point both for European barbarism and for national honor. Fears of trafficking and sex work had concretely materialized, and conclusively proved justified, in the figure of “an Assistant Station Master having a pimp on the staff”, “defiling the railway officers’ room by converting it into a brothel”.⁵³² The *Indu Prakash*, over its sustained coverage of this “inhuman outrage” in “unhappy Punjab”, labelled Moore a “moral pest”, “disgraceful alike to [his] own race and to humanity”. “We hope characters like this brute in human form are not considered tolerable in society even according to Anglo-Indian ideas,” it taunted.⁵³³ With educated and elite Indians’ worst fears confirmed, the press set about baiting those of the colonial state. *The Advocate* of Dec 12 spoke of “a feeling of acute resentment against a law that makes it possible for a guilty person to escape when the honour of woman is at stake.”⁵³⁴ *The Telegraph* of November 10th said: “One such case spreads the popular discontent more rapidly than thousands of harangues of the so-called agitators.”⁵³⁵ The *Indu Prakash* concurred: “It is cases like these which are really undermining British authority far more dangerously than either seditious writings or speeches or attempts at tampering with the

⁵³¹ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵³² “Reports on the ‘Rawalpindi Outrage Case’”.

⁵³³ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵³⁴ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵³⁵ “Reports on the ‘Rawalpindi Outrage Case’”.

sepoy...If no efforts are made to restrain the wild pranks of the white two-legged buffaloes, it would be very perilous...”⁵³⁶

The *Indian Daily News* of Calcutta, which reprinted excerpts from provincial vernacular newspapers, noted that during the week of November 14 the Indian papers focused on nothing but an impending famine and the outcome of Viranwali’s case:

Even the Seditious Meetings Act pales into significance before these two topics. Commenting on the former the *Sanjibani*, which is by no means an extremist organ, writes: —“A dastardly outrage was committed on a helpless woman; and the court of justice gives no relief! Is there really no remedy to this? It is unbearable! Every Indian woman should henceforth be provided with the means of her self-defence. Let them each have a long knife, and before she ventures out of doors alone she must have it tied to her waist; and no sooner do sinful words escape the lips of a *budmash* [bad character] than let her knife pierce through his heart. When thus a few base assailants are killed, there would scarcely be a man who would dare insult or molest an Indian woman.”⁵³⁷

Nor was *Sanjibani* the only publication to openly endorse extrajudicial violence. The *Vihari* of 11th November wrote: “Our present rulers do not consider our lives or our honour worth even a straw...It is manifest that such reprehensible deeds are done in the belief that Indians are mere beasts. We must, therefore, show our rulers that though we are at present a conquered people, we possess sufficient pluck to give tit for tat.”⁵³⁸ The invitation is to open a cycle of retaliation: for women, not to expect to be kept safe by those around them, but to kill anyone they fear; for men, not to protect women in public, but to rape women they see as belonging to someone else.

The vehemence of these statements and reactions—and the logic they espoused—should not be attributed to the dishonest legal reasoning of the courts alone. It appeared clear that the law had been interpreted to elide the coercive effects of official power. But to the press, judicial

⁵³⁶ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵³⁷ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵³⁸ “Reports on the ‘Rawalpindi Outrage Case’”.

accountability was only tangential to the inflammatory potential of the case. At first, even an Anglo-Indian paper like the *Indian Daily News* questioned the judge's interpretation of the consent statute, calling Viranwali's treatment a case of "wrongful detention": "the broad facts of the case seem to render the theory of consent extremely improbable. What was it that secured the consent? Was it money? If so, how much was paid, when, and where is it?"⁵³⁹ The *Indu Prakash* ridiculed Justice Reid for advancing "the idea that the absence of consent must exist during the very act of cohabitation and that if that consent was given even through deception, helplessness, etc., still such consent was valid...Cursed be the law if it actually enables a man in authority to allure a helpless unwilling woman to a room, to shut her up and there to cohabit with her with impunity if under the helpless condition she finds herself in, she gives up resistance as hopeless." It openly implied that only a habitual sex abuser would read the law as such: "we hope Justice Reid is not as good an expert as Moore in knowing by a look whether a woman is worth making advances to or not."⁵⁴⁰

However, these relatively clear-eyed questions about institutional and systemic complicity were raised only to be subsumed into the far graver implication of interracial complicity—which was in turn bisected by religious difference. What was worse—that it was a European superior who had committed the crime, or that his Muslim "myrmidon" had cooperated for his own benefit, and availed of the victim's body himself?⁵⁴¹ Viranwali was a Sikh woman; most of the railways employees and witnesses that had declined to intervene in her rape were also Muslim. The newspapers trumpeted these facts as a kind of ironclad proof that no

⁵³⁹ "Reports on the 'Rawalpindi Outrage Case'".

⁵⁴⁰ "Reports on the 'Rawalpindi Outrage Case'".

⁵⁴¹ "Reports on the 'Rawalpindi Outrage Case'".

conspiracy to frame Europeans had been at work: where ‘women’s honor’ was concerned, Indians could not possibly cooperate across religious lines, no matter how much they might resent their white superiors. Nor could Muslims have had enough social access to the girl to be able to tutor her in her accusations; in any case, why would Muslims risk having a case involving a Muslim rapist rise to the level of national scandal? And why would Viranwali herself entertain such a conspiracy, given that to be raped by both a white man and a lowly Indian employee was to be doubly tainted? As the *Telegraph* of November 10th told it, the ignominy should rightly have silenced her complaint altogether, “knowing that the story of her shame and disgrace would be published to the world and place her under an eternal social ban.”⁵⁴²

The problem with the rape of Indian women, then, was that it was impossible to punish, whether those accused of it were found guilty and jailed or acquitted and freed. This was because the very fact of its happening signaled the end of a woman’s life; being vindicated by the courts did not compensate for what was always assumed to be a permanent loss of worth. Social dignity was a singular threshold over an infinite precipice; it defied and exceeded judicial calculation. The true outcome of a rape case, therefore, was predetermined—and newspapers leaped to script that end. On the 23rd of November, *The Hindu* of Madras reported that Viranwali had “committed suicide at her home two days ago.”⁵⁴³ Where long pages had been devoted to covering the rape trial while it was underway, its natural end was so expected as to merit only a single line. Four days later on the 27th, as a kind of postscript, this natural end was fitted into its appropriate narrative frame: “a white man is let loose on society, and a young Hindu girl, the victim of his unbridled lust and misconduct, has committed self-destruction not wishing to live a

⁵⁴² “Reports on the ‘Rawalpindi Outrage Case’”.

⁵⁴³ “Reports on the ‘Rawalpindi Outrage Case’”.

life of humiliation and misery, but leaving the shadow of family dishonour to be suffered by her surviving relations.”⁵⁴⁴

But Viranwali had not destroyed herself. Perhaps her lot truly was to be a life of humiliation and misery—but she did not end that life. *The Indian Daily News* published a correction on December 18, 1907: “the suicide of Viranwali, the unfortunate victim in the Pindi Outrage case, is officially contradicted.”⁵⁴⁵ The rape case was lost and over. But she refused to do what was pre-empted, what was universally expected—and lived on.

4.6 The railway colony

Thus far I have tried to show how, in the hands of the Indian press, the wider racial politics of impunity subsumed the micropolitics of the spatial, detracting from an emergent analysis of the railways as a structurally compromised authoritarian institution which, by criminalizing passengers’ access to railway space, exposed them to the arbitrary and sexualized exercise of personal power. The self-protective agency of female passengers was ignored or denigrated in court, and eclipsed in public discourse by the irrationality and brazenness of the tactics deployed by railways rapists. Particularly flagrant predations committed by Europeans and Anglo-Indians were judicially absolved by nakedly racist special pleading which sought to pin malfeasance on Indian employees and local police, locating racial animus in Indians rather

⁵⁴⁴ “Reports on the ‘Rawalpindi Outrage Case’”.

⁵⁴⁵ “Reports on the ‘Rawalpindi Outrage Case’”.

than in whites. Rather than admitting that asymmetries of power, familiarity and knowledge in the railways environment allowed employees to subvert ordinary judicial standards of rational self-interest in an outrageously open fashion—in other words, to perform, and thereby produce, impunity—courts embraced the racist conspiracy that Indians as a class were bent on pursuing false rape charges targeted at Europeans, even at the incalculable cost of dishonor. This thinking was inverted in the melodramas of press coverage: to the newspapers, allowing Indian women onto the railways at all could almost be taken as an Indian practice of punitive self-harm: a way of pleurably flagellating oneself with demonstrations of inadequacy to rule.⁵⁴⁶

Yet once Indians were elected to positions of local government in the 1920s, they lost little time bringing other branches of institutional power to counterweigh against violence as a technique of everyday control on the railways—as seen in the trial of Rebello and Dorton, two Eurasians accused of raping a Malla woman named Binsia near Agra in 1923. This trial, publicized as the ‘Tundla Rape Case’, demonstrates how press coverage of rape could, in rare instances, lead to judicial re-evaluation, especially when readers of native newspapers were also in positions of power. The Tundla case demonstrates that with encouragement from Indian officials, evidence could be regathered and acquittals appealed, which could succeed in disambiguating rationality from impunity. It can be seen that without the cooperation and complicity of railways employees in general, white and Anglo-Indian rapists employed on the railways failed to cover up their crimes successfully, regardless of their knowledge of the railways environment and their manipulations of its rules. At such moments, when superior command of the environment was demonstrated to be inadequate to the magnitude of impunity

⁵⁴⁶ See Mitra Sharafi, “The Imperial Serologist and Punitive Self-Harm: Bloodstains and Legal Pluralism in British India”, in Ian Burney and Christopher Hamlin, *Global Forensic Cultures: Making Fact and Justice in the Modern Era* (Baltimore, Maryland: Johns Hopkins University Press, 2019): 60-85.

asserted, racial anxiety then shifted to ensuring that punishment was in proportion to assumed privilege: Europeans simply could not be punished in a way that brought them to the level of Indians.

On February the 21st of 1924, the MLA Dr Bhabendra Chandra Roy was spurred by the coverage of the Tundla case in the *Amrita Bazaar Patrika*—and, likely, the ire of his constituents—to enter a series of official questions in the Legislative Assembly of the United Provinces. His protests concerning the employment of the accused rapists at the cost of the public managed to breach the thickets of legalistic discouragement that the government of British India usually deployed to quell native politicians recently elected to power in the provinces.⁵⁴⁷ But Roy’s demand that the accused ticket collectors lose their jobs was, in actual fact, secondary. His primary point of concern was that the caste group to which the rape survivor belonged—the Mallahs—had had their “standard of morality” described in a derogatory fashion by the local Sessions Judge, who had quoted “a standard book on the Tribes and Castes of the UP” while evaluating the survivor’s credibility during the trial:

- A) Has the attention of Government been drawn to the article in *Amrita Bazaar Patrika* about ‘Tundla Rape Case’ published in the issue of the 14th February 1924? (Is the Government aware that the grave miscarriage of Justice on this case is causing great discontent amongst the Mullahs?)
- B) Do Government propose to take steps for the prevention of such miscarriage of Justice? If so, will the Government be pleased to state them?
- C) Will the Government be pleased to state whether a trying Judge has any right or authority to pass remarks on the character of women of a particular sect as he has done in

⁵⁴⁷ “Is it a fact”, Roy asked, “that Mr. Bennet, the trying Judge in the ‘Tundla Rape Case’ in the course of his judgement admitted that the accused ticket collector Rebello demanded sexual intercourse from a female passenger in exchange of railway fare by putting her in fear of criminal prosecution? If so, will the Government be pleased to state whether the above-named Ticket collector and the co-accused have been dismissed from service? If the answer to the above is in the negative, will the Government be pleased to state the reasons for still retaining their services?” “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.” *Proceedings of the Government of India, Home Department (Judicial)*, No. 412 of 1924, Part B.

the case of the Mullah women? If not, will the Government be pleased to state whether Government propose to take any departmental action against the Judge?⁵⁴⁸

The questions Roy had asked to this effect had all been disqualified, and what the Sessions Judge actually said about Malla women was left unrecorded. Its conspicuous absence from the case file—and the diplomatic character of all subsequent remarks made by the court about the Malla community—suggests that it was bad indeed.

The query about the rapists' employment was briefly shunted between the Railways Department and the UP Legislative Council before it, too, was disallowed five days later. Barely a month after Roy's question to the Government of India, however, the political terrain of the Tundla Rape Case had transformed. In response to the negative press coverage the case had received, the local government at Tundla had already filed an appeal before the High Court, challenging the lower court's acquittal.⁵⁴⁹ The Allahabad High Court had set aside the prior judgement and convicted the accused.⁵⁵⁰ But it had deviated from the standard sentence for rape⁵⁵¹ and instead sentenced the two men to just nine months in jail, accompanied by twenty stripes of the whip (or an additional 6 months inside if they were found medically unfit for a

⁵⁴⁸ "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted." Judl. No. 2294-C, 21/2/24.

⁵⁴⁹ Using powers under Section 417 of the Criminal Procedure Code (CrPC).

⁵⁵⁰ "Two Eurasian Ticket Collectors named Rebello and Dorton, the one aged 20 and the other aged 23, who were employed at Tundla Railway Station on the East Indian Railway were on the 9th of August 1923 charged with rape of a Mulla girl aged 15. They were committed for trial to the Sessions Judge of Agra, Mr. Bennett, I.C.S., who after a lengthy trial on 11th of October 1923 acquitted both accused. Against the order of acquittal the Local Government appealed on the 1st of February 1924 and the Appeal was heard by Rives and Mukherjee who gave judgement on the 29th of February 1924 and convicted the accused of rape under Section 376 of the Indian Penal Code and sentenced them to nine months imprisonment each and twenty stripes." "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted."

⁵⁵¹ The punishment for rape under Section 376 was transportation for life or imprisonment for up to ten years. Kolsky, "The Body Evidencing the Crime."

whipping). The Home Department had almost immediately issued a telegram suspending the sentence of whipping.⁵⁵² “There can be no doubt,” one memo stated, “that the Anglo-Indian community attach considerable importance to the case.” A rival member of the UP Legislative Assembly, Colonel Gidney, had seized upon the conviction as a prime example of the colonial state’s dereliction of duty towards Anglo-Indians, who were campaigning to possess the same legal privileges as “European British subjects”—namely, people able to show that they had British birth certificates and British domicile, upon whom it was (falsely) claimed the High Court had no authority to pass such a sentence.⁵⁵³ On the 13th of March, a large contingent of the Anglo-Indian community in Agra and Tundla attended a public meeting where more than a hundred and twenty people signed a petition issuing a strong condemnation of the High Court’s decision, accusing it of exceeding its judicial authority both in overturning an acquittal and in sentencing ‘Europeans’ to be whipped. Their names and original signatures are still preserved in the archival record.

In the meantime, Mr. Tomkinson, the Law Member of the Governor-General’s Council, issued a conclusive opinion to the Viceroy, Rufus Isaacs, that the whipping sentence was unjustified because the survivor had not suffered excessive physical harm: “Except in the case of

⁵⁵² “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.” Home Telegram dated 12/3/24, on the order of Sir Malcolm Hailey.

⁵⁵³ “Apart from the point that the petitioners had not proved their claim to be tried as European British subjects, I note that there is nothing in this presumably legal plea. The High Court’s powers in such a case are governed by Sec 423 (1) (a) of the CPC [Under Section 423 1A of the 1898 CrPC, appeals courts could reverse acquittals], and it could pass any sentence which is according to law...Col. Gidney [one of the petitioners] cites the case as one showing that Anglo-Indians should be given the same rights as European British subjects. That is a separate question. It is sufficient here to remark that the committing Magistrate, on the statements of the accused before him, could not have held that the claim had been substantiated.” “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.” Home Telegram dated 12/3/24, on the order of Sir Malcolm Hailey.

juvenile offenders or of persons belonging to criminal tribes, the sentence of whipping should, in my humble opinion, generally speaking, be inflicted in addition to a sentence of imprisonment *only in cases of a particularly violent character*. In this case in particular, in view of the fact that the Sessions Judge acquitted the memorialists and they were convicted on appeal...it seems to me that the sentence of whipping would be inappropriate.”⁵⁵⁴

The case could not have been ‘particularly violent’ in character, as we will see, if coercion and trickery were discounted as violence. And yet the inappropriateness of the punishment was immediately clear to all who weighed in. Why, administrators asked, did the punishment handed down to the accused appear to hedge its bets? If the men really were rapists, why hand them a sentence so light in duration, and then augment its severity by way of humiliation? Anglo-Indians, meanwhile, mobilized as a social totality against Rebello and Dorton’s sentence not because they believed or cared for the matter of their guilt, but because whippings were usually administered by Dalit jail sweepers. They were willing, however grudgingly, to allow the rapists to be whipped, as long as the punishment was administered by a European. Gidney telegraphed multiple government agencies, including the Viceroy himself, to declare that the “Domiciled Community”, represented by the European Association,

recoils at thought that such whipping is usually administered by lowest caste Indian convicts generally sweepers *a humiliation whatever the crime will be viewed as a slur on entire community* accused are undoubtedly European descent and as member auxiliary force are European British Subjects entitled to protection against such degraded form of whipping *to which no European has so far been subjected* stop. Request that whipping be administered by person of same nationality otherwise reaction our community must be such as to compel *en masse* resignation of auxiliary force as justifiable protest a step the

⁵⁵⁴ “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.” Home Telegram dated 8/5/24.

association desires to avoid stop. Suggest immediate action before punishment has been inflicted⁵⁵⁵

The threat of a mass resignation of Anglo-Indians from the Indian Auxiliary Forces reveals that the Tundla case had implicated their communal privileges and powerfully associated them with organized predatory behavior. There had been cracks in their ranks, and they had failed to cover up a crime that was committed at the heart of their territory. At the Sessions level, with a single European judge, the expectation of impunity had held sway. But at the High Court, a mixed bench had handed down a whipping at the explicit recommendation of the prosecuting Government Advocate, L. M. Bannerjee. It was almost as if dishonor had to fall somewhere, in a way that even Anglo-Indians, with their tired performance of racial distinction, could not control—communal humiliation and insult was by now insinuated into the very fabric of cases that touched on sexuality, passed around like political dynamite.

Like the previous cases, the one at Tundla—an important railways junction 15 miles east of Agra—had involved the everyday abuse of power taken to an impulsive extreme. On the 9th of August 1923, a 15-year-old girl named Binsia travelled with her 18-year-old uncle, Reoti, from her husband's house in the village of Datauji, Firozabad District, to her grandfather's house in Bahadurpur in the city of Agra, where Reoti lived. They had arrived at the Firozabad Railway Station too late to take tickets, and been "entrained" by a Railway *babu* who hustled them into believing they could pay at the other end. Their passenger train, No. 29, arrived at Tundla shortly after 9 o'clock at night. Rebello, a 20-year-old ticket-collector on the platform, heard their story and demanded they pay, confiscating the two rupees they had as a bribe to keep quiet.⁵⁵⁶ He then

⁵⁵⁵ "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted." Home Telegram dated May 23rd, 1924.

⁵⁵⁶ Rebello took them into the Ticket Collector's Office and searched them both. He demanded Rs. 14/4 /- from them (this sum represents two Intermediate Class fares from Cawnpore, the last checking station, to

took them from the Ticket Collector's Office to meet an accomplice, the 23-year-old Dorton, who lived in a bungalow in the Tundla railway colony three-quarters of a mile away. On the pretense that they were headed to the police station, they walked up to Dorton's verandah, where the lights were out. The ticket collectors told Binsia's uncle to climb through an unlatched window to get a lantern from the locked entryway of the bungalow. Once he had made it through, they bolted the window, and threw Binsia down to the floor, threatening to beat her if she made a noise. They assaulted her in the open air, as Reoti was forced to watch from the inside.⁵⁵⁷ During the trial, Dorton's neighbors in the colony each swore his innocence: "Dorton's quarters where the offence is alleged to have been committed was the quarters M...It is one of a row of connected quarters A to O. Mr. and Mrs. Oehme occupy the next quarters, J, K, and L. Mrs. Richardson was in the quarters H and I. All these three persons say they went to bed at 9:30 and that they heard nothing from Dorton's quarters. Mr. Oehme says he was on the verandah in front of his quarters and the offence is alleged to have taken place on the verandah in front of Dorton's quarters."⁵⁵⁸

However, the two men had been seen leading Binsia and Reoti toward the colony by an Indian sweeper named Munir Khan; when he confronted them, Binsia accused rape, and a fellow

Tundla, at Rs. 4/2/- each plus a penalty of Rs. 3/- each, which is admitted by the prosecution to be the proper charge). They did not have this sum, but had Rs. 2/4/-, which Rebello took, demanding payment of the balance as an alternative to being handed over to the police. "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted."

⁵⁵⁷ "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted." Notes on Judgement, dated 29th February, 1924, of High Court in Government. App. No. 97 of 1924: K. E. Vs. Rebello and Dorton (see 376 IPC).

⁵⁵⁸ "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted."

European Sergeant of Railway Police named Ceiston—seemingly out of pure dislike for Dorton, and in defiance of the station’s Platform Assistant—escalated the case.⁵⁵⁹

As with prior cases, the Viceroy’s officials assumed that the institutional context in which the crime took place would help clarify, instead of hinder, the investigation of the truth. Railway timetables, station diaries and platform police logs should have been able to establish whether alibis were in order or not; whether it was feasibly possible for the crime to have been committed at the time that it was; whether the correct procedure was followed in taking testimonies, conducting medical examinations, and inspecting the alleged site of the rape.⁵⁶⁰ However, these expectations of bureaucratic accuracy proved false: the railways environment was a compromised space where ambiguous and opportunistic relations between the men who kept the trains running rendered every official account suspect. A clear example of this was the retaliatory punishment meted out to the sweeper who caught Rebello and Dorton, who was scapegoated as a troublemaker. In the skeptical words of the High Court,

Another circumstance is the important part the cleaner Munir Khan plays in the case. Seeing the man and woman being led away from the station by the accused, his curiosity

⁵⁵⁹ Ceiston provided the local police with evidence of conspiracy to suppress the crime among the station officers: “I told Mr. Palmer the whole story and he tried to suppress the matter as much as possible, he did not want me to take it up because he was responsible for the doings of the ticket collectors under his charge...In front of me he wrote nothing down. These two accused were under his orders so he was trying to suppress it. He said to me, don’t cause all this trouble.” “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.”

⁵⁶⁰ Supporters of Rebello and Dorton insisted that Ceiston was inexperienced and taking too much bad advice from his “Head Clerk and Thana staff”, allowing himself to be tricked into aiding an Indian conspiracy. Mr. Palmer, the platform assistant, testified in favour of Dorton but “gave practically a complete alibi for Dorton which was opposed to the latter’s own written defence”, saying Dorton was in his office from 9 till 10pm. The note on the HC judgement tries to explain this away: “Could he dream for a moment of hushing up the affair, after having written his report (Ex. 13) in the Platform Assistant’s Report Diary, an official document about which a question might be raised by higher authority at any time in the future, with unpleasant consequences for himself? In view of the public excitement which had ensued, would he not realize that his efforts to hush up the matter at that stage would be futile?” “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.”

is aroused to such an extent that he is constrained to leave his duty, against strict orders, and to stand for half an hour near the Roman Catholic Church. How he knew the accused were bringing the man and woman back at all, or at any rate by the same road, is not explained...Is this due to a chivalrous desire to protect the weak, or is it, perhaps, due to the fact that his feelings towards men of the class of the accused are anything but cordial? He admits before the Magistrate having taken part in the Railway Strike at Tundla in 1922...his record of personal service, which is in evidence, which proves he is a striker...Much stress has been laid by the prosecution on the fact that Munir Khan was dismissed shortly after making his statement to the police...by the District Locomotive Officer...⁵⁶¹

Munir Khan had not been the only Indian witness to stake his job upon the chance of being believed. The District Police Sub-Inspector who had taken the case, Liladhar Singh, found himself replaced by a European, Sergeant Smurthwaite, when he attempted to raise the alarm about what seemed to be deliberate irregularities in Binsia's medical exam.⁵⁶² Instead of being sent to the Civil Surgeon as required, she had been examined twice by a Ms. Murphy, principal of a women's medical college in Agra, who had issued a report that minimized her external injuries as "mosquito bites".⁵⁶³ "If we could believe that the examination was made with any sort of care," the High Court Judges wrote while assessing her evidence, "we should certainly attach considerable importance to it."⁵⁶⁴ Their cynicism on this matter is perhaps best illustrated by the sullen racism of Rebello and Dorton's clemency petition, which defended Murphy's threadbare medical report by insisting that telling Indians apart was impossible:

⁵⁶¹ "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted." Notes on Judgement, dated 29th February, 1924, of High Court in Government. App. No. 97 of 1924: K. E. Vs. Rebello and Dorton (see 376 IPC).

⁵⁶² "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted."

⁵⁶³ "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted."

⁵⁶⁴ "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted."

Their Lordships profess to find a future proof of superficiality in Miss Murphy's examination in the fact that, *though the woman was sent to her twice, she thought it was a different woman each time*. It is submitted that, so far from showing carelessness, this is a clear indication of *impartiality*. Miss Murphy is a lady doctor of 11 years' experience: she has comparatively recently come out from England, and therefore, as is very natural, *probably finds it difficult to distinguish one Indian woman from another*... Moreover she was not expecting the same woman a second time in one day, sent up unnecessarily by a disgruntled Sub-Inspector.⁵⁶⁵

Only the third medical report produced by the investigation—one commissioned by Liladhar from a retired sub-assistant surgeon, behind the backs of his European superiors—had confirmed Binsia had been hurt badly enough to frighten her into silence. Much of the institutional evidence produced on the night of the assault suffered from similar evasions and contradictions.⁵⁶⁶

The greatest contradiction, however, was between the actions Reoti and Binsia took to bolster their accusation and the patronizing manner in which they were perceived by the court that ruled in their favour. Dorton and Rebello had tried to get them lost in the dark, luring them over the tracks into a segregated and complicit space that even Reoti, a city-dweller, would not normally have had familiarity with or access to. Despite this, Binsia proved to Sergeant Ceiston that she could locate the exact place at which she had been assaulted:

I did not ask the PA [Mr. Palmer] for a lantern. I wanted to see if the woman could find the spot in the dark... The woman, her uncle, one constable, myself, and two witnesses, one of whom has come, were the six persons who went to the house. She led the way over the railway lines, she came out at the Church Road, she passed the Church, then she brought me by the road at the back of the goods shed, and then she came on to another road, the same road which went and connected with another road, then she led me directly by the back of the bachelor's barrack, by the gate lodge, then she brought me to a

⁵⁶⁵ "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted."

⁵⁶⁶ Her testimony: "There was a stone floor—I was put down with force—I was crying out loud and weeping—Raoti was inside, shouting, then they said shut up—I put my arms out when I was thrown down—My private parts became swollen and blood came out." "Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted." Notes on Judgement, dated 29th February, 1924, of High Court in Government. App. No. 97 of 1924: K. E. Vs. Rebello and Dorton (see 376 IPC).

block, and to a place with a small thatch with a small door to it. Then she and we all went inside.⁵⁶⁷

On reaching the scene, Reoti and Binsia showed Ceiston something they could not have known to be there and “quite impossible to get over” as evidence: smashed bangles on the floor of Dorton’s verandah, and a broken windowpane, proof of their struggle against their captors.⁵⁶⁸ The rapidity and accuracy with which they established key details of their experience won them the crucial allyship of local Indian police, who provided medical confirmation that Binsia’s ordeal was violent enough to comprise the moral and mortal terror of rape.⁵⁶⁹

However, despite the astuteness with which Reoti and Binsia had helped their own case, demonstrating to investigators that they were observant and trustworthy, judicial assessments of their character could not hold space both for their agency and for their vulnerability to institutional power in a hostile environment. The High Court chose to devalue the former, dismissing Binsia’s feat of navigational memory as purely false: “The night was dark, the party had no lamp or lantern: the man and woman, unsophisticated Mallahs, were strangers to Tundla, who had only been that way once, in the company of the accused, crying and protesting, and in no fit state to pick up any landmarks. In the circumstances, can the statement that the woman led

⁵⁶⁷ “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.” Notes on Judgement, dated 29th February, 1924, of High Court in Government. App. No. 97 of 1924: K. E. Vs. Rebello and Dorton (see 376 IPC).

⁵⁶⁸ “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.”

⁵⁶⁹ This was confirmed by Home Member and Leg Assembly Leader Alexander Muddiman’s memo: “We have considered the evidence very carefully and come to the conclusion that the main facts of the story are true... The question remains whether the sexual intercourse amounted to rape. The High Court has found that the injuries were sufficient to terrify her into absolute submission. It is admitted that they are slight but we are not prepared to differ from the judges...” “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.”

the way unerringly be believed?”⁵⁷⁰ The presiding Judges stereotyped the two plaintiffs as “very ignorant, unsophisticated villagers”, “absolutely unfamiliar with railway lines and totally ignorant of the geography of the locality”, who “must have been thoroughly frightened and alarmed” upon being taken into custody by the ticket collector, and for whom the very idea of taking a shortcut by crossing the railway lines in the dark would have provoked “terror”.⁵⁷¹ Although the claim to have been tricked, coerced, and intimidated does not signify blind, obedient terror, the High Court chose to base its evaluation of the appeal on rescripted assumptions about Reoti and Binsia’s communal identity: assumptions of rustic foolishness and helpless innocence that were presumably intended in a conciliatory fashion toward those who felt defamed by the Sessions Judge’s comments about Malla women, but that ultimately reduced those women to one-dimensional victims. Ironically, we find the clearest evidence of a likelier reality in a clemency petition written by Rebello’s father—also a railway worker—to the Viceroy, which contain comments meant to expose Binsia as cynical and worldly but instead reveal her multiple attempts to disrupt her own assault: “The picture of being thoroughly frightened and alarmed also does not agree with the girl’s statements. When in the ticket office, she says, Rebello put her uncle outside and touched her breast...and then she said ‘Don’t touch my breast’. When they arrived at the bungalow and her uncle had climbed through the window, she said ‘you were to take me to the police, how is it you have shut up my uncle?’”⁵⁷²

⁵⁷⁰ “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.” Notes on Judgement, dated 29th February 1924, of High Court in Govt. App. No. 97 of 1924: K. E. Vs. Rebello and Dorton.

⁵⁷¹ “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.”

⁵⁷² “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.” Petition by S. W. Dorton and J. C. Rebello, Ticket Collectors of the East Indian Railway, Tundla.

The High Court, Rebello protested, had attempted to repair injuries rendered to Malla sentiment without adequately scrutinizing whether the plaintiffs really were ‘injured’ subjects: “Their Lordships, without having seen the said witnesses or having had the advantage of noting their demeanor in the witness box under examination and cross examination, have very largely based their conclusion of your memorialists’ guilt on the assumption that these witnesses were simple and unsophisticated villagers, who could easily be terrorized. This assumption, apart from being counter to the personal observations of the trial judge, and being clearly contradicted by the testimony of the witnesses themselves, is supported by no evidence of any kind on the record.”⁵⁷³

Although his remarks are patently self-serving, designed to have the conviction overturned, and should be viewed critically, they do confirm my suspicion that the object of legal parley in this case was the appearance of innocence and victimhood, abstracted from the vexed interplay of bodies, abuse, power, and criminality in public space. As the Mallahs and Anglo-Indians leveraged their influence over public institutions, and jockeyed to express collective backlash to unflattering judicial assessments of their social position, I see the Allahabad High Court’s script of helpless femininity as intended to paper over the racism and casteism of the case’s first trial by means of a kind of official contradiction, the public issuance of a badge of innocence to the Malla community. Government prosecutors won Binsia a conviction by denying her own active facilitation of, and role in, that conviction. In so doing, they demonstrated an understanding of both their judicial and their political audience: a colonized male public, which was interested less in Binsia’s agency than in imagining itself in the position of Reoti,

⁵⁷³ “Question in the Legislative Assembly by Mr. B. C. Roy regarding the Tundla Rape Case in which two Anglo-Indian accused have been acquitted.” Petition by S. W. Dorton and J. C. Rebello, Ticket Collectors of the East Indian Railway, Tundla.

powerlessly witnessing a presumed infinity of dishonor from behind a locked window, cursing his decision to trust an official authority. The High Court debated with keen attention over what he had seen—“it is a fact that people who live the life of Mullahs probably have a great deal better sight at night than townsfolk”—and what his presence signified about the violence of rape: “*if he was there, we cannot believe that this woman consented and went with these men...with the object of having sexual intercourse*”.⁵⁷⁴ The court’s thwarted, legally irregular counter-offering of humiliation—a whipping not only to flay white skin, but also to strip dignity from the railway caste—suggests the potency of extrajudicial retaliation to the impossible fantasy of restoring sexual honor.

In this chapter I have documented how—in the face of employees’ familiar and confident exploitation of Railways spaces—Indian victims of sexual assault developed and showcased a robust competing knowledge of their environment. The pattern of cases I have considered shows that women facing violence on the railways demonstrated spatial and situational awareness, consistent and accurate memory, and an instinct for detecting danger. Nevertheless, they ordinarily could not overcome the advantages that men possessed in terms of environmental familiarity and judicial sympathy. Forms of resistance similar to that displayed by Miss Mayne, refracted through the pervasively misogynistic scrutiny to which Indian women were exposed as they travelled, were rendered illegible and irrelevant.⁵⁷⁵ The legal sources frequently identify the abuse of power and victim intimidation as materially relevant to the circumstances of these

⁵⁷⁴ Notes on Judgement, dated 29th February 1924, of High Court in Govt. App. No. 97 of 1924: K. E. Vs. Rebello and Dorton.

⁵⁷⁵ See Ann Laura Stoler, “‘In Cold Blood’: Hierarchies of Credibility and the Politics of Colonial Narratives”, in *Engaging Colonial Knowledge: Reading European Archives in World History*, Ricardo Roque and Kim A. Wagner (eds.), Palgrave Macmillan, 2012: 35–66.

cases, but refuse to place sexual acts effected through nonphysical coercion within the category of rape. Whether tricked, coerced, or misled into being raped by men taking advantage of their position in an institutional context, women who were unable to demonstrate sufficient violence in the commission of rape invariably saw their rapists acquitted in court, both European and Indian.

Chapter 5: The Body as Threshold

So far in this study of rape, I have tried to demonstrate the varied topography of sexual precarity and public exclusion in India by exploring how this precarity could potentially extend to all spaces that contained female bodies, shaping them into similarly vulnerable objects whether secluded or exposed. Those whose experiences fit into the narrow colonial legal imaginary of rape were more likely to have been assaulted outside while traveling or working, but women who practiced seclusion and could expect never to have to regularly undertake either activity would have been no less affected, albeit differently, by that imaginary. In essence, the law's repeated incapacity to redress or deter rape in public constituted rape as an irremediable loss of sexual value: one that exceeded the worth of free movement as a principle, and the value of female life as a ransom.⁵⁷⁶ If one lived life inside, then, it was because it was an incalculable risk to be outside at the wrong time, in the wrong place, and visible to the wrong men. If one had to live much of life outside, one interloped in the face of this risk.

Here, I undertake what could be a farcical exercise: *all* female bodies? Do I really mean *all*—as in, that colonial law expanded and replenished the social calculus of rapeability to encompass every other metric of female respectability, extending the public danger posed by rape to every alternative space and social logic under its rule? Even if such a claim were bounded

⁵⁷⁶ A recurring legal and administrative theme of the long nineteenth century in colonial India was the right of the woman's community to inflict death upon her. Frequently this was not just because of something a woman had done—though accusations of sexual or social indiscretion were often retroactively deployed as justification—but because some public dissatisfaction, ritual, or claim for justice had to be articulated. See Tanika Sarkar, "A Prehistory of Rights: The Age of Consent Debate in Colonial Bengal," *Feminist Studies* 26, no. 3 (2000): 601–22, <https://doi.org/10.2307/3178642>.

to the South Asian region I have examined so far, what would it look like to test the universality of such a claim, to find its limit? We have already had ample illustration of the non-barriers ultimately posed by demographic distinctions such as the age, wealth, caste status, and social networks of the victim to the calculus of the rapist in the myriad locales and lifeworlds of rural northern India. There seem to have always been men in this milieu who were empowered by the law's inattention to rape to choose a 'forbidden' target, regardless of what other statuses and protections were ostensibly afforded to the target so chosen: there was almost no target who was completely and categorically 'off-bounds'.

The story I tell in this chapter explores the nonexistence of this sexual off-boundary or sexual exception in the social life of colonial India as the product of a fundamental clash of religious and psychiatric epistemes. Of the many cognitive and discursive dissonances between colonial law and social landscape that I treat in this dissertation, the case in question stages perhaps the most extreme. In the proceedings of a rape trial from 1901, I found the following witness testimony: "I never heard of a native who would ravish such a *pagal* [mad] woman as this one in court. *They think a woman like this is sacred, and they would not take advantage of her even if she solicited.*"⁵⁷⁷ This testimony came from *Subedar* Makhmad Khan, a high-ranking Pathan officer in the 33rd Punjab Infantry of the British Indian Army, at the jury trial of Private Joseph Burchell, an Irishman stationed in the Punjabi cantonment town of Ferozepur. The woman to whom Makhmad Khan referred was a wandering, homeless mendicant named Sardara Begum—and he also used another, significant, word to describe her madness: "She appeared to

⁵⁷⁷ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In "Alleged rape on a native woman by Private J. Burchell at Ferozepore." *Proceedings of the Government of India, Home Department (Public)*, No. 321 of January 1902, Part A.

be more *mast* than other beggar women.”⁵⁷⁸ Platts’ classic 1884 Urdu dictionary arrays this word with an astonishingly diverse weaponry of suggestive meaning: to be *mast* is to be “addicted, occupied, merry, absorbed, engrossed, amorous, lustful, lascivious, careless, drunk, intoxicated, out of one’s senses, overjoyed, frenzied.”⁵⁷⁹ Today in spoken Hindi, the adjective *mast* and the noun *masti* frequently shade into a more innocuous register of excitement, fun, and being up to no good. But here is another, contemporary, meaning of *masti*, this one supplied by the popular online Urdu dictionary Rekhta.org: “*sambhog ki aisi prabal iccha ya kaam-vaasna ki bhale-bure ka vichaar na reh jaye.*”⁵⁸⁰ I translate this as *a desire for sex that is so strong that there is no remaining thought for bad or good.*

The appearance of *mast* as a descriptor of insanity in a rape trial is an invitation to query precisely this register of the word’s meaning. What kinds of desires are allowed, *de facto*, to override a society’s received moral and ethical values—and to become unbounded, pervasive? What might it mean to invite or surrender to sex without a care or comprehension of whether that sex was ‘bad’ or ‘good’—or indeed, to exist without reference to the categories of bad or good at all? What conditions give rise to what is framed here as the normative response to such a ‘solicitation’ of sex: a spiritual recognition, which warns that the sacred cannot be exploited, that base ecstasy cannot operate parasitically upon divine ecstasy? Finally, what specific kind of ‘bad or good’ associated with sex might vanish from awareness in this particular state of desire, which is also a non-desire? Is it a discrimination of the quality of the sex itself, as pleasurable,

⁵⁷⁸ *Emperor of India versus Joseph Burchell*, October 25th, 1901.

⁵⁷⁹ John T. (John Thompson) Platts, “A Dictionary of Urdu, Classical Hindi, and English,” Dictionary (London, W.H. Allen & Co, 1884), <https://dsal.uchicago.edu/dictionaries/platts/>.

⁵⁸⁰ संभोग की ऐसी प्रबल इच्छा या काम-वासना कि भले-बुरे का विचार न रह जाय। “Masti,” Rekhta Dictionary, accessed June 6, 2024, <https://www.rekhtadictionary.com/meaning-of-mastii>.

unpleasurable, or painful? Is it the ability to judge whether the sex is morally, legally, or socially sanctioned? Or is it, in fact, the basic recognition that the object of one's desire is a person, a feeling and sentient being? It was these very questions about the state of desire, in fact, that were on trial in the Ferozepur case, and given to the presiding jury to answer:

1. Had the prisoner intercourse with Musammat Sardara Begum?
2. If not, did he attempt to have intercourse with her?
3. In either case, *did she resist or were her acts such as would constitute consent in a woman of sound mind?*
4. Was she *mentally capable of consenting* to the act of intercourse?
5. *If she was not mentally capable of consenting, did the prisoner know that she was incapable?*

After retiring for a few minutes to consider their verdict, the foreman stated that they unanimously found the prisoner **not guilty**, answering the first and second questions in the negative. The prisoner was acquitted and orders were passed for his release.⁵⁸¹

The Indian Penal Code provided two relevant circumstances that established a specific intent or *mens rea* for rape: if the intercourse with the victim was “against her will” or “without her consent”. However, in the absence of significant physical resistance—an ‘objective’ proof of a woman’s unwillingness—these conditions were “silent as regards the *subjective appreciation* by the accused of the absence of consent on the part of the woman.”⁵⁸² According to the Code, an individual initiating sex in “good faith” would have had to exercise “due care”—“the care that an ordinarily reasonable and prudent person exercises under all circumstances for his own

⁵⁸¹ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged rape on a native woman by Private J. Burchell at Ferozepore.” *Proceedings of the Government of India, Home Department (Public)*, No. 321 of January 1902, Part A.

⁵⁸² M. V. Sankaran, “Mens Rea in Rape: An Analysis of ‘Reg. V. Morgan’ and Sections 375 and 79 of the Indian Penal Code,” *Journal of the Indian Law Institute* 20, no. 3 (1978): 455
<https://www.jstor.org.ezproxy.cul.columbia.edu/stable/43950610>.

protection”—in obtaining consent, and it was truly a hard sell that Burchell had done so.⁵⁸³ In answering ‘no’ to the first two questions, then, and accepting Private Burchell’s claim—preposterously spurious, as we shall see—that he had not had sexual contact of any kind with the woman he was accused of raping, the white-man jury’s verdict denied the *actus reus*, and superficially avoided addressing the subsequent three: questions about the visibility and conspicuousness of Sardara Begum’s mental condition, her knowledge and awareness of sex, and the manner and likelihood of her resistance to sex she did not want—in other words, questions of *mens rea*, or Burchell’s intent to commit rape, as opposed to his intent merely to have sex.⁵⁸⁴

By denying that sex had even occurred, and committed as it was to letting Burchell walk away with no further interference to his career as a soldier, the jury could head off longstanding concerns about—and social judgement over—interracial sex, which had driven both military and civilian legislation in colonial India since the earliest days of the nineteenth century.⁵⁸⁵

⁵⁸³ Sankaran, “Mens Rea in Rape”, 458

⁵⁸⁴ “The *actus reus* in rape consists in having unlawful sexual intercourse with a woman without her consent. The absence of consent to sexual intercourse is an essential ingredient of the *actus reus* in rape....As regards *mens rea* in rape, there is some uncertainty. No accepted definition of the offence suggests the need to prove a subjective mental element. Judicial dicta to the effect that *mens rea* in rape means an intention to have sexual intercourse with a woman without her consent leaves the matter in ambiguity. The act of sexual intercourse is by its very nature intentional. It is not conceivable that there will be any difficulty about arriving at an intention to have sexual intercourse, *once the act of intercourse is proved*.... Has the Crown the evidential burden of showing any, and if so what degree of subjective appreciation by the defendant of the woman's absence of consent to the intercourse?” Sankaran, “Mens Rea in Rape”, 440.

⁵⁸⁵ “Fear of contamination, expressed as concern over venereal disease and moral failure, led to the 1864 Cantonment Act, which regulated prostitution and provided for regular examinations of prostitutes in Indian cantonments, and the 1868 Contagious Diseases Act extended these regulations to cities in general throughout India. These Acts, constantly modified and contested, highlight tensions between the Army, the Civil service, and political forces in England who sought to bring middle-class morals to the Empire...prostitution in India served a twofold purpose: reinforcing racial hierarchies that depicted Indians as morally degraded, and serving as an outlet for the sexual needs of the British.” Jeremy Neill, “‘This Is a Most Disgusting Case’: Imperial Policy, Class and Gender in the ‘Rangoon Outrage’ of 1899,”

Nevertheless, despite their disavowal, it was these very questions—questions of will, intelligence, awareness, and especially of impulse and instinct—that inexorably structured the entire trial and the progress of its arguments, as experts sought to portray Sardara’s willpower as “feeble” and her state of mind as “simply so imbecile that she does not know any better”, implying that she might have acted as if she wanted sex.⁵⁸⁶ When almost half a dozen Indian witnesses testified to having seen Burchell *in flagrante delicto*, for instance, the Government Advocate for the province of Punjab was compelled to comment that although he had no reason to disbelieve the witnesses, “the probability, that in consequence of [Sardara] being *imbecile* the offence was *only a technical one*, was very great, and the punishment that would have been awarded would have been merely nominal.” Even more memorably, the officiating Civil Surgeon claimed, as proof of her inability to judge morality, that Sardara had showed signs of consenting to sex even with *him* in the process of his examining her for rape-related injury: “I think that if overtures had been made to her [the implication is: ‘by me’] she would have consented to sexual intercourse without any objection. I do not think that she would have objected to intercourse with the prisoner had he asked her.”⁵⁸⁷

I have as little to say about either statement as I have consolation in reproducing them here, as I believe their moral desolation to be absolute. But it is clear that, in keeping with prevailing British judicial precedents that had begun to produce and govern the sexuality of the

Journal of Colonialism and Colonial History 12, no. 1 (2011): 1 <https://muse-jhu-edu.ezproxy.cul.columbia.edu/pub/1/article/430367>.

⁵⁸⁶ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged rape on a native woman by Private J. Burchell at Ferozepore.” *Proceedings of the Government of India, Home Department (Public)*, No. 301-321 of January 1902, Part A.

⁵⁸⁷ “Alleged rape on a native woman by Private J. Burchell at Ferozepore.” *Proceedings of the Government of India, Home Department (Public)*, No. 301-321 of January 1902, Part A.

disabled and neurodivergent, the legality of Burchell’s behavior hinged on his apparent solicitation *by* Sardara Begum, and whether it would be possible for a man cruising for sex to know that his potential partner was an ‘imbecile’ upon first encounter. It was precisely this connection, however—between madness and sexual invitation—that the witness Makhmad Khan had pointed out to be diametrically incompatible with local structures of feeling and desire. A madwoman could never be interpreted to be soliciting sex, regardless of where she was or what she was doing, because her being was sacred: engaged with worlds, states, and perceptions beyond the material and real. But at the same time, this ‘being-out-of-the-world’ was both connoted by a word with a complex ritual and religious history, rife with worldly and sensuous interpretation, *and* made to turn on itself and its subject, by means of the judicial reasoning that such a state would imply the subject could not even register sexual touch as a violation, *making non-consensual sex no crime*.

Adopting the framework used by Sarah Pinto, I present such a judicial reasoning as a “soul wound” inflicted upon the “‘sacred’ beliefs integral to the understanding of the mind and mental health across various Indian communities.”⁵⁸⁸ This chapter is therefore about the paradox of *masti*—an ecstatic state of mind that inhabits a liminal space between sexuality and asexuality—in a social landscape shaped by the ongoing colonial scandal of male sexual impunity. It interrogates discourses of madness, vagrancy, and disability, debates about the fate of *bhakti* and Sufi mysticism under the British Raj, and the haptic operations of caste, among

⁵⁸⁸ One example given by Pinto: “In 1849, a magistrate in Ahmedabad sent Brahmin Devram to the asylum because he went on a religious fast. The magistrate concluded that the Brahmin’s fast was an attempt at suicide and he admitted Devram to the Ahmedabad Asylum. Such a misconstruction was just one example of a ‘soul wound’.” See Sarah Ann Pinto, *Lunatic Asylums in Colonial Bombay: Shackled Bodies, Unchained Minds*, electronic resource (Palgrave Macmillan, 2018), <https://doi.org/10.1007/978-3-319-94244-5>.

others, to analyze the constitution of the subject of the rape trial as ‘sexually untouchable’. It argues that two figurative senses of sexual untouchability are opposed to one another in a contest of legality and legibility: that represented by Sardara Begum, a holy fool whose body, while openly and readily accessible in physical terms, was claimed to compel an asexual response from anyone with moral sense; and that represented by her rapist, a debauched white soldier whose legal immunity protected him from suffering the social and spiritual consequences of violating and contaminating such a body.

Ultimately, Sardara Begum’s state of sexual non-interactivity collided with and was overcome by Private Burchell’s sexual hyperactivity, amply abetted as it was by the dehumanizing colonial forces of ableism and white supremacy. But the polarization of these two figures also belies the essential lack of distance between their mental states in the matter of assessing—at least, in good faith—their capacity to consent to sex or interpret the sexual consent of another: if Sardara Begum was spiritually incapacitated, Burchell had been alcoholically so, after a long night of drinking in the cantonment’s *bazaar*. In differently accurate ways, then, *masti* described them both, for all that the law could not acknowledge that similarity. I explore how this difference manifested itself spatially, in the sense that one state of intoxication was enabled, excused, and protected externally—by law, territory, and commodity—while the other was uniquely internal, and rendered uniquely precarious by the transformation of religious and spiritual authority under colonial rule.⁵⁸⁹ The internal and external antecedents of *masti*

⁵⁸⁹ I lack the ability here to engage significantly with scholarship on colonial space in the more literal sense of the word, as a physical space to be governed: examples of such work include Stephen Legg, *Spaces of Colonialism: Delhi’s Urban Governmentalities* (Malden, MA: Blackwell Pub, 2007); and Mary Hancock, “Gender, Race and the Spatiality of the Colonial Town in India”, in Deborah Simonton, ed., *The Routledge History Handbook of Gender and the Urban Experience*, (New York: Routledge, 2017), <https://doi.org/10.4324/9781315276236>.

illuminate the difference between being untouchable as *knowing* one is protected from the consequence of one's action, and being untouchable as having *no heed for or understanding of* consequence. This brings us to the most sobering question of all: what it means to define rape as an act that strips a human being of their last defence—the resilience and protection afforded by one's internal state, and all that is sacred within or about it.

5.1: Confinement and contamination

To help explain why the public nature of this particular act of rape is crucial to exploring the problematics I have just described, I will briefly make use of two sets of theoretical oppositions that seem to approximate the Janus face of sexual untouchability: Michel Foucault's comparison between penal and monastic forms of power, and Aniket Jaaware's claim that untouchability is dual, both 'good' and 'bad'. In *The Punitive Society*, Foucault addresses skepticism about the recency of the birth of the prison form—dated by him to the late eighteenth century—which often took the stance that France was “a society that has been familiar with monastic enclosure, a convent-form, for centuries”, making it “more reasonable to see if we could trace the genealogy of the prison form from a certain monastic form of community”. To disprove this, Foucault claims that penal power has a fundamentally inverse spatial logic to that of monasticism, and thereby a different genealogy:

we should not forget what the function of monastic seclusion was. Actually, *on what side is the permeability?* What is involved here is not preventing someone's access to the outside world, not preventing them from leaving, but protecting places, bodies, and souls

from the outside world: *seclusion closes off the inside from all the possible assaults of the outside; it is one of those holy places into which there is no way one can enter. So, seclusion does not confine someone's liberty within a place he cannot leave and in relation to which the outside is inaccessible; it defines a protected internal space that must become inaccessible to the outside. It is the world that is kept outside, and not the individual inside. It is the world that is confined to the outside. So punitive confinement and monastic seclusion are fundamentally heterogeneous. [Emphasis mine]*⁵⁹⁰

In *Practicing Caste*, Jaaware contends that the human sense of touch is “homeless”; that it is “the largest sense of all...more diffused, dispersed, and unlocalized than any of the other senses”; and that “a way of shutting off the sense of touch is not available.”⁵⁹¹ To be awake, alive, and feeling is to register touch—the only exceptions are unconsciousness (which, as we will see, appears in Indic tradition as a classic, and gendered, symptom of madness or possession) and death. A ‘bad’ touch can be ‘literal’—as in the case of sexual assault—or ‘figural’—“the basis of caste distinctions and, to a certain extent, class distinctions as well.”⁵⁹² But perhaps the most pertinent aspect of Jaaware’s analysis of touch is his setting out of the paradigmatic drama of the inviolate sacred realm and the contaminating agent:

One is untouchable either because (1) one is inhabiting the realm of the “pure” or the “sacred” or because (2) one is an agent of the “bad” touch, the contaminating touch... There is considerable social variation in what is regarded as the pure or sacred realm, as there is in who is thought of as the contaminating agent, but these two categories can be found wherever there are caste distinctions based on a division of the social world into pure/purifying and contaminated/contaminating. Notions of activity and passivity interact in this distinction. *If one is untouchable because one is of the first type of untouchable, then one can touch others to bless them or purify them. If someone else touches you while you are in that space of “purity/untouchability,” then that touch is contaminating* (even if it is another brahman who touched you). It would seem then, that if the agency of the touch is with someone else, then that touch is, or could be, contaminating... *The issue, we believe, is of retaining the agency of social touch with*

⁵⁹⁰ Michel Foucault, *The Punitive Society: Lectures at the Collège de France 1972-1973* (New York: Palgrave Macmillan, 2015), 84-85.

⁵⁹¹ Aniket Jaaware, *Practicing Caste: On Touching and Not Touching* (New York, NY: Fordham University Press, 2019), 13-16.

⁵⁹² Jaaware, *Practicing Caste*, 22

oneself, and by extension, in one's own caste. If one is passive when one experiences touch, then it is likely that the touch would be found contaminating. These associations of touch with activity and passivity have several repercussions, several of them indicative of the metaphysical grounding for social practices.⁵⁹³

Set together, these two oppositions seem to suggest why a study of the *scene* of Burchell's assault on Sardara Begum—which occurred in a place that neither was expected or authorized to be—can illuminate the internal and external antecedents (indeed, the alibis) of *masti*, and the annihilation of one claim to sexual untouchability by another. From Foucault, we get the idea that within any act of enclosure or separation, there predominates one of a binary of social and political forms: seclusion, which ultimately protects the world *inside* the subject, on the basis of its presumed inner value; and confinement, which protects the world outside *from* the subject, on the basis of that subject's lack of intrinsic value. From Jaaware, we are reminded that the barriers and thresholds that manifested monastic seclusion or penal confinement in colonial India—such as barracks, asylums, sanatoriums, orphanages and schools, hospitals, prison cells, religious sanctuaries, and all domestic, homosocial, *zenana* spaces coded as the 'private sphere' and forbidden to public access—were typically *literal and external barriers*, standing in for the barrier of the body itself. However, a monastic logic of separation and enclosure, in particular, could also manifest seclusion internally, in-tangibly, at the level of touch—in the barrier of the skin, the barrier of a person's presence, proximity, or shadow—and find moral resonance in a world that practiced caste.

Relatedly, the mythic, literary, and spiritual theme of love-in-separation, or *viraha*, is a primary psychological trope of Indic religious traditions, and the humble and socially lowly

⁵⁹³ Jaaware, *Practicing Caste*, 25-6.

bhakta its primary psychic agent.⁵⁹⁴ The state of *viraha* is deeply gendered: a devotee who is unwillingly separated from her beloved God by the material world becomes both feminine and apart-from-the-world in her longing—but not necessarily physically or literally separate from it, as might be necessary to satisfy *other* gendered seclusionary logics, such as those of genealogical prestige and familial honor, that regulated life inside the *zenana*.⁵⁹⁵ These associated monastic forms of power might be exemplified in the shelterless, wandering mendicant, a lover of God whose body is their primary seclusionary barrier from the social world, and whose mind is their primary space of retreat from its norms and demands.⁵⁹⁶ This type of power is a renunciatory power, an ascetic power, the agency of which is better characterized by capitulation or negotiation than outright resistance—including in situations of bodily threat or contamination.⁵⁹⁷

⁵⁹⁴ “Despite a large number of low caste and women *bhaktas* in its ranks and within different regional traditions, however, the verdict on the truly emancipatory potential of Bhakti has been mixed. Historians of women *bhaktas* find it especially difficult to be effusive about the revolutionary capability of the Bhakti path.” Anshu Malhotra, “Bhakti and the Gendered Self: A Courtesan and a Consort in Mid Nineteenth Century Punjab,” *Modern Asian Studies* 46, no. 6 (2012): 1507, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/41683036>.

⁵⁹⁵ Non-consciousness, as a form of retreat and withdrawal from the world or paralysis within it, is an enduring South Asian idiom of psychological distress: “Love-in-separation, *viraha*, is culturally patterned. It has antecedent events, such as loss and shock; somatic signs, and symptoms, including fainting, unconsciousness, and other seizure-like activity; and self-appraisal involving rejection and loss... *Viraha*, in Sanskrit literature and bhakti devotionalism, may elicit the perfect form of the *rasa* of *karuna* (compassion and pity). As such, *viraha*-like narratives might be expected to activate positive social appraisals; they are useful for expressing negative feelings in a milieu in which verbalizing complaints might evoke disapproval and punishment. In folk genres, *viraha* is *one of the only forms of women’s distress that men present sympathetically from the point of view of women...*” Jocelyn Marrow, “Hysteria Narratives and Love-in-Separation (*Viraha*) in North India,” *South Asia: Journal of South Asian Studies* 45, no. 1 (January 2, 2022): 152-153, <https://doi.org/10.1080/00856401.2022.2014123>.

⁵⁹⁶ See Indrani Chatterjee, *Forgotten Friends: Monks, Marriages, and Memories of Northeast India* (New Delhi ; Oxford: Oxford University Press, 2013); and William R. Pinch, *Peasants and Monks in British India* (Berkeley: University of California Press, 1996)

⁵⁹⁷ Anshu Malhotra has summarized this view of agency in relation to Bhakti *saints* like Piro and Bahinabai: “scholarship on the mechanics of agency shows is the diverse ways in which systems and structures can be maneuvered by the marginalized, including women, to assume an agential initiative. As Mahmood notes, agency “in this form of analysis, is understood as the capacity to realize one’s own interest against the weight of custom, tradition, transcendental will, or other obstacles.” Undoubtedly this

For instance, hagiographical episodes from the life of the iconic medieval *bhakti* saint Mirabai, a high-caste princess, stop just short of the threshold of sexual misdemeanor, lending an additional interpretive dimension to gestures of sexual interest, consent, and desire. In one episode, the scholar Anshu Malhotra has noted, “Mira comes across a dissolute *sadhu*, out to take advantage of her by insisting that [the god] Krishna himself wishes her to submit to his advances. *Mira’s predicament is overcome appositely by her very quality of shamelessness*. She lays out the pleasure bed in the presence of the *satsang* [religious assembly], urging the *sadhu* to do Krishna’s bidding in front of all, thereby shaming him into abandoning his carnal desire.”⁵⁹⁸ Both subjecting herself to and exempting herself from the sexual codes of society, Mira preserves her chastity by surrendering it in public—inviting all to watch, and thereby producing shame, which here is precisely the emotion of which neither rapist nor saint is capable.

It has long been an axiom that colonial occupation is a presence so socially and morally derelict that it can only truly be overcome by organized counterviolence: one can only appeal to the shame and conscience of an entity that actually possesses these qualities. At the same time, the combined doctrines of nonviolent submission and inner spiritual strength hold a storied position in South Asia’s political and social history, and are valued as among its truest idioms of

manner of tactical maneuvering will be visible in the way Piro, or for that matter Bahinabai, worked to create spaces for themselves, manipulating plural cultural norms to gain power over their circumstances and selves. However, what this elaboration of agency and constraints upon it still does not explain is the acceptance of subordination, or at times the giving up of agential initiative... Though resistance and subversion are still viewed as constitutive of agency, that the process of negotiation with structures of power may also involve capitulation or negotiation is increasingly being understood.” Anshu Malhotra, “Miracles for the Marginal?: Gender and Agency in a Nineteenth-Century Autobiographical Fragment,” *Journal of Women’s History* 25, no. 2 (2013): 18-19, <https://muse-jhu-edu.ezproxy.cul.columbia.edu/pub/1/article/510529>.

⁵⁹⁸ Translated from Priyadas’ *Bhatirasabodhini*. Quoted in Malhotra, “Bhakti and the Gendered Self”, 1520.

resistance, in part because the British Raj proved sufficiently responsive to, and destabilized by, such resistance. This chapter suggests that one powerful source of this destabilization was structural disparities of shame, exploring what conditions and contexts compelled or dispelled shame among witnesses and bystanders to a scene of public rape. As shall be shown, in this period, the Viceroyalty of India under George Curzon (1899-1905) engaged vigorously and fruitlessly with putting out the growing fires of scandal ignited by the criminality and social delinquency of the empire's white working-class footsoldiers—which is the very reason this case is preserved in the imperial archive in full—and was confounded by the totality and extent of racist collusion in lower branches of administration, both civil and military, that shielded 'European British' men from punishment.⁵⁹⁹

I also hope to suggest, however, that there is more to this episode than racist collusion. Private Burchell's rape acquittal, I will show, represents a profound instance of a monastic form of power—the kind of spiritual daring embodied in a homeless, wandering holy woman—succumbing to colonial penal power and its logics of punitive confinement. The public presence of the intoxicated feminine, whose cynosure was the figure of the traveling beggar and the holy

⁵⁹⁹ A note on the connection between shame and scandal here: although many scholars have assumed that—the 'scandals' of Tarakeshwar and *Neel Darpan* aside—rape was deployed explicitly as a literary theme only by British writers, Indian writers frequently rewrote mythic stories about rape both as 'allegories of empire' and as vehicles to express anxieties about social purity and pollution. Pamela Lothspiech has analyzed a number of Hindi plays and poems published between 1910 and 1947 that deploy rape for this purpose. For example, *Bhima-Vikram* by Rameshvar Chaumuval 'Kaviratna' "dramatizes the violation of an epic queen, Draupadi, in a morality play about the rape of Mother India. Updated and significantly altered from its Sanskrit precedent, *Bhima's Glory* is imbued with Gandhian rhetoric. Mobilization against the defilement of Draupadi and other atrocities is a cipher for the mobilization of the nationalist movement against the British Raj...rape is a subject Indian writers broached in colonial-era literature, albeit most often elliptically, by referencing traditional stories and deeply imbedded ideas about defilement." See Pamela Lothspiech, "Unspeakable Outrages and Unbearable Defilements: Rape Narratives in the Literature of Colonial India," *Postcolonial Text* 3, no. 1 (April 25, 2007), <https://www.postcolonial.org/index.php/pct/article/view/604>; and Tanika Sarkar, "Talking about Scandals: Religion, Law and Love in Late Nineteenth Century Bengal," *Studies in History* 13, no. 1 (February 1, 1997): 63–95, <https://doi.org/10.1177/025764309701300103>.

fool, had come to represent spurious, superstitious, and disreputable religiosity as well as deviant sexuality, making such presence a grotesque nuisance to be eradicated from public space under the civilizing, sanitizing, and eugenic effects of colonial rule. In its place arose a new pole on the spectrum of sexual untouchability: the white stranger who had the run of the place, and was entitled to stick his appendages anywhere he pleased.

5.2: The woman sleeping in the courtyard

How had Sardara Begum ended up in the wrong place at the wrong time? “It has been impossible to discover how [she] came to be behind the hospital,” the area’s British Deputy Commissioner wrote. “It is however, a well-used path from the bazaar to that part of cantonments. She lives entirely on charity and wanders from one to another of her patrons in search of her meal.”⁶⁰⁰ Makhmad Khan, being a local officer of the military police, had personally seen her in the bazaar of Ferozepur some days before, “laughing excessively and chattering.” We can replicate his witness statement, which was the first to invoke *masti*, here in full: “*I cannot say whether she was sane or insane. When she begged she spoke like a sane woman. I once saw her at a barber’s shop at the corner of the butcher's bazaar. She was sitting and wore dirty clothes. I asked the barber [nai] who she was. She did not say anything. She*

⁶⁰⁰ “Alleged rape on a native woman by Private J. Burchell at Ferozepore.” *Proceedings of the Government of India, Home Department (Public)*, No. 301-321 of January 1902, Part A. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

appeared to be more *mast* than other beggar women. The woman in court is the woman I saw. She laughed when I saw her in the bazaar just as she laughs now. (*The woman is grinning in an insane way*).”⁶⁰¹

On the hot, moonless night of Saturday, August 23rd, 1901, Sardara had left the bazaar and wandered into the compound of the army-run 33rd Punjab Infantry Hospital. This compound was bounded on all four sides: the western side by the road separating it from the church garden; the eastern by a broad *nallah*, or irrigation ditch, which came in from the Sadar bazaar; and the northern and southern sides by smaller *nallahs*, one separating the compound from the road leading to the British infantry barracks, and the other dividing it from the house occupied by the Army chaplain to the north. At midnight, an Indian hospital assistant on duty, Tara Chand, was awakened by four or five soldiers running from the south—the barracks—towards the east of the compound—the direction of the bazaar, passing thirty meters from his bed.⁶⁰² The hospital sentry, making his rounds under the eaves of the building, challenged them without an answer, at which point Tara Chand realized that the men were British soldiers, who could ignore them. He sent an Indian army sergeant, or *havildar*, named Allah Ditta to the *nallah* at the back to see what

⁶⁰¹ *Emperor of India versus Joseph Burchell*, October 25th, 1901. “Alleged rape on a native woman by Private J. Burchell at Ferozepore.” *Proceedings of the Government of India, Home Department (Public)*, No. 301-321 of January 1902, Part A.

⁶⁰² At the trial, Tara Chand provided the most detailed description of the compound, which contained mulberry and *farash* trees and a row of thin hedges easy for a man to run through: “The ground was ploughed, nothing growing. The ploughed land is a yard or two from the cook house. There is a nalla on that side—at that time dry—five, six or seven yards broad and two or three feet deep. There are many *ak* bushes near the *nallah* and in it. There is a path along the *nallah*. The double line round the hospital compound from the well back to the well is an irrigation channel dug in the soil, not metalled. It is simply for growing a hedge planted in it, round the compound. A separate ditch runs round the edge of the B.I. and Church roads between this hedge and the roads. No hedge was planted in the irrigation channel at the time. The channel is 18 inches broad and 9 or 12 inches deep. The ditch is two or three feet deep.” *Emperor of India versus Joseph Burchell*, October 25th, 1901. “Alleged rape on a native woman by Private J. Burchell at Ferozepore.” *Proceedings of the Government of India, Home Department (Public)*, No. 301-321 of January 1902, Part A. Testimony of Tara Chand, 24, Hospital Assistant.

the matter was. He discovered Sardara, “a half-witted creature who was wandering aimlessly along the side of the *nallah* holding up her pyjamas. She for some time gave no sensible reply to his questions beyond asking for water, but finally she said some soldiers had assaulted her (*kharab kiya*).”⁶⁰³ Allah Ditta brought Tara Chand to the spot: “I questioned her, and she answered my questions intelligently but rather irregularly and seemed to be laughing at times. I went back to the bed as I saw no soldier there and I had no means of verifying what she said. I paid no attention to what she said, and did nothing in consequence of it. *I can't say whether I believe what she said.*”⁶⁰⁴

They left her where they had found her. Less than an hour later, however, the sentry again heard a disturbance: a woman crying out the words “*Mar gaya! Chor hai!*” (“He’s dead! Thief!”) on the south side of the compound, somewhere behind a line of outhouses. Another *havildar*, Kadim Shah, and a sepoy named Umar Khan ran to the spot, as the cries continued. Near the corner of the southern and eastern *nallahs*, they discovered a drunken Private Burchell standing in a ditch with his trousers down and helmet off, on top of Sardara Begum, whose pyjamas were so torn, Umar Khan recalled, that they exposed a whole leg from the thigh down:

There is only one cook house in the compound, to the east of the hospital...the sweepers cooked their own food in the servant’s quarters, therefore I called that the cook house. When we saw the soldier first, he was standing between the woman's legs. His feet were in the small *nallah*. He was lying on the woman, not standing. His feet were in the *nallah* and he was having connection with her. The woman's feet were in the *nallah*. Her buttocks were on the edge of the *nullah* which is about 9 inches wide (demonstrating with his hands), it is about 6 inches deep...I saw no blood on the man's shirt or trousers or on the body of the woman. The woman pulled up her

⁶⁰³ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”. No. 304, Telegram No. 428, 27th August, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

⁶⁰⁴ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged rape on a native woman by Private J. Burchell at Ferozepore.” *Proceedings of the Government of India, Home Department (Public)*, No. 301-321 of January 1902, Part A. Testimony of Tara Chand, 24, Hospital Assistant.

pyjamas as soon as I pulled the man off. She pulled up the pyjama leg in which her leg was and held the other pyjama leg in her hand. She walked up to the guard with one leg naked and did not cover it in my presence.⁶⁰⁵

Kadim Shah and Umar Khan were not local: they were Pashto-speakers, likely from India's frontier provinces, and they did not understand Hindustani well. But they knew what they had seen, and the nonverbal signs were clear. "The woman wept after the soldier was pulled off," Kadim Shah recalled at the trial. "No, she stopped weeping when we released her from the soldier... The woman did not laugh. I did not think that she was of unsound mind..."⁶⁰⁶ "She went to the road and sat down there," Umar Khan added. "She did not weep or anything after that."⁶⁰⁷ But when it came to naming the act, we encounter a familiar fuzziness yet again: the plausible nonexistence, to British legality, of a common word that specifically and undeniably connoted rape in the region's languages, including Hindustani. Sardara Begum had used the phrase *kharab kiya*—another semantic galaxy, with many of its meanings clustered between 'doing something wicked' and 'despoiling or ruining something'. Speaking through a Pashto interpreter, Umar Khan testified: "The man was *actually having intercourse* with the woman." When Kadim Shah took the stand in the same way, and repeated the same phrase—"actually having intercourse", of which no Pashto transcription is given—the interpreter was asked to

⁶⁰⁵ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In "Alleged rape on a native woman by Private J. Burchell at Ferozepore." *Proceedings of the Government of India, Home Department (Public)*, No. 301-321 of January 1902, Part A. Testimony of Umar Khan, Sepoy, 33rd Punjab Infantry.

⁶⁰⁶ *Emperor of India versus Joseph Burchell*. Testimony of Kadim Shah, *Havildar*.

⁶⁰⁷ *Emperor of India versus Joseph Burchell*. Testimony of Umar Khan, *Sepoy*, 33rd Punjab Infantry.

clarify “that the words used by the witness do not mean committing rape.”⁶⁰⁸ Unsurprisingly, they did not.

After the Pathans pulled Burchell off Sardara Begum, the pair were interrogated on the spot by Tara Chand and *havildar* Allah Ditta, and taken to the hospital’s guardroom. The guards were at a loss for what to do with Sardara; Makhmad Khan testified: “No one could consider it proper for a woman to have one leg bare before so many men. I did not tell her to clothe herself as she had not much on, and she had the torn piece of her trousers in one hand. I thought at first it was a rosary... No one asked me that night to have the woman examined. I saw no blood or bruises on her bare leg. She did not offer to show me any.”⁶⁰⁹ She was allowed to leave the hospital the next morning, and was rounded up and brought back on Monday, two days later, to give a statement for the police as well as a military inquiry, and to undergo a medical examination by the Civil Surgeon, Captain Perry. For the next fortnight, she was kept under regular observation by Perry, who visited her every day; then, on the 16th of September, she was sent to the Lahore Lunatic Asylum indefinitely and declared unfit to give testimony at Burchell’s trial—although, as we see, she was nevertheless brought to court so that the jury could watch her grin “insanely”.

The district’s deputy police commissioner, F. Yewdall, summarized the crux of the problem: only one man had been caught in the act, but Sardara had claimed she had been gang-raped. “She told me *four soldiers* had assaulted her, but it is quite impossible to get any connected story from her, and herein lies the great difficulty in investigating the case, as no help

⁶⁰⁸ *Emperor of India versus Joseph Burchell*. Testimonies of Umar Khan, *Sepoy*, 33rd Punjab Infantry, and Kadim Shah, *Havildar*.

⁶⁰⁹ *Emperor of India versus Joseph Burchell*. Testimony of Makhmad Khan, *Subedar*.

can be got from the woman.”⁶¹⁰ Although she remained unclear and wavering on much else, Sardara insisted that she had been assaulted more than once, and by more than one person, despite attempting to get help after her first assault. There is no better illustration of her abandonment than the grim fact that her second attempt to summon help was the cry “He’s dead! Thief!”—because rape, the truth, had evoked only disbelief and indifference. This sign of abjection and abandonment, however, was also the sign of a strange, uncanny ingenuity: by crying thief, Sardara enacted a creative solution to the barrier of misogyny and dehumanization that screened rape from the everyday conscience of bystanders, and brought witnesses running in time to see everything. Moreover, as should be clear from the passages above, those witnesses were markedly split on the question of whether she was mad at all. Although she ordinarily grinned and laughed excessively, Sardara had not laughed that night: she had cried, screamed for help, scrambled to cover whatever scraps of skin she could, and sat motionless for hours afterwards. Even more crucially, she had deployed a strategy of self-defense that can only be described as intelligent, socially evaluative, and aware of reality: raising the alarm about a thief, in a world where no one really cared if a beggar woman was raped or not. This might have been proof that this crime had a victim; that a person had been harmed; and even that Sardara Begum was not an “imbecile”. But it was not—for all this, Sardara could identify no one. “She has said in one statement that there were twenty soldiers, four of whom violated her,” wrote Yewdall in frustration.⁶¹¹

⁶¹⁰ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”. No. 304, Telegram No. 428, 27th August, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

⁶¹¹ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”. No. 304.

5.3: A fortress of impunity

The mystery that now held priority for the Viceroyalty was not how Sardara Begum had come to be in the hospital compound, but how at least half a dozen soldiers had also happened to be there as well, several hours after the curfew that kept them confined within Ferozepur's army barracks. "I should like to be informed under what rules, or breach of rules, soldiers could be out at 2 a.m.," Viceroy Curzon wrote the Military Department two weeks after the incident.⁶¹² He then ordered that the "asleep, or negligent or bribed" sentry who had let them out be punished—only to be told that there had been none—and confirmed from his subordinates that a heavy sentence of imprisonment in the civil courts "would entail the man's discharge from the service and prevent any action on the military charge."⁶¹³ Before he could concern himself with investigative efforts being made to secure Burchell's conviction, Curzon wanted to know how many more could be equally guilty.

Only one other soldier had been caught outside and arrested: Private Linehan, who lived and slept in the same bungalow as Burchell up in the barracks. Earlier on the night of Sardara's assault, Burchell and Linehan had been arrested together, in a brothel in the Sadar bazaar, to the east of the hospital compound. Incredibly, it appears that if Sardara Begum had been assaulted

⁶¹² Breaking out of barracks, the Military Department replied, was a breach of paragraph 666, King's Regulations. "Alleged rape on a native woman by Private J. Burchell at Ferozepore." *Proceedings of the Government of India, Home Department (Public)*, No. 301-321 of January 1902, Part A. Curzon to Military Department, 18th August, 1901.

⁶¹³ "Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore". No. 306 and 308. Curzon to Military Department, 29th August and 8th September, 1901.

once before that night by a different group of men, Burchell had also been caught in the middle of having intercourse once before, on the same night, in the room of a sex worker. On their way back to the army guardroom, the two men had escaped from the military police and separated, with Burchell running through the hospital compound with officers in hot pursuit. Having lost his helmet and belt in the scrim, Burchell claimed to have stopped—and stooped down—in the hospital *maidan* to look for them. Yewdall reported:

*He totally denied being on the top of the woman or having made any attempt to violate her, although he admitted being down on his hands and knees. The military police corroborated this statement as far as to following the accused through the hospital. After that the accounts they give of their movements are most contradictory, and I am not convinced that they are telling the truth. It seems probable that they are, some of them at any rate, attempting to save the accused. Some of them state they lost Burchell in the chaplain's compound and others on the other side of the road. The inhabitants of the compounds have stated they heard no disturbance on the night in question, which would be a very unlikely event if five soldiers in ammunition boots were to charge through the compounds. The accounts given of their subsequent movements are very contradictory ... The two men belonged to the Garrison battery stationed in the Fort, and are reported to have been present at roll call and in the morning. It is a most easy matter for men to break out of the Fort at night, and there may have been many other men out at the same time.*⁶¹⁴

As this passage should make clear, Burchell had been arrested trying to make his way *from* the bazaar *to* the barracks—but Tara Chand and his subordinates at the hospital had also encountered a different group of British soldiers running through the hospital's *maidan* in exactly the opposite direction earlier that night: *from* the barracks in the south, *to* the bazaar in the east. This made it evident that Sardara's claims could not be dismissed as mere raving: more than one gang of soldiers really had broken out that night, possibly in concert, predictably leaving behind a few confused and drunken stragglers. In its first flush of crisis-mode, the

⁶¹⁴ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 304, Telegram No. 428, 27th August, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

Government of India focused on the physical ease of escape from the Fort. “There is a moat around the Fort,” Linehan explained later, during Burchell’s trial. “I do not think that the sides of the moat are faced with brick. There is a wall four feet high on the fourth side, sloping to the moat. There are no sentries on the wall. On our way into [and out of] the Fort, we dropped down from the top of the wall.”⁶¹⁵ An official in the Home Department wrote to Curzon, “At Ferozepore, owing to faulty construction, a good hill pony could be ridden over the ramparts and a “dacoit fencing” is now being put up in the ditch as, from a defensive point of view, it is radically weak.”⁶¹⁶

Curzon found it unacceptable and “a shockingly dangerous thing” that even a fence had not existed to mark the cantonment’s boundary before: “I should have thought that an arsenal—particularly in the Punjab—should have been guarded with exceptional care.”⁶¹⁷ Ferozepur Fort’s dacoit fencing—“an excellent obstacle, 9 1/2 feet high, with the horizontal bar so placed that a man cannot stand on it and put his leg over without being impaled”—had been approved three years before, but construction had only just begun.⁶¹⁸ Even so, the falsity of this proposed future

⁶¹⁵ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 321. Testimony of Patrick Linehan, Gunner, 33rd Punjab Infantry.

⁶¹⁶ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 308. The officer continued: “As a rule in India the term “breaking out of barracks” is a misnomer, imported from barrack conditions at home. Barracks in India cover a large area: doors are generally open in hot weather and there are no sentries. The non-commissioned officer in the room is responsible, but men can always get out if they wish to at the risk of punishment.” E.R. Elles, 13th September, 1901.

⁶¹⁷ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 312, 21st September, 1901.

⁶¹⁸ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 312, 10th August, 1901. The officer, J.A. Tanner, attached a diagram of the fort that has not been preserved: “The plan attached shows the Fort at Ferozepore in its present state. The arsenal is inside a kind of hexagonal heap in the centre, within a walled enclosure by no means easy to enter; The barracks lie between the arsenal and the outer ramparts. The latter are of easy slopes with a dry ditch. When the Fort was built, it was intended that the ditch should be a wet one, but the soil would not hold water. The defence committee have for some

solution was immediately apparent. As one officer wrote: “‘*Dacoit* fencing’, it may be observed, *can easily be surmounted by unarmed individuals*, but is an effective obstacle to a body of men advancing to the attack under fire.”⁶¹⁹ This was a situation where it could not be determined—or even admitted to be a matter of confusion—which security imperative was the greater, and what the barrier between spaces was actually for: keeping natives out, to deny them access to an arsenal, or soldiers in, to keep them from wreaking havoc upon the society they occupied. As such, it was an illusion of safety and separation, and all the more so for its picket-fence materiality.

But this bureaucratic bustle for material facts and concrete action produces another illusive—and elusive—materiality: the presence of this case in the archive. *Emperor v. Burchell* attracted attention at the very top because of prosecutors’ utter failure to identify which other British soldiers had been out at night, or any evidence that there had been other perpetrators of Sardara Begum’s rape at all. The Punjab Government Secretary gave the case the highest priority, instructing Deputy Commissioner Yewdall to prepare his inquiry “by the rules relating to cases in which natives meets their death at the hands of Europeans.”⁶²⁰ Yewdall then wrote to the Commanding Officer of the Ferozepur Cantonment to give him notice that, given the case’s

years passed pointed out that the Fort was not stormproof, and government have at length sanctioned dacoit fencing of the Rawalpindi pattern being placed all around the ditch... When this obstacle has been erected, i.e., by July 1902, the Fort will be secure against a native rising and to some extent against field artillery.”

⁶¹⁹ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 312, W.A. Liddell, 4th October 1901.

⁶²⁰ ‘Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore’, No. 301. Telegram 745-S, dated 9th August 1901, from H.A. Casson, Judicial and General Secretary to the Government of the Punjab, to the Secretary to the Government of India, Home Department. See also Mrinalini Sinha, *Colonial Masculinity: The “manly Englishman” and the “Effeminate Bengali” in the Late Nineteenth Century* (Manchester, New York: Manchester University Press, 1995).

‘brutality’, he would be taking it up personally; no doubt he could not have done otherwise, as he had been ordered by the Adjutant-General of India to submit daily telegrams reporting the progress of the case to the Military Department.⁶²¹ The Cantonment itself was commanded to render every possible assistance to the civil authorities, with all British units called upon to furnish statements showing the names and numbers of men absent with or without leave on the night of assault.⁶²² But more than a month after it had occurred, Yewdall reported back that he had uncovered “not a particle of evidence that anyone else was present at the time of the assault by Burchell.”⁶²³ He wrote to his direct superior: “I have pointed out to the military authorities that the only hope of finding these [other] men is by getting some information through their agency. They responded by assisting in every way, and by forwarding any evidence they succeeded in obtaining...Inquiries have been made in every possible direction by the police, but it has been impossible to discover any evidence.” Nevertheless, Yewdall was certain that *some* evidence was there: it was becoming clear that if there had been any other witnesses to what had really happened to Sardara Begum, and how many men really had attacked her, those witnesses were other British soldiers in Burchell’s cantonment. He continued:

One other point rather indicates that other soldiers were near at the time of the second assault. *The belt and helmet of Burchell have never been found.* He himself says he dropped them near that spot, but *it is more likely that he took them off for*

⁶²¹ “The case seems in all probability a brutal one as the woman in her statement declares that all four soldiers actually raped her. I consider, therefore, that I should inquire into the case myself and I accordingly give you notice of my intention to do so...” “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 301. Telegram No. 1566, 6th August, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Officer Commanding, Ferozepur Cantonment.

⁶²² “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 301. Telegram No. 332, 17th August, 1901. From Officer Commanding at Ferozepur, to Adjutant-General of India.

⁶²³ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 304. Telegram No. 450, 11th September, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

convenience, and when the guard ran out, his companion or companions carried off the things and escaped... I am afraid there is little hope of ever discovering the other men if there be any...if any other soldier knows of the case there is not the least chance of him telling anything. The military authorities have done everything in their power to assist in the investigation of the affair from the first. But the perpetrators of an assault, who were out of barracks without any one's knowledge, and who were seen by no one when they went out, cannot be easily identified.⁶²⁴

Given the circumstances, he could only recommend that the case be filed as it was. When Burchell, too, was acquitted by the Chief Court of the Punjab at his civilian rape trial during the first week of September 1901, the minor military offense of breaking out of barracks was disposed of by his commanding officer at Ferozepur by an award of four days' CB, or confinement to a barracks that self-evidently constituted no real confinement.

5.4: Animal instincts: madness, disability, and rape

“This was also final,” wrote a Home Department official regarding Burchell’s paltry punishment: “nor is there any other offence arising out of the incident on which Gunner Burchell can be arraigned. Nothing further, therefore, in connection with this transaction, can legally be done to him.”⁶²⁵ This statement was perhaps wishful leading on the official’s part, however, for if nothing more could be done to the rapist, there certainly was precedent for doing much to

⁶²⁴ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 304, Telegram No. 428, 27th August, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

⁶²⁵ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 320. W.B. Wilson, 21st November, 1901.

those who were found to have abetted his judicial absolution. “I shall want to see the full record of this case,” Viceroy Curzon ordered. “It seems to present some features of suspicious resemblance to the Rangoon Outrage Case.”⁶²⁶ When he received and read a transcript of the trial proceedings from the Punjab High Court, he wrote his officers: “This seems to me a very discreditable case, discreditable in its incidents, discreditable in the steps taken to bring the guilty party or parties to justice, and discreditable in its results. I have read the whole of the record: and the light that it throws upon the life of British soldiers in India, or some at least of them, is disagreeable and even disgusting.”⁶²⁷ He had used precisely that word—disgusting—to describe the Rangoon Outrage: an eerily similar and more notorious event that had transpired just two years before. A middle-aged Burmese woman named Ma Gun had been crossing the grounds of the British Cantonment in Rangoon on Easter Sunday, 1899, when members of the newly arrived West Kent Regiment—working-class men from the East London Docks, confined in quarantine due to a smallpox outbreak in Rangoon—waylaid her near their barracks and gangraped her in the open, leaving her in a “filthy” condition with “semen visible on her legs and dirt all over her”, while a dozen men stood around her making jokes.⁶²⁸

The scholar Jeremy Neill has analyzed the Rangoon Outrage as a boundary dispute within imperial British masculinity between “working class ideas of sexual access” and “bourgeois concepts of proper behavior”, the latter of which were, in theory, buttressed with

⁶²⁶ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 316.

⁶²⁷ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 321. Viceroy Curzon, 21st December, 1901.

⁶²⁸ Jeremy Neill, “‘This Is a Most Disgusting Case’: Imperial Policy, Class and Gender in the ‘Rangoon Outrage’ of 1899,” *Journal of Colonialism and Colonial History* 12, no. 1 (2011): 3, <https://muse-jhu-edu.ezproxy.cul.columbia.edu/pub/1/article/430367>.

punitive force upon white men by colonial law, in order to project order and control to the colonized population.⁶²⁹ Ma Gun's situation parallels that of Sardara Begum's in detail after detail: most eyewitnesses to the actual act of penetration, as opposed to its aftermath, had been British soldiers colluding with the perpetrators, and the few intimidated Burmese witnesses were unable to identify any of them; doctors at the understaffed plague-time Rangoon Hospital had carried out no medical examination, and even ordered Ma Gun bathed and cleaned up without collecting forensic evidence; and Ma Gun herself appeared to have been driven insane by the incident, offering incoherent and contradictory testimony at trial.⁶³⁰ Although investigators had little doubt she had been raped, Neill notes, they "thought the victim's mental state was such *that it made her seem consenting when she would have no idea what was actually happening to her.*"⁶³¹ Nevertheless, farcical standards of 'solicitation' were trotted out before the Rangoon jury, in the form of the claim that Ma Gun had previously been seen dancing in front of the barracks, that she frequented city streets in which brothels were situated, and that she had pulled up her clothing in front of the men who raped her. But British officials with 'local knowledge' quickly noted that Burmese prostitutes did not solicit customers by pulling up their clothing, as the men of the West Kents claimed Ma Gun had—only Indian prostitutes did so, implying that

⁶²⁹ Neill, "This Is a Most Disgusting Case", 1-2.

⁶³⁰ Neill outlines the fates of the soldiers who chose to break silence; at least two soldiers were arrested for assaulting the one British witness who gave a statement of evidence to the police. This witness' was later discredited as a 'Copper's Nark' and an 'informant' in trial, undermining his character, and had to be transferred out of the regiment. Neill, "This Is a Most Disgusting Case", 6-9.

⁶³¹ Neill, "This Is a Most Disgusting Case", 4.

the quarantined regiment, which had experience with India but not yet with Burma, had woven together their alibi on the false assumption that both types of women behaved the same.⁶³²

The wider judicial supposition of ‘sameness’—that signs of sexual solicitation and consent were universal across identity, status, and context—had recently been complicated in British case law with respect to insanity and intellectual disability. In Britain, these changes would have been evident in the passage of the 1885 Criminal Law Amendment Act, which categorically stated that it was an offence for any man who “unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl”, *so long as the offender knew the girl or woman was an “idiot” or “imbecile”*.⁶³³ Counterintuitively, as scholars such as Joanna Bourke and Ralph Sandland have argued, this legal change reflected increasingly *harsher*, as opposed to more lenient, attitudes towards mad or disabled rape survivors. If a sane or ‘normal’ rape survivor was blamed for not physically resisting obviously, visibly, or vigorously enough, women and girls with intellectual disabilities could be blamed for *not seeming obviously mad or disabled enough* to warn a man that they were unfit to consent to sex. This formulation mystified basic interpersonal and social awareness, allowing defendants to argue that madness and incapacity to consent were not qualities readily apparent to see. It undid the practice of the earlier decades of the nineteenth century, in which local British magistrates

⁶³² Neill, ““This Is a Most Disgusting Case””, 7. I speculate that Indian prostitutes, whose work was severely affected by the enforcement of Contagious Diseases Acts in colonial India the 1860s and 1870s, may have learned to lift their clothing in front of British soldiers in order to show that they were observably disease-free.

⁶³³ Joanna Bourke, ““Animal Instincts’: The Sexual Abuse of Women with Learning Difficulties, 1830s–1910s,” *Women’s History Review* 29, no. 7 (November 9, 2020): 1213, <https://doi.org/10.1080/09612025.2020.1805155>; Ralph Sandland, “Concubitu Prohibere Vago: Sex and the Idiot Girl, 1846–1913,” *Feminist Legal Studies* 21, no. 1 (April 1, 2013): 94, <https://doi.org/10.1007/s10691-013-9231-3>.

and community juries had tended to adjudicate such rape cases contextually, relying on family accounts and assuming that wide local foreknowledge of a particular woman's vulnerability might both protect her from being sexualized *and* attract rapists looking for an easy target.⁶³⁴

Over the course of the century, degrees of survivor culpability for rape in these cases came to be designated by hierarchical degrees of intellectual or mental impairment. The term 'imbecile' came to designate the higher end of the ladder: a relatively 'sane' subject who was "intellectually limited" but "capable (to varying degrees) of communicating their thoughts and wishes to others."⁶³⁵ Mad or disabled women who fell into this category were often denied the presumption of innocence, and were viewed as "unrapable": possessing '*animal instincts*' that meant that they needed to be institutionalized (or otherwise constrained) in order to prevent them from seducing the men with whom they came into contact. This widely influential concept of 'animal instincts' conflated two sets of long-held views about the intellectually impaired: that they were closer to 'beasts', and that they possessed uncontrollable, socially-dangerous impulses.⁶³⁶ By the turn of the twentieth century, Sandland notes, the rise and popularity of eugenics and anti-prostitution movements meant that "the feeble-minded woman [another term for the 'imbecile'] was seen as temptress of husbands, corrupter of children, and spreader of

⁶³⁴ Sandland, "Concubitu Prohibere Vago", 1205-6.

⁶³⁵ Sandland, "Concubitu Prohibere Vago", 1209. Sandland takes a slightly different tack, noting that this opposition of 'vulnerable' to 'dangerous' was fundamentally unstable: "In contrast to the way in which the opposition vulnerable/dangerous was constructed in the nineteenth century rape caselaw, which was indeed as an opposition—those below the level of instinct were vulnerable, those acting out of instinct were dangerous—now it functions as a moment of permanent undecidability. By 1895, we find this explicitly recognized by Bourneville (1895, 65, cited in Foucault 2003b, 220), who wrote that the dangerousness inherent in sexuality of a female defective is apparent 'at the very moment she was a victim'". Sandland, "Concubitu Prohibere Vago", 98.

⁶³⁶ Bourke, "'Animal instincts': the sexual abuse of women with learning difficulties", 1211, 1203.

disease”; as a result, a mad or disabled rape victim could usually only win a case against her abuser if “*the evidence showed that her instincts were held in check by her ability to understand the difference between right and wrong; that is, to internalize the moral codes devised by civilised society for the suppression of the instincts.*”⁶³⁷ In other words, she had to be obviously mad, obviously vulnerable, and yet also somehow obviously knowing, aware, and moral. Most significantly, the specific quality that had to vanish from her instinct was animality: a quality that critically linked the indigenous moral and social meanings of Sardara’s *masti*, as we shall shortly see, to colonial officials’ etiologies of Indian madness.

The Rangoon Outrage influenced Sardara’s case because it appears to have firmly installed the ‘foreknowledge-of-insanity’ standard in colonial rape trials in South Asia, and highlighted its usefulness as a ‘get-out-of-jail’ card, despite the British Indian government’s interest in securing convictions for the rape of Indian women by white men. The Rangoon jury, remarkably abreast of metropolitan developments, requested legal guidance—and wiggle room to acquit—specifically on the basis of the 1885 Criminal Amendment Act, asking: “*is it rape if a man has intercourse with a woman a total stranger to him, and of whose sanity or otherwise he is unaware?*” The judge trying the case noted: “*if accused in good faith believes woman sane and neither suspects insanity nor doubts sanity, his connexion with her, with consent obtained, without force, is no rape.*”⁶³⁸ This interpretation was no doubt supported by the fact that Ma Gun was *not known to be insane before the attack*, and had been driven to insanity only after it, as its aftermath. The Rangoon jury delivered a ‘not guilty’ verdict after just seventeen minutes of discussion—and soon after, Ma Gun was reported in the Indian press to have died from injuries

⁶³⁷ Sandland, “Concubitu Prohibere Vago”, 101, 94.

⁶³⁸ Neill, “This Is a Most Disgusting Case”, 10.

inflicted by her attackers.⁶³⁹ It was this press coverage—which also led to a question being lodged in the British Parliament and a telegram to the Viceroy from the Secretary of State—that prompted Curzon’s government to come down strongly on any officers it believed had colluded to shield the perpetrators. “It stunned me,” Curzon wrote, “that the regimental authorities would fail to use their best exertions to bring the guilty men to justice.” Following the advice of one of his generals to banish the guilty Regiment to “the most unhealthy and unpleasant station in British India”, he punishment-posted them even further, to the Yemeni port of Aden.⁶⁴⁰ A Regiment captain, a major, the Rangoon Deputy Police Commissioner, and both the District and Cantonment Magistrates were censured, in some cases ending their chances of advancement in their administrative branches; others, like the West Kent Battalion Commander, were forced to retire and saw their pensions reduced; and all eight of the men initially accused of Ma Gun’s rape were dishonorably discharged from the army.⁶⁴¹

To briefly restate what has been established so far: with the prevailing legal precedent in favour of blaming and confining mad and disabled female sexuality over redressing rape, but an also a very recent *executive* precedent portending severe official consequences for collusion in sexual violence, the investigators of Sardara’s case were put on notice, looking for some way to make it seem like they had tried everything feasible to prevent the collapse of the government’s case against Burchell. They came up against an iron fact that confounded legal controls on European men in colonial spaces time and again: a collusive attitude to male violence that seemed as watertight as the concerted action of a dominant caste, and which readily drew

⁶³⁹ Neill, ““This Is a Most Disgusting Case””, 5.

⁶⁴⁰ Neill, ““This Is a Most Disgusting Case””, 6.

⁶⁴¹ Neill, ““This Is a Most Disgusting Case””, 12-13.

institutional and racial subordinates, including many Indian men, into facilitating its excesses and shielding perpetrators from discovery. We have already seen some documented examples of how such plots and hush-ups were engineered within railways spaces in the previous chapter; here, in the army town, the net of collusion seems somehow even thicker, the impunity more absolute. Military police, army chaplains, hospital administrators, soldiers—and even the mixed-race *dhobis*, or washermen, who were called in to deny that there was blood on Burchell’s laundry the morning after—all insisted on having seen or heard nothing that can help fit together the story of a rape that took place, in some cases, meters away from them: the local dissemination of that party line is undocumented, invisible.⁶⁴²

Surveying the layout and landscape of Ferozepur Cantonment, Curzon himself had tacitly accepted that the British soldiers stationed there could be contained only nominally by law and regulation. In actuality, the town’s public spaces appeared to be regularly subject at night to events akin to a mass breakout of the most unstable inmates of an asylum: gangs of culturally and socially unaccountable men rushing the town in drunken rampage, ignoring the challenges of Indian guards and police, and openly assaulting people they found in the street. The nexus between public brazenness, state containment, and the many social meanings and senses of ‘madness’ was as descriptive of the white soldier’s activities as it was of the lifestyle of the local beggars and mendicants who had come to be marked in the colonial administrative episteme by their nonadherence to the laws of empire and society. But as Private Burchell was pulled back behind a fence, psychologically speaking, and the men who had aided and abetted him did not break rank, the judge and jury at his trial passed over his state of mind, making no effort to

⁶⁴² *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 321. Testimony of *dhobi*.

evaluate his reasonableness or the plausibility of his alibi. Instead, they invested their visions of containing brazenness and madness into holding Sardara culpable for her own rape, and their strategies of containment into confining her for her own safety. They were aided in this process by the prosecutorial strategy of the government itself.

To avoid the Rangoon treatment from Curzon, as we have seen, Deputy Commissioner Yewdall had communicated early and consistently that widespread military collusion with the rapist was likely to doom the conviction, and that he needed cooperation he was not getting. As the case approached trial without further evidence coming to light, he pivoted to a different strategy, which seems to anticipate and weaken the accused's 'foreknowledge-of-insanity' defence. "The only evidence of such an assault," Yewdall wrote to his superiors, "is the fact that the woman said it had been committed. The woman, however, is practically insane, and the Civil Surgeon who has had her under observation has declared that she is quite incapable of giving evidence."⁶⁴³ In order to show, therefore, that Sardara was obviously and visibly mad to a reasonable person upon first encounter, Yewdall had to construct a working case history that both proved Burchell's victim had been insane before she was raped, and that provided causal explanations for her madness that could be placed within extant colonial knowledges of the Indian psyche. Expert testimony that certified and classified Sardara's mental state as suitably severe could then, in theory, translate that state to the white jury, and establish that Burchell would have been able to tell that Sardara was insane in the run up to their sexual encounter. Had the jury accepted the Indian witnesses' basic contention that Burchell had 'actually had

⁶⁴³ "Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore": No. 304, Telegram No. 428, 27th August, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

intercourse' with her, we can see why this tactic might have worked. As we have seen, however, they didn't, accepting Burchell's lie that he had been looking for lost items on the ground near where Sardara lay. With this weak point in the strategy, Yewdall may have chosen it fatalistically—hoping perhaps to provide a contextual and professional account of Sardara's insanity that proved for the record just how unhelpful the victim of the case had been to begin with.

Here, I move to closely read and contextualize this declaration of incapacity, and to explore how such an expert opinion followed from, and itself reflected, the widespread disagreement and confusion among Indian bystanders and witnesses about Sardara Begum's actual mental state: whether she was insane or not, intelligent or not, able to understand what happened or not, or able to be harmed by it. In the following sections, I turn to three additional witnesses that were brought forward by the prosecution to provide the when, why, what, and how of Sardara's madness—Mohammed Sadiq, a new local recruit to the camel-mounted police force; E. L. Perry, the officiating Civil Surgeon at Ferozepur; and Archer Cochrane, the Superintendent of the Lahore Lunatic Asylum. I will examine the tensions and contradictions in lay and professional assessments of her mental state: between *pagal* and *mast*, vulnerable and dangerous, desiring and undesiring, holy and profane. To understand how these tensions eventually found their disingenuous resolution in the asylum superintendent's expert opinion—that Sardara was “weak-minded and imbecile”, and visibly mad upon first encounter, but also “*quite an irresponsible agent*” possessing sexually blamable animal passions and instincts—I

turn to the many-stranded interplays of language in the colonial rape trial to parse a “social” model of disability in north India.⁶⁴⁴

Social models of disability, scholars argue, are those that sustain “a focus on stigma and exclusion”, assessing the reality of disability in a given time and place as “a consequence of the way in which normative social, economic, and other structures, consciously or otherwise, have exclusionary effects.”⁶⁴⁵ With the broad historical meanings and implications of *masti* as my means of ingress into that reality, I guard against “assuming a transhistorical subject” by exploring how the variety of culturally distinct and divergent terms used to label mad and disabled Indian people, far from confusing the subject, “is, in part, the subject matter.”⁶⁴⁶ The capture of *masti* as a sign of sexual culpability by colonial knowledges of madness reflects how British law at large had begun to produce and create the concept of idiocy precisely upon rape cases against the mad and disabled.⁶⁴⁷ My purpose, in the colonial context, is to demonstrate how such production was co-constituting, shaping the contours of both rape and madness upon the interactions between legal personhood, agentive responsibility, and spatial exception. The interpretive ground of these interactions were the bodies of Indian women who existed at extremes of economic and social precarity, into whose subjectivity colonial law repeatedly failed to find any ingress that would bestow meaning. As bodies and their behaviors came to stand in

⁶⁴⁴ Patrick McDonagh, C. F. Goodey, and Tim Stainton explain in their introduction to *Intellectual Disability: A Conceptual History, 1200–1900* (2018): ‘language is a critical site of historical inquiry that can tell us much about the nature of the subject and the forces constructing it, as well as the contemporary social responses to it’. From Bourke, “‘Animal Instincts’”, 1202.

⁶⁴⁵ Sandland, “Concubitu Prohibere Vago”, 82.

⁶⁴⁶ Bourke, “‘Animal instincts’: the sexual abuse of women with learning difficulties”, 1202.

⁶⁴⁷ Sandland, “Concubitu Prohibere Vago”, 82.

for mental states—particularly states of intention and desire—the case of Sardara Begum reveals what could transpire when subjects that claimed a legitimate existence in a state of social alterity confronted the deliberate elimination of *spaces* for social alterity, without which such states were illegible and lost social value. Those bodies reinscribed as vagrants, for instance, could no longer expect to be tolerated or remain unquestioned in public space. The question of who really deserved to retain the right to access the street, to move freely, to seek relief from confinement, could not arise—as the white soldier demanded, without deserving, these privileges. As the trial could not meaningfully address either the incongruity of the cantonment space with the Indian social world it occupied or the ignominy of what had transpired among its occupants, it invented its own correspondences between the bodily and mental states of those occupants. The outcome of this shift was the transvaluation of Sardara Begum, a homeless woman sleeping in a public courtyard at night, from sexually irreproachable, off-bounds by definition, to insane, illegible, and not worth the value of having her sexuality redeemed by a conviction in a rape trial.

5.5: A psychic statute of limitations: *masti* as culpability

The spread of the party line—the cantonment’s soldiers banding together to cover up every trace of what they had done—was a process invisible to the case’s investigators. But there was a related spectrality which was perhaps even more unnerving: the complete invisibility of the co-perpetrators who had apparently taken turns with Sardara before Burchell even arrived at the scene. How could anywhere between four and twenty men have raped a woman unnoticed

and undetected in a public hospital courtyard in the middle of the night? For Yewdall, the truth of this claim of gang rape was his first attempt at ingress into Sardara's state of mind—via the extraordinary counterclaim, in his dispatches to his superior, that *no one* had raped her before Burchell, and she had *hallucinated* the gang rape, or relived it, because the sight of soldiers rushing through a courtyard had triggered the memory of a long-past trauma. The first time Tara Chand and Allah Ditta had encountered Sardara that night, half an hour before Burchell was found assaulting her, she told them that “a soldier had ravaged her on the *maidan* behind the hospital”—but, Yewdall reasoned, she had not been able to explain *how long ago* such a thing had actually happened.

If, then, any other soldier perpetrated an assault on the woman it was *at some previous time* and on the *maidan*. . . She also stated at the same time that she was on her way to Thalli, which is in Bikaner [in Rajasthan, too far away to reach by foot], and this is another instance of her confusion of mind. It is quite possible that the five soldiers had so upset her by rushing past that she made wild statements of having been ravished. It is indeed quite possible that the two witnesses misunderstood her and that she did not mean to imply that she had been actually ravished. The men are, however, very positive on this point. *At the most, then, all we can say is that there is a strong suspicion that the woman had once before been ravished by a soldier, but it is quite impossible to say by whom or when. As she spoke of Thalli, a village which she had not visited for many years, she may easily have been referring to an assault by a soldier which had happened years before. There is in fact a rumour that this woman once had a child whose father was supposed to have been a soldier.*⁶⁴⁸

Here, madness becomes a kind of psychic statute of limitations—all of Sardara's life prior to her encounter with Burchell, everything that had brought her to that point, is cast as a realm of pure speculation. Unable to bring forward any other culprits for witnesses to identify, Yewdall conjectured that the sight of soldiers might have caused Sardara to experience what we know today as a ‘flashback’, relying on a “strong suspicion” and “rumors” about her past whose

⁶⁴⁸ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 304, Telegram No. 428, 27th August, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

source he did not disclose. It seems that he intended this information to help her case morally, even if not legally: he also wrote, “There is nothing against the woman's character, and she has no property of her own, living entirely by begging.”⁶⁴⁹ Weaving together these strands of chaste character, ascetic poverty, past injustice, and anguish over a lost child, Yewdall appeared to be attempting to narrate grief as the cause of a madness that produces spatial and temporal disorientation, a confusion as to the here and now of the world. Here he may be reflecting an opinion within British colonial psychiatry which held that ‘grief’ was the most common ‘moral cause’ of insanity to be found among female Indian asylum inmates—followed by anger, religion, poverty, and love, the latter three of which could also be held up as forces in the trajectory of Sardara’s life.⁶⁵⁰ But as an assessment of the worth of the victim, and the harm that had been caused her by the incident, it only muddied matters further, representing her mental state as both opaque and also out of time. The narrative of a soldier already having touched her in the past can be taken as a way of erasing something of the stain, the need to redress the matter of another soldier having done it now. The object of the trial slips: is it the recency of the charge of raping a body that is at stake; that of aggravating, precipitating, or colluding in an act of madness; or that of conjoining two separate fires of public nuisance, the white loafer and the Indian vagrant, into a single spectacle of degradation? To colonial law, Sardara Begum’s body,

⁶⁴⁹ “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 304, Telegram No. 428, 27th August, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

⁶⁵⁰ Debjani Das, “Is Insanity a ‘Female Malady’? Lunatic Women in the Asylums of Bengal in the Nineteenth Century,” *Social Scientist* 39, no. 5/6 (2011): 40, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/41289406>. “By 1865, the causes of insanity among women lunatics of Dacca remained largely ‘unknown’ other than few instances of anger, passion, grief, loss of property, epilepsy, ganja, hereditary, and congenital tendencies.” Das notes that cases which could be found to have moral causes were few in number compared to ‘physical’ or ‘unknown’ causes, which together made up 90% of admits in roughly equal proportion.

like many we have seen, is a one-use threshold. Once it is crossed, one imagines the jury reasoning, why bother punishing a re-crossing? If you've been raped before, why not be raped again? If you were already mad to begin with, what harm, exactly, has been freshly done?

The question of harm, therefore, was whether it mattered to redeem the honor of a rape victim in whose honor no one had any stake. In this period, few women other than beggars and those of the lowest castes were willing to approach a public hospital, especially an Army one; perhaps Sardara had come to get some kind of malady treated, or was just trying to stay in sight of watchmen while sleeping outdoors at night.⁶⁵¹ Searching for her antecedents, Yewdall was only able to extract spatially and temporally irrelevant clues—Sardara referenced Thalli, a place she had not visited in several years, and claimed to be on her way to Malwal, but people in the two nearby villages that bore variations of that name had never heard of her.⁶⁵² Eventually, however, Yewdall was able to bring forward a witness—the nineteenth called to the stand—who could provide significant details about her life. Mohammad Sadiq, an eighteen-year-old boy from the dominant landowning Punjabi Khokhar clan who had just joined the camel-mounted (or 'camel-*sawaar*') police in Ferozepur, took the stand and informed the jury that he had known Sardara Begum since he was ten years old.

My father [a police sergeant in Ferozepur District] was stationed at Malot and used to give her alms. We then supplied her with clothes and she began to live at our house. My father was transferred to Ferozepur and the woman accompanied the family...to Muktsar. From Muktsar we sent her back to Malot, because my father was away for a long time investigating dacoity cases, and we found it inconvenient and expensive to keep her. This was three or four years ago. Malot is 50 or 60 miles from Ferozepur. We sent her with a bullock cartman. She had no child with her when she came to us and did not bear one

⁶⁵¹ Das, "Is Insanity a 'Female Malady'?" 27.

⁶⁵² "Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore": No. 304, Telegram No. 428, 27th August, 1901. From F. Yewdall, Deputy Police Commissioner, Ferozepur, to the Commissioner and Superintendent, Jalandhar Division, Punjab.

afterwards, as far as I know. Her character was very good. She remained indoors. She was *mast*, i.e., *she was a fakir who did not concern herself with worldly affairs. She could partly understand what was said to her, and was to that extent intelligent. She was not a violent lunatic.* She used to grin as she grins now in court. My father died about 15 months ago. I am not aware that she has ever been married. *Mast people are considered spiritual leaders and people are afraid of being cursed by them.*⁶⁵³

In denying that Sardara had a child, or indeed had ever been married, Mohammad Sadiq contradicted Yewdall's classically European notion that womb-related melancholia had something to do with her madness. In fact, he revealed that such frames of interpretation were categorically misapplied: Sardara was "a *fakir* who did not concern herself with worldly affairs", a subject that could be assumed neither to possess any ordinary kin or familial relationship, nor to have ever experienced a sexual encounter, traumatic or otherwise, that instigated a mental disorder. It was not the psychogenesis of madness that mattered in a subject that had already left the "worldly" behind: it was the latent capacity of that subject itself to compel respect through a fear of spiritual consequences. Mohammad Sadiq was not giving the court an account of his well-off family's ornamental hermit; he was describing a person considered to be a potentially powerful spiritual adept, capable of shifting the tides of a devotee's fortune in a precarious world. As Nile Green has argued, such figures "remind us that much of the character of Muslim religious practice in South Asia was concerned less with matters of belief than with more mundane issues of survival in an environment plagued by manifold insecurities."⁶⁵⁴ In her *holy*

⁶⁵³ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In "Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore": No. 321.

⁶⁵⁴ Nile Green, "Transgressions of a Holy Fool: A *Majzub* in Colonial India", in Barbara Metcalf, ed., *Islam in South Asia in Practice*, Princeton Readings in Religions (Princeton: Princeton University Press, 2009), 174.

destitution and abandonment, Sardara reflected a society that teetered precariously under colonial occupation.⁶⁵⁵

Mohammad Sadiq also provided some clues as to why, though Sardara was vulnerable to confinement in an asylum, she had not yet ended up in one. In the colonial period, Indians generally did not use state-run asylums unless it was to dispose of people who were thought of as having outlived all value, as the asylum was seen as unable to succor or heal madness.⁶⁵⁶ Debjani Das has argued that it was especially unusual for women to be sent to such institutions; if they had any kind of social standing, families or caretakers would usually “contrive to manage them at home.”⁶⁵⁷ This seems to have been Sardara Begum’s lot—a life that afforded a more socially-conforming type of modesty and good character, sleeping indoors, wearing borrowed clothes, and eating donated food. Hidden within the tactful statement “we found it inconvenient and expensive to keep her” is perhaps some secret history of gradual alienation and abandonment: perhaps Sardara became restless; perhaps outbursts or antics disturbed neighbors, even if never “violent” or “lunatic”. One ordinary solution—still common today—for mental distress or breakdowns in girls and women was to marry them to a man as soon as possible, as sanctioned

⁶⁵⁵ Malhotra explores how Punjab saw an explosion in *faqīri* and mendicancy in the wake of the final Anglo-Sikh war—a “period of political uncertainty that made alternative social imaginings perhaps a shade easier.” Malhotra, “Bhakti and the Gendered Self”, 1526.

⁶⁵⁶ As Sarah Pinto puts it: “Because families preferred ‘indigenous systems’, they refused to admit relatives to an asylum despite having easy access to them. Bombay had an excellent transport system, especially in the second half of the nineteenth century. New railways connected the Presidency with its hinterlands. Moreover, many of the asylums, especially in the nineteenth century, were centrally located. Yet, the asylum remained a place for the poor and destitute. Such asylum demographics were not a result of poor families willing to admit relatives. Even poor families refused to accept separation from mentally ill family members. In Bombay’s asylums, *fakirs* along with beggars and religious mendicants formed the largest patient population in lunatic asylums... Most of these patients were ‘wanderers with no friends’.” Pinto, *Lunatic Asylums in Bombay*, 7-9.

⁶⁵⁷ Das, “Is Insanity a ‘Female Malady’?” 39

sexual contact was held to ‘cure’ madness derived from frustrated desire; but this was no option for disposing of a *fakir*.⁶⁵⁸ Nor was rape, Muhammad Sadiq seemed to be suggesting, even close to a conceivable option for dealing with one, if you were sane and sensible: between the consequences of ignorance of insanity and the consequences of provoking a curse, Burchell should expect to feel the impact of having both committed a crime and violated a powerful social taboo.

In this testimony, we also see how an alternative perspective reads the body to deduce the mind. Mohammad Sadiq’s relation to Sardara is articulated within a subaltern religious world that keeps holy figures in careful configurations of physical proximity and avoidance; like the *hijra*, the *faqirni* is both selectively auspicious and ordinarily untouchable.⁶⁵⁹ Sharing this world with Sardara in sensibility and practice, growing up in a family that extended her charity, his reading of her body was informed by his recognition of a very real *internal* space of alterity—the mind of the mystic—within the enveloping seclusion of the body, for all that Sardara’s body appeared as a flimsy barrier against violation. In the brief time given him, he attempted to map her mind on to the external signifiers of her body and biography, to translate between surface and interior in the idiom of colonial law. I follow the trajectory that the jury did *not* take in response; the questions they did not ask. In stating that Sardara was a spiritual leader, what traditions

⁶⁵⁸ Shilpi Rajpal, *Curing Madness? A Social and Cultural History of Insanity in Colonial North India, 1800-1950s* (New Delhi: Oxford University Press, 2021), 219. Jocelyn Morrow argues that in the Indian context, hysteria is the physical symptom of family trauma or conflict that can be resolved in no other way than letting the mad woman tell her tale of suffering. Morrow, “Hysteria Narratives and Love-in-Separation (Viraha) in North India.”

⁶⁵⁹ See Amen Jaffer, “Spiritualising Marginality: Sufi Concepts and the Politics of Identity in Pakistan,” *Society and Culture in South Asia* 3, no. 2 (July 1, 2017): 175–97, <https://doi.org/10.1177/2393861717706294> for more about the relation between *hijras* and the spiritual state of *masti*.

would Mohammad Sadiq have cited if asked to elaborate why? What domain of alterity was granted to her body and its behaviors by the state of *masti*, and to whom was this domain available? If the mind of the mystic rendered the body radically and uniquely at liberty to evade or instigate touch, and empowered it to enter or exit space and sociality solely at the command of the divine, could the mystic's holiness be contaminated or compromised by the body's sexual violation? To refer back to Jaaware's terminology: does the bad 'literal touch' of the rapist overwhelm the 'figural touch' of the holy fool, which is both bad and good, and can curse or bless at a whim?

When Mohammad Sadiq described Sardara—an ostensibly harmless beggar who sat grinning by the shops in the *bazaar*—as *mast*, and therefore unaccountable for her conduct, he revealed an organic social fear of the powers of a *faqir*. These powers had long been associated in pre-colonial India, Nile Green argues, with madness, a category encompassing "actions and states of mind that demonstrably and persistently clashed with established norms, [which] could be interpreted as a sign of divine grace and favour that set certain individuals apart from ordinary folk." Madness was partially incorporated into public and social life—with caution—in the figure of the *majzub*, or holy fool, whose *jazb*, or attraction to the divine, "resulted in a state of absorption or ecstasy that took on the appearance of madness."⁶⁶⁰ Anurag Advani's study of hagiographies of *majzubs* who lived in Mughal India reveal them to be a difficult, disruptive, and sometimes terrifying lot. One early sixteenth-century *majzub* "engendered hatred in the temperaments of people" because he "said hard and bitter things while giving advice and speaking the truth"—often in the form of dire predictions which quickly came true (such as the

⁶⁶⁰ Green, "Transgressions of a Holy Fool: A *Majzub* in Colonial India", 173.

deaths of the *majzub*'s family members, after they finished a dish of *halwa* without giving him a share)—and “only sticks and stones worked in order to pacify him.”⁶⁶¹ It is perhaps no wonder that Mohammad Sadiq's family eventually decided not to keep their *fakir* too close, if domestic quarrels could end like that: as Advani writes, “once the anger of *majzūbs* had been stoked, there was no telling how gravely they would curse or punish their offenders.”

In claiming such prerogatives, a *majzub*—usually male—invoked “*his inviolability as one “touched” by God*, which when ignored would inevitably lead to a bad end.”⁶⁶² To be touched by God was to be untouchable at the hands of any other authority. Pre-colonial *majzubs* are frequently documented committing acts of deviancy and transgression that would have gotten an ordinary person into serious trouble with the law: open displays of nudity, blasphemous utterances in the *bazaar*, and even public masturbation.⁶⁶³ And yet, in tolerating such behavior, “the communities that surrounded these holy fools were able to provide themselves with a source from which to access the power of God. For in their vivid social alterity holy fools were vivid signifiers of the otherness of God, who like his unruly friends was also expected to disrupt the mundane order through miraculous intervention.”⁶⁶⁴ In pre-colonial regimes, where kings and princes patronized beggars and such visions of divine power were shared across society and

⁶⁶¹ Anurag Advani, “The Madness of the Majzūbs: Three Sufi Hagiographies in Sixteenth-Century Mughal India,” *Journal of the Economic and Social History of the Orient* 65, no. 1–2 (February 18, 2022): 52, <https://doi.org/10.1163/15685209-12341562>.

⁶⁶² Advani, “The Madness of the Majzūbs”, 52.

⁶⁶³ Advani, “The Madness of the Majzūbs”, 54-56.

⁶⁶⁴ Green, “Transgressions of a Holy Fool: A *Majzub* in Colonial India”, 174.

state, the only risk in such an existence was fraud: “the legitimacy of the fool’s behavior and others’ devotion to him rested entirely on the claim that his raving was inspired *jazb*.”⁶⁶⁵

In the late colonial period, however, the unruliness, the waywardness, and the danger attendant upon states such as *jazb* and *masti* delegitimized them from the jump. The portrayal of Sardara Begum at Burchell’s trial highlights a developing connection between the social alterity of *masti* and the medicolegal ascription of dangerous animal instincts and passions to mad and disabled people. Just as the English language had adopted Indian terminology to describe the sexual aggression of breeding elephants as a state called *musth*, so the *masti* of the *faqir* was conceptually mistranslated to animality—a low form of life fit to be described only as a specimen of social disease.⁶⁶⁶ By the first decades of the twentieth century, such conflations of India’s heathen religions and its exotic animals regularly appeared in colonial catalogues of those who had once been considered mystics; Denzil Ibbetson’s *Glossary of the Tribes and Castes of the Punjab* described the Qalandariyya sect of Sufi practitioners explicitly in such terms: “*Qalandari*, the *kalender* of the Arabian Nights, is properly a holy Muhammadan ascetic who abandons the world and wanders about with shaven head and beard. But the word is generally used in the Punjab for a monkey-man. *Some of them have a sort of pretence to a religious*

⁶⁶⁵ Green, “Transgressions of a Holy Fool: A *Majzub* in Colonial India”, 174. This article explores how the ritual and social practices of *majzubs* changed in colonial India, when its partisans were pitted against “an entire colonial apparatus of incarceration and pathology; tales of miraculous escapes from colonial asylums are associated with a number of such contested madmen. In these circumstances, British rule offered new possibilities for both transgression and its punishment, such that the heyday of colonial rule in India saw holy madness at the center of a nexus of wider struggles, political and discursive, for control of Indian society and its meanings.”

⁶⁶⁶ See Julian Baker, “Trans-species colonial fieldwork: elephants as instruments and participants in mid-nineteenth-century India” in Piers Locke and Jane Buckingham, eds., *Conflict, Negotiation, and Coexistence: Rethinking Human-Elephant Relations in South Asia* (Symposium on Human-Elephant Relations in South and Southeast Asia, New Delhi, India: Oxford University Press, 2016).

character; but their ostensible occupation is leading about bears, monkeys, and other performing animals.”⁶⁶⁷ Similarly, he defined a related and overlapping category of mendicant, the *malang*, as a kind of primitive caveman shaman: “any unattached religious beggar, who drinks *bhang* or smokes *charas* [cannabis] in excess, wears nothing but a loin cloth, and keeps fire always near him. The Malangs are said to wear their hair very long, or matted and tied into a knot behind.”⁶⁶⁸

This variety of disdain—as if towards the meaningless activities of a lesser species, like cats mating, of whom we are aware only when their racket becomes a public nuisance—is new, and typically colonial. Green has argued that “one of the most important but least recognized religious transformations in modern South Asia has been the ‘fall from grace’ of the holy beggar or *faqīr*” in the British colonial period. This fall from grace can be grasped from “the way in which three anti-social states—the rejection of work in favour of begging, the mental incapacity to engage coherently with fellow humans and the deliberate pursuit of drugged states of consciousness—were [previously] rendered respectable through the attribution of moral value and epistemological meaning.”⁶⁶⁹ That value, once widely socially recognized, was definitively undermined by India’s 1891 imperial census, in which *faqīrs* of whatever sect were officially categorized among ‘Miscellaneous and Disreputable Vagrants’, forever marking them as

⁶⁶⁷ H. A. (Horace Arthur) Rose, *A Glossary of the Tribes and Castes of the Punjab and North-West Frontier Province : Based on the Census Report for the Punjab, 1883, by the Late Sir Denzil Ibbetson and the Census Report for the Punjab, 1892, by Sir Edward Maclagan and Compiled by H. A. Rose* (Patiala: Languages Dept. Punjab, 1970), 57.

⁶⁶⁸ Rose, *A Glossary of the Tribes and Castes of the Punjab and North-West Frontier*. See also Sudhir Kakar, *Shamans, Mystics, and Doctors: A Psychological Inquiry into India and Its Healing Traditions* (Chicago, Ill: University of Chicago Press, 1991) for religious healing practices in modern India.

⁶⁶⁹ Nile Green, “Breaking the Begging Bowl: Morals, Drugs, and Madness in the Fate of the Muslim *Faqīr*,” *South Asian History and Culture* 5, no. 2 (April 3, 2014): 227, <https://doi.org/10.1080/19472498.2014.883761>.

habitually suspicious characters who could not expect an exoneration of their motives and behaviors upon religious grounds.⁶⁷⁰ Confining mad vagrants in the asylum and subjecting them to treatment regimes became a way “to civilize Indians rather than colonize them” while continuing to colonize their space: the civilizing process of the asylum “functioned to produce bodies that could prove useful to the colonial system.”⁶⁷¹ And yet, as David Arnold has noted, the colonial regime also naturalized Indian poverty and wretchedness: destitute Indians were “too numerous to receive systematic relief”, and India was “beyond the workhouse.”⁶⁷²

The most dramatic moral transvaluation of the lifestyles of wandering mendicants was perhaps in the meaning of intoxication—a quality deeply associated with *masti*, and the religion of the Qalandariyya, in particular. Practitioners at colonial asylums often listed ‘intoxication’, most commonly implying mental deterioration via the use of cannabis, as a cause of insanity for male inmates, but they almost never ascribed such a cause to insane women.⁶⁷³ And yet, the lowness and animality of Indian religious intoxication may have appeared as such to Victorian

⁶⁷⁰ Green, “Breaking the Begging Bowl”, 230. “In colonial eyes, both British and Indian, the faqīr was the very embodiment of eastern backwardness, proof even for the most sympathetic of overseers that Indian Islam had long since entered its age of decadence. This same critique – indeed the very language of decadence – was shared by the new Muslim reformists re-envisioning Islam as an ideology of social activism.”

⁶⁷¹ Pinto, *Lunatic Asylums in Colonial Bombay*, 20. See also James Mills, “‘More Important to Civilize than Subdue’? Lunatic Asylums, Psychiatric Practice and Fantasies of the “Civilizing Mission” in British India 1858—1900’, in Harald Fischer-Tiné and Michael Mann, *Colonialism as Civilizing Mission: Cultural Ideology in British India* (Anthem Press, 2004), 171–190; and Waltraud Ernst, *Mad Tales from the Raj: Colonial Psychiatry in South Asia, 1800-58* (Anthem Press, 2010).

⁶⁷² David Arnold, “Vagrant India: Famine, Poverty, and Welfare under Colonial Rule”, in A. L. Beier and Paul Ocozbek, eds., *Cast out: Vagrancy and Homelessness in Global and Historical Perspective*, Ohio University Research in International Studies. Global and Comparative Studies Series, no. 8 (Athens: Ohio University Press, 2008), 121.

⁶⁷³ Das, “Is Insanity a ‘Female Malady’?” 27; See also James H. Mills, *Madness, Cannabis and Colonialism: The “native Only” Lunatic Asylums of British India, 1857-1900* (New York : London Macmillan: St. Martin’s Press, 2000).

eyes precisely because of the currents of gender fluidity, femininity, and extra-sensual pleasure that ran through the state of *masti*. Scholarship on Islamic mysticism in postcolonial South Asia has highlighted these currents, with Amen Jaffer noting that in contemporary Pakistan, becoming *mast* is a sign of purity, prowess, distance from ordinary beings, and “authentic sacrality”, allowing certain Sufi adepts whose charisma has been signified thus to engage in forms of gender subversion that others cannot. In the case of *hijra* devotees, the valorization of *masti* as a legitimate religious state—a signifier of the elite and elect—produces an acceptance of queer bodies and their affects in religious spaces, and “allows the incorporation of playfulness, fun and even the erotic into the spiritual fold.”⁶⁷⁴

Likewise, the religious practices of the modern-day Qalandariyya in Punjab, Pakistan, suggest that *masti* manifests as a bodily experience that is intrinsically connected to space, movement, and the abandonment of the self. Their tradition of *dhamal*, a frenzied, intoxicated form of dance that brings on the state of *masti*, transforms the relationship of the religious subject to “the ‘individual body’, the material body in its subjectivity, and its presentation in a public arena.”⁶⁷⁵ A contemporary ethnographer of *dhamal* at Sufi festivals and shrines around Lahore described female mendicants or *faqirni*—also known as *malangnis*—as “permanently or temporarily individuals-outside-the-world” who were categorized by other worshippers as “bi-

⁶⁷⁴ Jaffer, “Spiritualising Marginality”, 185.

⁶⁷⁵ Jürgen Wasim Frembgen, “Dhamāl and the Performing Body: Trance Dance in the Devotional Sufi Practice of Pakistan,” January 1, 2012: 103. <https://doi.org/10.1163/221059512X626126>. See also Scott Alan Kugle, *Sufis & Saints’ Bodies: Mysticism, Corporeality, & Sacred Power in Islam* (Chapel Hill: University of North Carolina Press, 2007).

shar' ('without the religious law') and *jalali* (incorporating an awe-inspiring emotional state)."⁶⁷⁶ This lawless, passionate state, characterized in *dhamal* by "wild movements, caprioles and abrupt leaps", is the ecstatic rapture of *masti*: "this dance of abandonment leads to 'clearance of the soul', 'breaking up the self' and thus to self-annihilation 'making room for God'".⁶⁷⁷ Once the enraptured devotee steps over the inner threshold of paradise, they leave the signs, values, and bodily inhibitions of the external world behind, maintaining "a consciousness of paradoxically 'being outside oneself', but 'being with the body'". This sacred embodiment has erotic connotations, with modern practitioners of the dance explaining "that the form of love (*ishq*) which manifests in *dhamal* is energetic and 'hot' (*garm*), its seat is supposed to be the heart. This power of love leads to an intoxicating perception and experience of the Qalandar's presence through the 'flow' of *masti*."⁶⁷⁸

It is the power of the erotic that propels the mystic past the traditional Sufi path, which is characterized by a slow, gradual, and formal transition from the forms of conduct, or *adab*, of an ordinary layperson to increasingly esoteric and exceptional forms of conduct. At each progression across the spectrum of *adab*, physical, external (*zahir*) actions become transformed into spiritual, internal (*batin*) states, "until the actions reach into the heart."⁶⁷⁹ The *faqir*, the

⁶⁷⁶ Frembgen, "Dhamāl and the Performing Body", 92. "*Masti* means the mystic ardor of love to God, 'where analytical thinking is switched off', as formulated by a young, well-educated performer from Lahore." 106.

⁶⁷⁷ "The common Sufi interpretation is that in *hāl* (the state of trance) the moment of divine presence is realized which opens the door to a spiritual space, where dancers, listeners and musicians are united with their *murshid* (spiritual guide). This state is considered to be bestowed by God, descending from him into a man's heart, thus agency is attributed to God only." Frembgen, "Dhamāl and the Performing Body", 82.

⁶⁷⁸ Frembgen, "Dhamāl and the Performing Body", 108.

⁶⁷⁹ Katherine Ewing, "Malangs of the Punjab: Intoxication or *Adab* as the Path to God?" in Barbara Daly Metcalf, ed., *Moral Conduct and Authority: The Place of Adab in South Asian Islam* (Berkeley: University of California Press, 1984), 358. Rules of conduct, therefore, are not a strict set of behavioral

malang, and the *qalandar*, however, violate this Sufi orthopraxis by ignoring or even deliberately disobeying the *shari'a*, and allowing God to directly, erotically, possess their hearts, producing fantastically transgressive states of being that surpass the external world. As the beloved and betrothed of God, the *malang* is subservient to God as a wife is subservient to her husband. As Katherine Ewing puts it:

The *malang* considers his life to be regulated and guided by *hukm* (commands, orders). His explanation for his actions and general life style is: "*hukm hai*" ("It is an order")... Thus the *malang* does not see himself acting in a particular way because of established rules of conduct. Rather, every action is said to involve a direct infusion of the sacred into everyday life, of direct communication with God or a saint. According to the *malangs*, direct communication with God and the structuring of one's entire life around this direct contact, making no move on one's own, are what make one a genuine *malang*.⁶⁸⁰

Ewing's reading of the subjectivity of the *malang* conveys a body whose use value is entirely given up to the irresistible intentions of the divine, and feminized in relation to God. Scholars have noted that this "experience of the divine through the body as *Leib*" constitutes a common cultural pattern across Sindh and the Punjab.⁶⁸¹ The enraptured subject that inhabits this body has also transcended it, and rejects agency over its actions; its gestures are wild, wayward, and erotically charged; its wandering is without reference either to social and legal norm or to bodily integrity and safety. In this way, the *faqir's* lowly, earthly, suggestive body enacts "the principle

rules but "a prescription concerning the relationship between outer and inner: 'preserving the heart, observing the secret, and being the same both secretly and outwardly.'"

⁶⁸⁰ Ewing, "*Malangs of the Punjab*", 359.

⁶⁸¹ Frembgen, "Dhamāl and the Performing Body", 108. "Considering how essential metaphors of love are within the mystically-inspired folk religiosity of these regions, this seems in particular true for the 'poetics of movement' typical of female *dhamāl* dancers, which displays not only passion and frenzy, but also sensuousness and eroticism."

of *malāmat*, which means ‘seeking blame’, holding [herself] in contempt in order to conceal [her] spiritual achievements and to fight hypocrisy.”⁶⁸²

At a trial whose implicit mandate was to have a homeless woman declared insane, and to incarcerate her in an asylum, for the social disruption of inciting a soldier to commit rape, the invocation of *masti* provokes questions that one is at a loss to sit with. Did this agential orientation to seeking blame, welcoming opprobrium, appearing worthy of nothing but contempt—the body in *masti*—find a good-faith colonial appropriation in the verdict of the case of Sardara Begum? Was she “to blame” for the spurious misrecognition of consent that precipitated her own rape, in the sense of deliberately intending to invite trouble? If so, why did the trial’s Indian witnesses insist it was a double oxymoron to suggest that a *faqirni* could invite sex; that rape, by definition, is unwanted and uninvited, and that the act of invitation self-evidently lacks a subject that invites? To read such a body as inviting sex in a ditch in the middle of the night, those testimonies suggest, is to tempt fate. It is to mistake sacred signs for profane: to betray one’s *own* illusory, self-absolving god complex, one’s *own* unwavering confidence of impunity in social transgression. There is a strange integrity to this threadbare social nexus which continues to uphold the radically precarious path of the wandering *faqirni* as blameless and moral in the face of colonial frameworks of sexual respectability. For all that it faltered, and what ultimately befell her, it offers troubling conditions of possibility, for it shows us what it meant to be female and heedless of danger in public, and the extremity required to achieve it, in late colonial India. Sardara’s case suggests that in a world of caste, it is only if one is permanently and directly touched by God that one ceases to be changed or marked by the touch

⁶⁸² Frembgen, “Dhamāl and the Performing Body”, 82.

of others; only God may dissolve the instinct to avoid exposure, to fear a stranger's touch. The price of true heedlessness is the body's abandonment: one must forsake all other protections, including the ability to resist whatever consequence heedlessness brings.

5.6: From vagrant to inmate: sexuality and public space

The ultimate consequence of heedlessness, I hope to show in these final passages, is not simply rape; it is rape, followed by the confinement of the survivor and her disbarment from public space. The institutional enablement of the rapist by colonial law is the social disablement of the wandering female body. To exclude this body from unquestioned and unmolested access to public space, madness was transformed by its encounter with the law from an ability to a disability: a subject that was empowered by madness to wander in commune with the divine was now reduced by it to subhuman incoherence. Stigma was attached to madness by the state of *masti*, the very qualifier that also rendered it unaccountable to the world—and the body in *masti* came to designate not a soul at peace in internal seclusion, but a disordered soul that must be physically confined and excluded from public life. We have already explored how the gender subversion, intoxication, and bodily abandon attendant upon the state of *masti* characterize the *faqir* as an ambivalent social type even within non-colonial frames of reference, which generally held up begging and mendicancy as “a dignified and moral pursuit for the godly”.⁶⁸³ By the late

⁶⁸³ “In pre-colonial India, the *faqīr* (and, *less commonly, his female counterpart, the faqīra*) enjoyed an unusual degree of autonomy from the norms of religious institutions that was based in large part on the economic independence brought by begging... *Indeed, such was the strength of the semantic connection*

colonial period, as scholars of vagrancy in India have shown, ambivalence had definitively transformed to hostility and embarrassment: “the trickle-down effect of colonial morals, laws and scientific discourses...undermined both the moral and epistemological foundations of ‘holy beggary’ (*faqīrī*) as a legitimate religious path. Central to this shared opposition to the *faqīr* among middle-class colonialists and [Indian] reformists alike were new attitudes to the value of work and the morality of wage-earning.”⁶⁸⁴ Voluntary poverty and self-inflicted madness lost their associations with personal spiritual merit as Indian social reformers recast the *faqīr*’s condition as “the voluntary degradation of the work-shy drug addict.”⁶⁸⁵ But this scholarship on the colonial vagrant makes only glancing reference to how moral reassessments of *faqīrī* affected the positions of the rare few *faqīrs* who were women—and as women, absconding from specifically gendered duties and social burdens in their ‘elopement’ with God, on top of everything else.⁶⁸⁶

Here is where the intersecting histories of rape and disability that shaped Sardara Begum’s fate provide insight into how sexuality mediates these new and ascendant logics of personal merit, which implied that only those who were productive, purposeful, and socially conforming deserved to blamelessly inhabit colonial public space. The mandatory ascription of

between spirituality and beggary that the latter often served as sufficient proof of the former.” Green, “Breaking the Begging Bowl”, 226.

⁶⁸⁴ Green, “Breaking the Begging Bowl”, 227.

⁶⁸⁵ Green continues: “In colonial eyes, both British and Indian, the *faqīr* was the very embodiment of eastern backwardness, proof even for the most sympathetic of overseers that Indian Islam had long since entered its age of decadence. This same critique—indeed the very language of decadence—was shared by the new Muslim reformists re-envisioning Islam as an ideology of social activism.” Green, “Breaking the Begging Bowl”, 230.

⁶⁸⁶ See Arnold, “Vagrant India”.

voluntary choice and self-directed agency to the law-abiding colonial subject undergirds the transvaluation of Sardara's inability to resist rape into her unwillingness to resist sex. In parallel, a new medico-legal imputation of mental capacity—irresponsibility and weak will—establishes the expert verdict that Sardara required incarceration. Both of these transformations were mediated by medical experts, who occupied a central and critical place in the colonial judicial system by dint of the Indian Evidence Act of 1872, which distinguished expert testimony from the testimony of other witnesses—who could only state the facts of what they knew—by permitting experts to testify to both facts personally observed and to infer opinions from those facts. Thus, as Elizabeth Kolsky puts it, “whether a medical expert offered a verifiable scientific observation about the presence of semen stains on a complainant’s clothing or an unverifiable cultural claim about the impossibility of raping a low-caste Indian female under ordinary circumstances, his testimony was received by the colonial courts as an objective expert opinion.”⁶⁸⁷ Experts were typically called upon in rape cases to attest to proof of violent resistance and physical injury, but medico-legal examinations were never formally required by the law, and evidence that was crucial to trial outcomes was often never obtained, or sought too late—as with the case of Sardara, whose medical exam took place more than seventy-two hours after her rape—even as judges “routinely warned juries not to convict in rape cases unless the complainant’s testimony was corroborated by physical facts.”⁶⁸⁸ These physical facts, attested to

⁶⁸⁷ Elizabeth Kolsky, “‘The Body Evidencing the Crime’: Rape on Trial in Colonial India, 1860–1947,” *Gender & History* 22, no. 1 (2010): 115, <https://doi.org/10.1111/j.1468-0424.2009.01581.x>.

⁶⁸⁸ Kolsky, “‘The Body Evidencing the Crime’”, 120. “In 1876, Surgeon-Major Robert Harvey concluded from his analysis of 372 rape cases that, if a medical officer discovered no physical signs of rape, ‘the case is practically over.’ In 1902, Bombay Police Surgeon Arthur Powell described the medical examination as a ‘Court of First Instance’ as without a medico-legal report, the police rarely proceeded to investigate a charge. During the period under review, medical observations about ‘the body evidencing

by experts, had to clear a vertiginous threshold of violence; the precedent-setting case in force during these decades, *Empress v. Shankar* (1881), held that “proof of non-consent amounted to *an overwhelming show of force* by the defendant and evidence of *the utmost physical resistance* by the complainant.”⁶⁸⁹ Kolsky holds the medical expert testimony that backed up these standards largely responsible for a sustained decline in the successful conviction of rapists in British India, with the odds of winning a case swinging almost two to one in favour of the rapist over the first half of the twentieth century.⁶⁹⁰

In tracing out how the verdict of Sardara’s confinement was justified in the lengthy expert testimonies delivered at the trial, my purpose is to draw attention to the spiritual significance as well as the spatial consequences of madness being recharacterized from a state that *enables* the subject and *disables* the harm-doer to one that *disables the subject and enables the harm-doer*. Because Sardara Begum’s madness was recognized and pathologized by virtue of a rape committed upon her body, she lost something else along with her spiritual merit: namely, any recognition that she did not deserve the harm that had been done to her as a woman. With the caveat that it is impossible to speculate what she herself may have experienced—especially as it

the crime’ and other physical proof of struggle and injury almost eclipsed the oral testimony of female complainants.”

⁶⁸⁹ Kolsky, “‘The Body Evidencing the Crime’”, 120. “In *Shankar*, the Bombay High Court established strict evidentiary standards for conviction that remained binding for decades. The *Shankar* decision relied on a Welsh case, *Reg. v. Lloyd*, which held that, ‘in order to find the prisoner guilty of an assault with intent to commit a rape, you must be satisfied that the prisoner, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part.’”

⁶⁹⁰ Kolsky, “‘The Body Evidencing the Crime’”, 115. “Between 1904, when the *Criminal Law Journal* began recording all criminal cases reported by the High and Chief Courts, and 1947, there are seventy-five reported rape trials. In these cases, the high courts confirmed 37 per cent of the lower courts’ convictions and either acquitted or reduced the sentences of defendants in the remaining 63 per cent of cases.”

is unclear if she would have conceived of herself as having anything to lose—I suggest that this gender-based harm had two dimensions: the trauma and distress of bodily violation, and the loss of a hard-won freedom to be alone, in the world, and outside.

When Captain Perry first examined Sardara on the night she had been attacked, he noted that “she gave more or less intelligent answers” about where she was from and what she did, but that he immediately considered it unnecessary to inquire whether she had a husband or child living or alive: “I judged from her appearance and manner and grinning in a silly way that she was imbecile. I noted that she could give a correct and connected answer to questions, because she answered correctly about the Pathan sepoy. I noted that she should be sent to the Lahore Lunatic Asylum for observation. *I noted that she could thoroughly understand the nature of the sexual act...I do not see why the prisoner should have discovered, on meeting the woman on a dark night and soliciting intercourse with her, that she was imbecile.*”⁶⁹¹ To Perry, Sardara’s appearance and clothing—a pair of torn pyjamas and a loose sheet—instantly put her beyond the conception of family, and ‘clocked’ her as “imbecile”, even as he insisted that the coherence of her verbal responses somehow made it impossible for a man cruising on the street to make the same assumption that he had on sight. When Perry conducted a formal medical examination three days later, he established that Sardara’s body ‘knew’ sex—she was not a virgin, and had been pregnant at least once—but carried no marks of violence.⁶⁹² Bloodstained scraps from her

⁶⁹¹ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 321.

⁶⁹² “The appearance of her vagina, which I examined, did not enable me to say whether she had or had not been in the constant habit of sexual intercourse. Had a man had forcible sexual intercourse with her on the night of the third I should expect to have found external marks of violence. I should not expect to have found internal marks. Menstruation would not have prevented my discovering internal marks of violence.” *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 321.

pyjamas had been sent to the Imperial Serologist, who found mammalian blood but no trace of semen.⁶⁹³ Perry interpreted the finding as disproving the occurrence of rape: “The woman had stains of blood on the external genital organs and on the thighs halfway down to the knees. The woman was then menstruating, and this accounted, in my opinion, for the blood... It is highly probable that she was menstruating on the night between the 3rd and 4th August. *This would probably have made her sexual passions more active.* Her age was between 25 and 30 years or thereabout. She was a powerful, well grown woman, and well developed and nourished. Strong for her size.”⁶⁹⁴

In suggesting that menstruation made Sardara sexually active, agentive, and desiring, Perry underlines the connection of *masti* to the animality of being ‘in heat’. British colonial medicine held that Indian women’s early marriages and childbirths increased the risks of diseases of the womb, which in turn influenced susceptibility to mental illness. Catamenia, or a regular menstruation cycle, was understood to be linked to good mental health and sanity—but doctors also held that menstruation itself predisposed women to insanity.⁶⁹⁵ Ultimately, the surgeon insists, this body is not a genuine host of the divine; it is simply too wretched, and also

⁶⁹³ See Mitra Sharafi, “The Imperial Serologist and Punitive Self-Harm: Bloodstains and Legal Pluralism in British India”, in Ian Burney and Christopher Hamlin, *Global Forensic Cultures : Making Fact and Justice in the Modern Era* (Baltimore, Maryland: Johns Hopkins University Press, 2019), <https://ezproxy.cul.columbia.edu/login?url=https%3a%2f%2fsearch.ebscohost.com%2flogin.aspx%3fdirect%3dtrue%26AuthType%3dip%26db%3dnlebk%26AN%3d1916479%26site%3dehost-live%26scope%3dsite>.

⁶⁹⁴ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 321.

⁶⁹⁵ Das, “Is Insanity a ‘Female Malady?’” 28. Das also recounts the story of Musammat Anundo, a 19-year-old prostitute confined in the Dacca Asylum in 1842. “Anundo was sent from Mymensingh because she abused people. She was apparently wandering around the countryside. On her admission, she indulged in immoderate fits of singing, crying and dancing. She tore her clothes into pieces. Her catamenia was suppressed.” After this point it was claimed that her insanity had gone into ‘remission’.” 35-6.

not asexual enough. Just as animals are wild, but some can be coaxed to some domestication, so some people reject domestication, and become wild and beastlike and sexually dangerous. Their psychological deterioration is signified by their abnormal biologies, instincts, and desires: “I do not think that she would have resisted under any circumstances,” Perry testified; “and *I think that menstruation would have made her more than ordinarily willing to consent.*”⁶⁹⁶ But before I move to how Perry and the asylum superintendent assessed Sardara’s ability to meet the legal standards of unwillingness and lack of consent in the rape statute, I want to linger on his automatic assumption that she had no home or family, and therefore no sexual dignity to claim as a survivor. Paradoxically, it demonstrates that wandering and being outside had in fact been Sardara’s *escape* from the determinisms of sexuality—until it wasn’t.

As the female wandering mendicant is signified as rapeable, she loses a long-established escape from what Anshu Malhotra calls “womanly *dharma* [law, duty, and religion] within the normative tradition”: a state of “sexual containment through marriage and wifehood.”⁶⁹⁷ For Malhotra, there is an “axiomatic incompatibility between marriage and *bhakti* [absorption in God]” for women devotees, as it would introduce the problem of dual loyalties to God and to the

⁶⁹⁶ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”: No. 321.

⁶⁹⁷ Malhotra, “Bhakti and the Gendered Self”, 1506. “By looking at the writings of the Muslim prostitute Piro who comes to live in the establishment of a 'Sikh' guru Gulab Das, in Chathianwala near Lahore during the period of Ranjit Singh, this paper attempts to read Piro's use of Bhakti legends and imagery to build support for her unusual step.” In her poetry, Piro writes, “*niwazan roze chhut gaye mastani hoi*”, which to Malhotra “[explicates] her giving up ritual fasting of the Muslims, and having become intoxicated on the teachings of her guru”. *Kafian Likhayate Mata Peero Kian*, quoted 1509. Here again, the transfiguration of an externally or apparently degraded state is important to spiritual power: “The potential redemption of the prostitute encompasses the possibility of liberation of all the degraded 'others', of humanity itself, lending to these religions the aura of democratic salvation.” 1507. These traditions cite prostitutes because they are trying to be inclusive of *bhakti*'s potential as a path and a space for all, not exclusionary.

husband, and impose impossible quandaries of sexual propriety.⁶⁹⁸ Male spiritual adepts also faced this problem: if they were householders with property, wives and families, they had to order both their inner spiritual and outer worldly affairs to maintain contact with the sacred, and therefore had to shift between subjective states of male authority and genderless devotion.⁶⁹⁹ Since these transitions between spaces and states of mind were spiritually dangerous, the most radical and devout practitioner, such as the *faqir* or *malang*, was mandated to “[avoid] all transitions”: “He focuses on his inner life and ignores the *zahir* [external world]. He seeks to live perpetually in contact with the sacred. Because he does not pass in and out of the social world, *his body does not become polluted...He can therefore ignore his body altogether.*”⁷⁰⁰ A key component of this ignorance of the body was celibacy, which expressed “the utter incompatibility of the world of the *malang* and the world of woman”—and illustrated what a tightrope the female mystic’s path truly was.⁷⁰¹

In placing himself completely outside the social world, the *faqir's* position, intentions, and desires were analogous to and yet totally in opposition to those ascribed to the virtuous woman.⁷⁰² In fact, the humiliation and disempowerment that male *faqirs* and *malangs* enacted

⁶⁹⁸ Malhotra, “Bhakti and the Gendered Self”, 1515. Female *bhaktas* in medieval Hindu tradition either refuse marriage, abandon their marriages, or marry their god.

⁶⁹⁹ As Katherine Ewing writes: “The outer world must be ordered according to God's laws before any contact with the sacred is possible. The *pir* lives in this outer world among ordinary men. He marries and has children. Thus, he passes back and forth between inner and outer in the social world. Thus, he passes back and forth between inner and outer in the social world. His body must be purified through the prescriptions of the *shari'a* so that he can make these transitions from the everyday social world in which he is enmeshed to the inner spiritual world...” Ewing, “*Malangs of the Punjab*”, 361.

⁷⁰⁰ Ewing, “*Malangs of the Punjab*”, 361.

⁷⁰¹ Ewing, “*Malangs of the Punjab*”, 362.

⁷⁰² Ewing, “*Malangs of the Punjab*”, 363: “As several *malangs* expressed it, their sexuality is bound to God. This binding is symbolized in the iron bangle. It is perhaps of significance that a woman, upon the

upon themselves to annihilate their social persona and ego were aimed at achieving the subjectivity of women—who proverbially have no ego to shed. For a *female faqir*, then, what had to be shed were the protective trappings of domesticity, as *faqīri* and domestic conjugality were incompatible, and female *faqirs* carried this fundamental contradiction within their own bodies. This contradiction required operating as if the body did not matter; as if nothing that happened to it could affect the state within—and yet, the risk of a woman losing all externally-signifying bodily integrity and value could not but be different than it would be for men. The orthodox ideal for South Asian Muslim women was that they “need not enter the street at all...When it was necessary to violate this ideal, it was done by *creating a portable inside space*: formerly, the enclosed palanquin, now, the *burqa* (veil).”⁷⁰³ Sardara Begum’s life outside—her alternative domain of spiritual seclusion, her body standing in for *palki* and *burqa*—had been a radical form of gender subversion, one rarely taken by women to her extreme, and whether the subversion was ‘intentional’ or not. Free of the need to purify and re-purify soul and body with transitions between spaces and mindsets, she lived alone, lost to communion with God, and without shame. Though the *faqir*’s path was diametrically opposed to the woman’s path, her obscure origins and social lowliness afforded her an opening: as with the prostitutes and courtesans who became *bhakti* saints, the transfiguration of an externally or apparently degraded state is important to spiritual power. But Sardara’s self-ejecting exit from *stridharma*, a woman’s duty, place, and ordinary fate, was disrupted and undone at the rape trial, where sexuality was re-

death of her husband, breaks her glass bangles. The iron bangle of the *malang* cannot be broken: his tie to God will never be severed.”

⁷⁰³ Ewing, “*Malangs of the Punjab*”, 362.

imputed to her body, categorized as a deviant kind of sexuality, and recovered back into a new form of confinement: an asylum for socially destitute women.

At first, claiming “she would usually do anything she was told to do”, Captain Perry had denied that a woman in Sardara’s mental state could give consent to sex as defined in the Indian Penal Code, which held that “a consent is not such a consent as is intended by any section of the Code...if the consent is given by a person who, *from unsoundness of mind, or intoxication*, is unable to understand the nature and consequence of that to which he gives his consent.”⁷⁰⁴ He engaged in a series of grotesque speculations about her awareness of what was happening: “I cannot say whether she would have understood the prisoner’s object had he asked her to lie down and take off her pyjamas. I think that she would have acquiesced had he then proceeded to lie on her period she might or might not scream afterwards. She might very probably have cried out from excitement caused by the act of intercourse, or if she had been hurt by the act, or if she had been frightened... Had there been determined resistance the woman is so *powerful* that penetration would have been very difficult.”⁷⁰⁵ It is ironic that this underutilized bodily ‘power’—Sardara’s apparent physical strength and health—eventually suggested her cooperation with sexual contact, given that the “fear of being cursed” mentioned by her former patron’s son suggests a different locus of power. But colonial law registered power only as the will and capacity to retaliate with physical violence. Although British psychiatrists themselves recognized that “retreat and withdrawal”, as well as “unconsciousness due to emotional shock, loss and anger”, were archetypical responses to conflict and violation in Indian idioms of psychological

⁷⁰⁴ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 321; and Sankaran, “Mens Rea in Rape”, 454.

⁷⁰⁵ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In “Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore”, No. 321.

distress, Sardara's 'freeze response' or lack of overt resistance did not signify as a lack of consent.⁷⁰⁶ Instead, Perry contended, "She has so little willpower that I do not think she would have wanted to resist. I never saw her exhibit signs of fear. I do not think that she would be easily frightened."⁷⁰⁷

As his testimony wore on, Perry equivocated, and finally reversed his position, saying that Sardara was only "imbecile to some extent, or half-witted", and that although she could not reliably answer factual questions, she "could thoroughly understand the nature of the act and would be capable of resisting to a certain extent...a person to some extent imbecile could give the legal consent defined in section 90 of the Penal Code, read out to me."⁷⁰⁸ This perspective was reinforced by the Lahore Asylum Superintendent Archer Cochrane, who claimed "considerable experience of the insane", and had observed Sardara in confinement for about six weeks at the time of trial:

I have seen her frequently, 20 or 30 times. She is not, in my opinion, fit to give evidence in a case. *Her mind is unsound. She could understand the physical nature of sexual intercourse, but not the consequences, or that she was doing wrong. She cannot understand what is morally right or wrong. She is quite an irresponsible agent. She is weak minded and imbecile. She could say no if solicited and if pressed she would not mind saying yes. If she resisted in the first instance and was physically hurt she would continue to resist, otherwise her will power is not strong enough to enable her to refuse*

⁷⁰⁶ Marrow, "Hysteria Narratives and Love-in-Separation (Viraha) in North India", 151-152. "This history of psychogenic loss of consciousness begins with the Ramayana's Ahalya, wife of the sage Gautama, who was cursed to turn to stone after her seduction/rape by the god Indra."

⁷⁰⁷ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In "Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore", No. 321.

⁷⁰⁸ He continued, "On the 26th of August the woman appeared to be more intelligent than she appeared to be on and after the 27th August. On the 26th I had not sufficient opportunity of judging of her intelligence. When I first saw her, I formed the opinion that she had a very weak will, but had not considered the question of her being legally capable of giving consent...I did not then consider her as imbecile as I consider her now, but I considered her imbecile to some extent, or half-witted..." *Emperor of India versus Joseph Burchell*, October 25th, 1901. In "Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore", No. 321.

*continued overtures...When asked if she would like a man to be sent to her, she replied that she would. She has remained clothed and decent while in the asylum. Her modesty has not been tested. She showed no sense of shame when asked if she would like a man to be sent to her. She has not shown any signs of thinking such intercourse immoral. She has no power of reasoning.*⁷⁰⁹

In one of these responses to his cross-examination, Cochrane claimed that Sardara's "modesty" had not been "tested" by the observations and examinations of the experts—and in the very next, he asserted that she "showed no sense of shame when asked if she would like a man to be sent to her", implying that *her sexuality was being assessed by those very experts sexually propositioning her*. In these statements, we see that medical testimony framed Sardara's mental state in ways that were deliberately designed to maximize her culpability: she was presumed to have enjoyed her own rape on an animal level, the level she was now held to belong to.

I cannot think of a suitable epitaph, a sensible ending, to this narrative. I could, perhaps, quoting the jurist Hukm Chand's influential 1897 *Principles of the Law of Consent*, meditate on Sardara's grin, on the meaning of laughter:

The Arabian prophet, observing that a virgin must be consulted in everything which concerns herself, said: "if she is silent, it signifies assent;" and Muhammadan jurists of all the schools hold that *smiling, laughing, or remaining silent must be construed to imply consent...*as her assent is rather to be presumed in cases in which modesty must be a bar to an express declaration by her of her wish, but the operation of the saying is not restricted to the case of marriage, and extends also to other contracts between adults. Thus, Najim-al-Misri, author of the *Ashabah-van-nazair*, enumerates thirty-seven cases in which silence is held equivalent to consent, and his renowned commentator Hamavi adds eighteen others to the list.⁷¹⁰

⁷⁰⁹ *Emperor of India versus Joseph Burchell*, October 25th, 1901. In "Alleged Rape on a Native Woman by Private J. Burchell at Ferozepore", No. 321.

⁷¹⁰ Hukm Chand, *Principles of the Law of Consent with Special Reference to Criminal Law: Including the Doctrines of Mistake, Duress, and Waiver* (Bombay: Bombay education society's press, 1897), 146.

Have I, in telling these histories of rape, merely added more silences to the consent that is implied in our continuing subjection to sexual danger in public space, our collective assent to still living this way? At this moment in time, I cannot tell.

Epilogue

But who is it that nominates these for history in the first place? For some discrimination is quite clearly at work here—some unspecified values and unstated criteria—to decide why any particular event or deed should be regarded as historic and not others. Who decides, and according to what values and what criteria? If these questions are pressed far enough, it should be obvious that in most cases the nominating authority is none other than an ideology for which the life of the state is all there is to history. It is this ideology, henceforth to be called statism, which is what authorizes the dominant values of the state to determine the criteria of the historic.⁷¹¹

A chronicler who recites events without distinguishing between major and minor ones acts in accordance with the following truth: nothing that has ever happened should be regarded as lost for history. To be sure, only a redeemed mankind receives the fullness of the past—which is to say, *only for a redeemed mankind has the past become citable in all its moments.*⁷¹²

In choosing these particular epitaphs to end with, I want to acknowledge how far this provisional study of rape falls from addressing the problematics of writing history with which they contend. I wrote this history by pulling whatever I thought could be significant from an archive replete with the dominant values and ideology of the colonial state, and singularizing a few minor events which I narrated into major. I am certainly not redeemed by it. The histories I

⁷¹¹ Ranajit Guha, “The Small Voice of History”, in Ranajit Guha, *The Small Voice of History: Collected Essays* (Bangalore: Distributed by Orient Blackswan, c2009), 304.

⁷¹² Walter Benjamin, “Theses on the Philosophy of History”, in *Illuminations* (New York: Schocken Books, 2007), 254.

propose—of bodies that were somehow dragged over the final threshold of colonial law—do not evoke the long-lost heroisms and romances that make a really good, compelling national story. That is the kind of thing that can only be conjured out of haze—a story that constitutes its own archive. A story that is glad of loss, because it offers material to mourn, and because absence does not make its own historical demands, but welcomes every and any reading.

In the colonial north India of the story I have told, rape appears as a phenomenon that does not require explanation. There is little in its context that is pertinent to its commission. It is simply internal to the system, taken for granted as a thing that exists, and the variety of circumstances in which it occurs is rendered mostly invisible. And yet, rape proliferates. It marks the landscape, the roads, the countryside. Moreover, its recurrence is not only in identical words and case histories. It is also in identical crimes and their repetition upon the same body. We have seen that in several cases in this dissertation, rape is doubled, and is carried out by more than one perpetrator, or more than once by the same perpetrator on the same person. A woman is raped after she has already been raped, sometimes because she has already been raped. Because she has already been raped, there is no point doing something to redress the rape, often because the rape being prosecuted is one that came after previous rapes that were not prosecuted. This means that there is no point doing something to redress rape at all. This juridical slippery slope reflects how, especially by the second half of the 19th century, as Durba Mitra has shown in *Indian Sex Life*, girls and women who enter the colonial archive tend to do so when they are *already* ‘ruined’; they are merely archetypal of a script that is already extant, and that runs forward often without need for a literal referent. In Mitra’s archive, the majority of women are simply assumed to be prostitutes, clandestine or open: the prostitute is a category that encompasses all of social life and social analysis. Her ruin is not ascribed to any individual perpetrator, but to society at large—the

result being that the only feasibly available recipient of objectification and punishment is herself.⁷¹³

My experience of the archive of rape was similar, and ultimately, it afforded me no causal smoking gun. What is it about already having been raped that makes you rapeable—not just on the level of the individual but on the level of the class? Why the pattern, why rape upon the same bodies in the same settings and scenarios? In what ways are the scenes similar, and in what ways are they different? Aren't these the most basic questions of rape in history, at their heart? If there is one conclusion to take away from this study, it is that the certainties of sexual risk that disbar women from public space today must be challenged both in policy and in narrative—and that this will involve claiming the public sphere, and the struggle to end rape, both in movement and in scholarship. It has been historical scholarship, not the past itself, which is absent from the current discourse surrounding rape; in the moral causation of sexual atrocity, the past was always right within reach, an easy allusion or reference.

Such references were everywhere in the cognitive dissonance of prominent Indian leaders who claimed back in 2012 that the gang rape of Jyoti Singh was a small incident that became overblown, not worthy of mass hysteria or soul-searching about the 'times'. Many of these leaders simultaneously made that very same discursive and affective link to a change of 'times' by suggesting, for example, that women in India were safe before Mughals and other Muslims invaded the country, as Om Prakash Chautala, the ex-Chief Minister of the Delhi-adjacent state of Haryana, notably did.⁷¹⁴ In other cases, these allusions did not come out into the open, but

⁷¹³ Mitra, *Indian Sex Life*.

⁷¹⁴ "Seven Ridiculous Statements Which Prove That India's Political Class Is Sexist to the Core," Scroll.in, March 14, 2015, <http://scroll.in/article/713536/seven-ridiculous-statements-which-prove-that-indias-political-class-is-sexist-to-the-core>.

clearly served as the animating narrative behind “a scripted representational regime that attributes the blames of rape to women, alcohol, literacy, poverty, public access and so on”, and in characterizing endemic sexual violence as an issue of ‘development’, “institutionalizes a politics of forgetting”.⁷¹⁵ The weight, the authority, the relevance of—indeed the longing for—the exonerations of the past have come in all force to bear on the lament of the present in a simple explanatory statement: modernity is to blame.

It is my opinion that India must overcome the enormous force of this idea—the incursion of modernity into traditional life—in order to genuinely reckon with violence against women. It has subsumed every other possible popular discourse surrounding rape into an endless refrain of girls wearing jeans, using cellphones, and thereby inviting the depredations of primitive chauvinists upon themselves. Modernity is a convenient societally-agreed-upon ‘perpetrator’ of sexual violence and the present humiliation of women because in postcolonial India, it is not the past that is a foreign country, but the present.⁷¹⁶ Modernity is inextricably linked to colonization, and thereby to a ‘break’ with a ‘traditional’, authentically Indian past. That idea of loss and breakage itself dates to colonial times, as the past, imagined as a spiritual remnant or a reserve of sacred values, was carefully recuperated, reforged, and reinterpreted in the colonial nineteenth century as India’s dominant classes, politically disenfranchised in the public and economic sphere, had their first experience of Westernization. For them, as Partha Chatterjee put it, “the greater one’s skills at imitating the West materially, the greater the need to preserve the

⁷¹⁵ Baxi, “Political Apparatus of Rape in India.”

⁷¹⁶ Emily Robinson has documented the neat reverse of this phenomenon: to Western historians, the past is an Oriental country, an ‘Other’. Emily Robinson, “Touching the Void: Affective History and the Impossible,” *Rethinking History* 14, no. 4 (December 1, 2010): p. 515.

<https://doi.org/10.1080/13642529.2010.515806>.

distinctness of spiritual culture”.⁷¹⁷ As a capitalist regime was introduced into India, bourgeois classes “recast” their practices of gender and sexuality into a more colonially-compliant “new patriarchy” that did not question male domination but mandated social reform.⁷¹⁸ Western modernity, however, remained a pill half-swallowed: as Charu Gupta notes in her study of late-colonial Hindu publics in North India, “all looked at the past as an age of glory and blamed the present for their declining status”⁷¹⁹ in heterogeneous, modernizing cities and economies.

This old and enduring perception of western modernity as a barrier between a ‘pure’ past and a shameful present has proved useful, in a globalizing India, in realigning patriarchy and other forms of social oppression to emergent social formations and circumstances. Because modernity thus constitutes no reflection of the true character of Indian culture and values, deploying it as a scapegoat for social malaises such as rape allows human perpetrators to go scot-free, permits the state to evade responsibility or accountability, exempts the beloved and glorious past from an examination of its maltreatment and erasure of women, and allows that past to be rewritten as one that valorizes women, which in turn coaxes them to accept ‘traditional’ moral codes and strictures in the present as their only imagined source of safety. We see then, as Kavita Krishnan argues, that blaming ‘Western’ influence for rape is part of a deliberate attempt, on the level of discourse, to construct a ‘safer’ patriarchy out of misogynistic interpretations of

⁷¹⁷ Partha Chatterjee, *Empire and Nation: Selected Essays* (New York: Columbia University Press, 2010): p. 26

⁷¹⁸ Sumit Sarkar and Tanika Sarkar, eds., *Women and Social Reform in Modern India: A Reader* (Ranikhet: Permanent Black; Bangalore: Orient Longman, 2007): p. 6

⁷¹⁹ Charu Gupta, *Sexuality, Obscenity, Community: Women, Muslims, and the Hindu Public in Colonial India*, (Delhi : Permanent Black ; Orient Longman, 2001): p. 27

tradition,⁷²⁰ and to create a safe outlet of blame for frustration at the continuance of violence in an abstract entity that both represents an indispensable fact of life, and protects or conceals the glorious past from any truth-seeking attempts to re-evaluate its legacy.

When we examine the record of public statements made by leaders and popular media narratives on the causes of rape, we see that the idea of Western-modernity-as-perpetrator is deployed in a standard repertoire of tropes. Right-wing organizations explicitly distance and valorize the ‘pure’ past in relation to the ‘Western model’: “What is happening is we have imbibed the US. We have lost all the values we had in cities,” said Vishwa Hindu Parishad international advisor Ashok Singhal in January 2013, responding to Jyoti Singh’s case. He then attacked live-in relationships as “not only foreign to our culture, but also hostile.” He also claimed that Indians “lived a life of 'purity' prior to the arrival of British rulers...the 'purity' of virginity, described as '*brahmacharyam*' by him, was being disturbed.”⁷²¹ The past cannot be allowed to get too distant, however; representatives of the past that have endured are held up as false alternative models: “Such crimes won't happen in "Bharat" or the rural areas of the country. You go to villages and forests of the country and there will be no such incidents of gang-rape or sex crimes,” claimed Rashtriya Swayamsevak Sangh chief—and delusional misogynist—Mohan Bhagwat.⁷²² No formulation of modernity-as-perpetrator is more pervasive, however, than the

⁷²⁰ Kavita Krishnan, “Rape Culture and Sexism in Globalising India,” *Sur International Journal on Human Rights, English Ed.* 12, no. 22 (December 2015): p. 258, <https://www-proquest-com.ezproxy.cul.columbia.edu/publiccontent/docview/1792776677/abstract/2C04AC53F4E14A9BPQ/1>.

⁷²¹ “Now, VHP Blames Western Lifestyle for Incidents of Rape,” *India Today*, January 6, 2013, <https://www.indiatoday.in/india/south/story/vhp-blames-western-lifestyle-for-incidents-of-rape-in-the-country-150911-2013-01-06>.

⁷²² Anurag Verma, “10 Bizarre Statements Made By Indian Politicians That Will Make You Facepalm Hard,” *News18*, August 3, 2017, <https://www.news18.com/news/politics/10-bizarre-statements-made-by-indian-politicians-that-will-make-you-facepalm-hard-1481489.html>.

suggestion that women themselves are now becoming, or already represent, the modern, so it is they who ruin themselves. This arrant victim-blaming is only the more unpalatable converse of a more general narrative that places women at the frontlines of conflicts between the traditional and the modern, whether as perpetrator, as above, or as prey, as in the *New York Times*' characterization of a young Delhi woman as "modernity's victim. She got a job, which led to taking a loan, which led to buying a cellphone, which led to plans with strange friends, which led to alcohol, which led to sniffing intoxicants on fabric, which led to jail."⁷²³

"Given the symbolic place of women's sexuality within cultural nationalist myths," as Sneha Krishnan writes, blaming rape on women's embrace of modernity, and their abandonment of the Indian traditions they are duty-bound to embody, is a powerful way to manipulate the "diverse affective currencies"⁷²⁴ rape carries when it is not in political interest to entirely displace the threat of sexual violation as a method of social control.⁷²⁵ Under the associative dichotomy of 'Western-modern' with 'public' and 'glorious past' with 'private', an ancient scriptural tradition that normalizes marital sexual violence and depicts women as lustful, lying adulteresses⁷²⁶ can remain the religious and moral bedrock of present arguments and mindsets

⁷²³ Anand Giridharadas, "India's Rape Problem, and How Men See It," *The New York Times*, December 9, 2013, <https://www.nytimes.com/2013/12/10/world/asia/india-rape.html>.

⁷²⁴ Sneha Krishnan, 'Responding to Rape: Feminism and Young Middle-Class Women in India', in M. Alston, *Women, Political Struggles and Gender Equality in South Asia* (London, UNITED KINGDOM: Palgrave Macmillan UK, 2014): p. 20.

<http://ebookcentral.proquest.com/lib/columbia/detail.action?docID=1779958>.

⁷²⁵ Baxi, "Political Apparatus of Rape in India. Nor is this manufactured anxiety about the modern woman—or the dividends its strategic deployment can generate—new: as Kumkum Sangari has pointed out, "ideologies of women as carriers of tradition often disguise, mitigate, compensate, contest, actual changes taking place. Womanhood is often part of an asserted or desired, not an actual cultural continuity." Kumkum Sangari and Sudesh Vaid, eds., *Recasting Women: Essays in Indian Colonial History* (New Brunswick, N.J: Rutgers University Press, 1990): p. 17.

⁷²⁶ See Uma Chakravarti, "Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class

opposed to criminalizing rape and abuse within the home—where the majority of such violence occurs⁷²⁷—while its impact on mindsets that harass and torture women on the streets can be discursively negated or denied, because women in the past did not perform modernity, and the modern public sphere did not ‘exist’. Again, we have the *New York Times*, reporting that men in Delhi attribute the rape problem to “vertiginous social change that has created new temptations at a faster rate than the new habits to cope with them.”⁷²⁸ Even progressive and leftist Indian public commentators have spun out negative narratives of modernity while attempting to frame the causation of rape; Sudhir Kakar, in an editorial for the *Times of India*, wrote: “The Indian civilizational idea that defined women in relational terms and placed a large majority in an asexual limbo was too extreme. But to replace this with another extreme, the Western idea of the body as an amusement park, a place of sexual recreation, has only plunged us from the frost of sexual inhibition into the fire of its excesses.”⁷²⁹ Sitaram Yechury, the Communist Party (Marxist) leader, adapted the Iranian intellectual Jalal e-Ahmad’s concept of ‘Westoxication’ to coin the term ‘modernoxity’ in a *Hindustan Times* editorial. He wrote: “India’s march towards modernity is being subverted not merely by the tenacity of past institutions—caste-based social oppression, patriarchic order that suppresses women, the khap panchayats, unequal treatment of

and State,” *Economic and Political Weekly* 28, no. 14 (1993): 579–85, <https://www.jstor.org/ezproxy.cul.columbia.edu/stable/4399556>.

⁷²⁷ Sneha Rajaram, “Among Those Accused of Rape, Known Persons Outstrip Strangers 10 To 1,” *The Wire*, accessed June 3, 2024, <https://thewire.in/11108/whats-the-ratio-of-known-v-stranger-rapists-take-a-wild-guess/>.

⁷²⁸ Giridharadas, ‘India’s Rape Problem, and How Men See It’.

⁷²⁹ Sudhir Kakar, “We Are Caught between Extremes of Traditional and Western Perspectives on Women,” *The Times of India*, January 9, 2013, <https://timesofindia.indiatimes.com/home/opinion/edit-page/We-are-caught-between-extremes-of-traditional-and-western-perspectives-on-women/articleshow/17944379.cms?referral=PM>.

religious minorities, etc—alone. This is buttressed by the values of neo-liberal consumerism (modernoxity), treating women as objects of display and not as human beings.”⁷³⁰

I have spun out and detailed the narratives above to demonstrate how representations of the problem of rape in modern India have never confined themselves either to rape or to the here and now. The past is both ahistorically frozen, and simultaneous with the present, in the mirror that violence against women sets before a society. As the classicist Mary Beard put it in her iconic personal account of rape in the *London Review of Books*, “it is in the telling of rape-as-story, in its different versions, its shifting nuances, that cultures have always debated most intensely some of the unfathomable conflicts of sexual relations and sexual identity.”⁷³¹ In colonial India, as today, these conflicts staged fears of invasion and contamination by a foreign culture as the historical catalyst of women’s dispossession, abduction, enclosure, and confinement—and then, as today, it remains unclear whether nation, culture, and the “woman question” can be disentangled from them.

In 1938, A.S. Altekar, a prominent historian and interlocutor of Gandhi, published an influential text titled *The Position of Women in Hindu Civilization*. Among the propositions Altekar made in this text was the following argument: a supposedly once-prevalent ancient Hindu practice of readmitting women who had been abducted and sexually abused back into the social fold of their communities had died out in South Asia by the 11th century with the establishment of the new millennium of ‘Muslim rule’. He speculated, with little reference to credible sources, that the death penalty accorded to apostasy under ‘Islamic law’ (an all-

⁷³⁰ Sitaram Yechury, “Two Sides of a Coin,” *Hindustan Times*, accessed June 3, 2024, <https://www.hindustantimes.com/columns/two-sides-of-a-coin/story-EjSi5We8jwhzDZN4u2Vd4N.html>.

⁷³¹ Mary Beard, “Mary Beard · Diary: On Rape,” *London Review of Books*, August 24, 2000, <https://www.lrb.co.uk/the-paper/v22/n16/mary-beard/diary>.

encompassing term used by Hindu and British intellectuals during this period to refer to both the *Sharia* and customary law in Muslim communities) made it near-impossible for raped or abducted *Hindu* women to be reclaimed by their families.⁷³² The reasoning behind this leap of logic is not difficult to reconstruct, because by the period in which Altekar was writing it was an extremely prevalent one. Once they had been ‘converted’, such thinking goes—through rape, forced marriage, or their own consent and cooperation—any return to Hinduism or renunciation of Islam by such captive women posed too great a risk of retribution by the ruling Muslim dispensation against the Hindu communities that welcomed them back, because any instance of apostasy, even in cases of forced conversions, could not be tolerated. The implicit judgement behind this narrative is clear: Hindu communities in the past were too afraid of the consequences of fighting back to recover ‘their’ lost women; in other words, they were, and had always been, irredeemably cowardly.⁷³³

Altekar, however, did not say as much upfront; he sought to add something new to what was, on the eve of India’s independence, already an overused interpretive refrain. Instead of placing all blame on the fear of further retributive violence between communities, he charged the Hindu religious episteme with departing from scriptural injunctions and innovating ‘new notions of purity’: women were now given to understand that “their fate was sealed forever, the moment

⁷³² Anant Sadashiv Altekar, *The Position of Women in Hindu Civilization, from Prehistoric Times to the Present Day*, 3d ed (Delhi: Motilal Banarsidass, 1962), 309-310. Scott Kugle has provided a comprehensive overview of early British colonial engagements with the *Sharia*; see Scott Alan Kugle, “Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia,” *Modern Asian Studies* 35, no. 2 (2001): 257–313, <https://www.jstor.org.ezproxy.cul.columbia.edu/stable/313119>.

⁷³³ For more examples of Hindu writers’ denunciations of a lack of communal courage, see the chapter “Defining the Nation” in Sudhir Chandra, *The Oppressive Present: Literature and Social Consciousness in Colonial India*, Oxford India Paperback edition, Oxford India Paperbacks (Delhi: Oxford University Press, 1994), 116-154.

they had fallen into the hands of their enemy. No return was possible: they had to adjust themselves to their captors and new surroundings.” In other words, Altekar reads a modern notion of rape—the loss of the possibility of return—into past scenarios of abduction: “a single sexual organ identifies the self, that organ is conceived of as an object that can be taken or lost, and such a loss dissolves the self.”⁷³⁴ “This changed attitude produced a disastrous consequence on the strength and solidarity of Hindu society,” Altekar wrote. “Were the doors always kept open for women overtaken by misfortune to return to their families and society,” he continued, “the Muslim population in the once-undivided India would not have risen to nine crores. Hindu society has paid heavily for its narrow orthodoxy; it is high time that we should now take a rational view of the whole situation and cease to penalize women for their misfortune.”⁷³⁵

For Altekar the real and important consequence of centuries of imagined sexual violence against women, therefore, was that entrenched new categories of purity and community self-definition had led to a condition in which Hindus were unable to redeem, salvage, or lay to rest their past. They could only do so now by ‘recovering’ lost women, even ‘re-converting’ them, by rewriting the conditions of their loss. By a process of historical invocation and transmutation, he collapses the ruined past with the unsatisfying present, the sign of women with the promise of an alternative, redeemed masculinity. In Altekar’s alternative history—in which raped women would have been allowed to return—the reclamation of these ‘lost’ women would have been a “liberal” and “rational” response to unforeseen contingency, an opportunity to view women with “human sympathy”. He was quick to note, however, that such clemency could only have been

⁷³⁴ Sharon Marcus, “Fighting bodies, fighting words: a theory and politics of rape prevention”, in Judith Butler and Joan Wallach Scott, eds., *Feminists Theorize the Political* (New York: Routledge, 1992), 397.

⁷³⁵ Altekar, *The Position of Women in Hindu Civilization*, 314.

granted to women provided they showed “genuine repentance”, and that it would have to have involved “certain purificatory rituals” to void the raped woman of her taint.⁷³⁶

We see here how rape compels the modern historical imagination: alleging, suspecting, or denying rape touches off speculation not only upon how a raped subject might have spoken, acted, or existed differently, but also upon the sorts of limit cases, litmus tests, final straws, and collective interests such a charge activates. Altekar was as guilty of ‘new notions of purity’ as the Hindu communities he imagined into the past—and of projecting the debates of his time, conflicts between factions of the Hindu orthodoxy on the question of social reform, back onto a completely different historical context. Like many Hindu intellectuals of late colonial India, he did not dispense with inherently exclusionary categories of community formation, nationhood, and cultural purity: he reiterated and rationalized them *even as* he decried their historical effects. Scholarship of this kind is both misogynistic and historically spurious. Nonetheless, as Hindu nationalist historians in South Asia adapted the narrative axioms they inherited from colonial scholars in the late nineteenth and early twentieth centuries to envision a new image of the Indian nation and its past, a distinctly historical conceptual linkage between invasion, abduction, sexual violence, Muslim alterity, and national redemption endured into the Indian present, inhering in the figure of the raped and abducted woman over and above the modern context of Partition.

The facticity of histories like Altekar’s, as well as their regressive understanding of the functioning and consequence of gender within power, have been repeatedly challenged by a

⁷³⁶ Altekar, *The Position of Women in Hindu Civilization*, 307-314. Altekar also makes clear that, according to scriptural procedure, women who had conceived children in conditions of assault under captivity would not be allowed to bring such children into the community. He fails to see this as a potential reason for women choosing to remain with their captors.

variety of postcolonial South Asian scholars.⁷³⁷ Problematically, however, many of these challenges also seem to adhere to the same received categories—to a certain kind of colonial sociological vision about ‘Indian’ civilization, the status of women, and the importance both for imperialism and for certain feminist traditions of proving the permanence of various practices of gendered subordination in colonized societies. Uma Chakravarti, for example, has noted: “The structure of institutions that ensured the subordination of women was complete *in all essentials* long before the Muslims as a religious community had come into being. The Muslim bogey was a convenient peg to explain the origin of all oppressive practices”.⁷³⁸ If Altekar is guilty of conflating the abduction, conversion, and sale, marriage, or enslavement of women in precolonial South Asia with the ‘rape’ of such women, defined in modern terms, Chakravarti’s argument implies not only that the structure of the subordination of women in South Asia was stable over time regardless of historical change and context, but also reiterates the privileging-together of gender, sexuality, *and religion*, communally defined, as frames through which to view the politics of the abduction of women by various social and political actors or groups for various social and political ends.

Pradip Kumar Datta, writing about ‘abduction scares’ in 1920s Bengal, explains this as a kind of discursive enclosure: “By locating women in *a tight dialectic between their sexual vulnerability and physical self-protection*, [women] were discouraged from situating themselves

⁷³⁷ Examples of such critiques include Vasudha Dalmia, *Hindu Pasts: Women, Religion, Histories* (Albany, NY: SUNY Press, 2017); Daud Ali and University of London, eds., *Invoking the Past: The Uses of History in South Asia*, SOAS Studies on South Asia (New Delhi ; Oxford: Oxford University Press, 1999); and Vinay Lal, *The History of History : Politics and Scholarship in Modern India* (New York: Oxford University Press, 2003), among others.

⁷³⁸ Uma Chakravarti, “Beyond the Altekarian Paradigm: Towards a New Understanding of Gender Relations in Early Indian History,” *Social Scientist* 16, no. 8 (1988): 47, <https://doi.org/10.2307/3517507>.

in the context of other political issues, that is, from seeing themselves in relationship to roles other than their simple sexual being. Via abductions, Hindu communalism *strictly bounded the whole question of gender by sexuality.*⁷³⁹ History was uniquely useful to the establishment of this rigid control because distortions of the past facilitated the eventual reinterpretation of sexual violence in the present: if, as Datta notes, women in the present were too enmeshed in complex contemporary social hierarchies to “provide a stable sign of communal differentiation”, and sexual misconduct by men of all communities was too widespread to be attributed to any one group, the sources, records, and techniques inherited by Hindu nationalists from the colonial discipline of history allowed such difficulties to be overridden by persistent repetition.⁷⁴⁰ Early modern references to the taking of women were more or less successfully transmuted by the work of colonial and nationalist history-writing into a generalized and widely-recognized narrative of the abduction, followed by the rape, of millions of Hindu women more or less continuously over a period of a thousand years.

How to redeem India’s identity? This question is important for our return to Altekar, as he imagined the subjectivities (and communities) of women who were abducted and violated by ‘Muhammadans’, and were faced with a choice to cooperate or to plan an escape. Confronted with a body of Hindu law and an orthodox imperative to ‘purity’ that sanctions the abandonment of abducted female subjects, Altekar seeks to transform this negative, prohibitive sense of law into a positive, productive, *modern* reconciliation of the subject with the power that governs her: instead of being outcast, tabooed, or erased, he envisions the potential consequences of

⁷³⁹ Pradip Kumar Datta, “Women, Abductions and Religious Identities in Colonial Bengal”, in Charu Gupta, ed., *Gendering Colonial India: Reforms, Print, Caste and Communalism* (New Delhi: Orient Blackswan, 2012), 281.

⁷⁴⁰ Datta, “Women, Abductions and Religious Identities”, 286.

exercising a more ‘lenient’, ‘gentle’ form of disciplinary power upon her. This envisioning is a precisely Foucauldian “entry of life into history”—it creates a subject consciousness that, owing to the ‘backwardness’ of its historical time, butts up against its own exclusion from any transcendent or redemptive historical purpose, any meaningful orientation towards posterity.⁷⁴¹

But this is not a challenge to colonial thinking and colonial knowledge that Altekar imagined it was. His assumption that rape was the natural corollary to abduction followed the British assumption that in an anarchic state of oriental despotism, no laws or rules existed in India to regulate everyday exchanges; all social spaces and interactions were more or less subject to the lawlessness of a state of war, a state of exception.⁷⁴² Moreover, “the phantasm of *zenana* or the harem” that dominated the writing of Europeans in India iterated the nation as “a landscape of *despotic enclosure*.”⁷⁴³ If there were no norms or morals underlying the taking of women, rape was the obvious conclusion to abduction. Moreover, a condition of widespread rape under ‘Muhammadan’ rule was an ideal foil against which the British could define their political presence and purpose in India: their sociological framework for the region was premised on the idea that India had been subject repeatedly over its history to waves of ‘invaders’ from the West,

⁷⁴¹ I have relied for this interpretation of power upon Rey Chow, “Sacrifice, Mimesis, and the Theorizing of Victimhood (A Speculative Essay),” *Representations* 94, no. 1 (2006): 132-135, <https://doi.org/10.1525/rep.2006.94.1.131>.

⁷⁴² Purushottam Agarwal, “Savarkar, Surat, and Draupadi: Legitimizing Rape as a Political Weapon”, in Tanika Sarkar and Urvashi Butalia, eds., *Women and Right-Wing Movements: Indian Experiences* (London: Zed Books, 1995), 32.

⁷⁴³ Sneha Krishnan and Laura Antona, “Carceral Domesticities: An Introduction,” *Environment and Planning D: Society and Space* 41, no. 6 (December 1, 2023): 931–39, <https://doi.org/10.1177/02637758231218070>. They continue that the Indian household was considered “too enclosed, lacking the political freedoms of movement and assembly, as well as flows of air and light that colonial discourse associated with European homes. Liberal imperialist projects thus sought to relocate residents of such improper homes, often by putting them within other kinds of enclosures: for instance, red light districts that marked zones of prostitution, hostels where young women were educated into properly modern domesticity, and hospitals and asylums for the contagious and the mad.” 935.

and that each wave of outsiders had connected itself to Indian society by taking women. This framework of invasion equated distinctions between religious communities or caste groupings with differences of race, a category previously irrelevant to South Asia that was articulated by and constituted through the threat of miscegenation.⁷⁴⁴ In such a changing milieu it is not difficult to see how the very idea of marriage between communities, the taking and exchanging of women, became discursively associated in colonial knowledge projects not only with ‘invasion’, but with both domestic transgression and public, political crime under a lawless, amoral, ahistorical ‘Muslim despotism’.

How, then, does one critique such paradigms without either being bound by them or dismissing the persistence of rape and sexual violence as charged, emotive historical unknowables whose very elusiveness to contemporary scholarly analysis effects tremendous political consequences in the present? When I read over Altekar’s ideas about how lost women could be resurrected or reclaimed for the future, I see yet another carceral logic, “rooted in regimes that immobilise racialized bodies and shape the conditions on which futurity is available to them.”⁷⁴⁵

Sharon Marcus has argued that rape should be understood as a language founded not on “real or objective criteria, but political decisions to exclude certain interpretations and

⁷⁴⁴ Durba Ghosh, *Sex and the Family in Colonial India: The Making of Empire* (New York: Cambridge University Press, 2006). Ghosh has documented how, as British understandings of political self-interest in their earliest Indian territories shifted decisively against the social acceptance of Europeans who had ‘gone native’, the intermixing of Europeans with Indians was increasingly proscribed and regulated through the settlement, interpretation, and negotiation of interracial domestic affairs in courts of law.

⁷⁴⁵ Krishnan, “Carceral Domesticities”, 932.

perspectives and to privilege others.”⁷⁴⁶ She is echoed here by Thomas Keenan’s analysis of the forensic afterlives of modern cases of abduction, where the exclusion of certain perspectives is mapped onto the exclusion of certain bodies. When the removal of a person from their social milieu, he writes, is accompanied by the erasure of the traces of that removal (as it often is), “projects designed to undo the first disappearance can themselves contribute to the disappearance of the disappearance.” For such projects, whatever their intent, evidence is rarely a matter of *fact*: “it is that *upon which* a decision can be rendered about what the facts in a case are...it is not an answer, but a question: it asks for a decision, a reading or an interpretation; *it asks to be told what it says*.”⁷⁴⁷ Just as the space vacated by abduction produces various rhetorical operations, various evidentiary discourses and forensic scripts, to fill in the gaps between fragments, so through reiteration, the language of rape develops into a social script, a narrativized exchange, that “enacts conventional, gendered structures of feeling and action.”⁷⁴⁸

Altekar’s influence suggests one thing for certain: that ‘comprehensiveness’ and statistics are unlikely to disrupt this narrative. In South Asia—among other places—as established channels for the authoritative transmission of tradition broke down in a transition to colonial modernity, colonized subjects “discovered that the transmissibility of the past had been replaced by its *citability*, and that in place of authority there had arisen a strange power to settle down, piecemeal, in the present”. Citation, Walter Benjamin argued, was not simply a new way to the

⁷⁴⁶ Sharon Marcus, “Fighting bodies, fighting words: a theory and politics of rape prevention”, in Judith Butler and Joan Wallach Scott, eds., *Feminists Theorize the Political* (New York: Routledge, 1992), 387.

⁷⁴⁷ Thomas Keenan, “Getting the Dead to Tell Me What Happened: Justice, Prosopopoeia, and Forensic Afterlives,” *Kronos* 44, no. 1 (2018): 113, <https://doi.org/10.17159/2309-9585/2018/v44a7>.

⁷⁴⁸ Sharon Marcus, “Fighting bodies, fighting words: a theory and politics of rape prevention”, in Judith Butler and Joan Wallach Scott, eds., *Feminists Theorize the Political* (New York: Routledge, 1992), 390.

past, and nor was it an instrument of historical authentication—it was born out of despair and alienation in the present, presenting itself as the rescripting of a loss already written off as irrevocable. As such, its power was “not the strength to preserve but to cleanse, to tear out of context, to destroy.”⁷⁴⁹ This kind of power—the power to explode differences and distinctions between actions and contexts in a given temporal field—is closely related to the power of the rape script: as Marcus notes, “in a ‘continuum’ theory which makes one type of action [such as in our case an abduction] immediately substitutable for another type of action, sexual assault, the time and space between these two actions collapse and once again, rape has *always already* occurred.”⁷⁵⁰ If rape can be assumed as something that has always already happened, or as generalizable beyond any one category of man, community, or perpetrator, how is the threat of rape specially renewed or strengthened in discourse by particular citational practices? How do they avoid not only once again reducing gender to sex, but also claiming subject bodies as the property of imagined or invented communities?

The historical anthropologist Veena Das interviewed Punjabi survivors of Partition and the 1984 Delhi riots, many of whom had been abducted from their families and returned years later.⁷⁵¹ She then drew on these testimonies to argue that remembering and holding unredressed and unreported sexual violence within the self in everyday life was painful not primarily because of the actual rape—the bodily memory of which could dim over time—but because women could not forget how their kin and families *betrayed* them. When it came to it, having belonged and

⁷⁴⁹ Benjamin, *Illuminations*, 38-39.

⁷⁵⁰ Sharon Marcus, “Fighting bodies, fighting words: a theory and politics of rape prevention”, in Judith Butler and Joan Wallach Scott, eds., *Feminists Theorize the Political* (New York: Routledge, 1992), 389.

⁷⁵¹ Veena Das, *Life and Words: Violence and the Descent into the Ordinary*, (Berkeley: University of California Press, 2007).

having been loved and valued—this meant nothing. They were left behind, abandoned, and ignored or silenced when they returned. What Happened was smoothed over and never mentioned thereon—everyone was ‘glad’ she was back, everyone regretted and wept and promised token help and support. But a particular moment of being wrenched from the collective—of being singled out, individuated, made alone and wretched and strange, precisely *because* one belonged to a particular collective—and never being able to belong in the same way again: this was the violence that shattered a world. The subjects of this experience became embodied accusations, somewhere between silent and vocal, living and dead, through the very fact of their presence and existence.

Is this what motivates the fear, then and now, of letting a woman outside—that when she walks out the door, she won’t come back? Is rape the story that is invented to obscure the dreadful possibility that her departure was voluntary, or at least inevitable—to erase her sexual value, to reframe her as waste and loss—to say she *can’t* come back?

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