

CHAPTER 5

# TIME'S CORPUS

## ON SEXUALITY, HISTORIOGRAPHY, AND THE INDIAN PENAL CODE

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AT STAKE HERE IS A DIALOGUE BETWEEN TWO MINORITIZED historiographies—one in South Asian studies and the other in queer-sexuality studies—and their shared preoccupation with the responsibility of historical emergence and recognition. To attempt such a dialogue, this chapter moves away from the conventional (and often reactionary) segregation of the two field formations as oppositional or discrete. Central to the argument is an understanding of area studies as constitutive of the histories of sexuality and vice versa.<sup>1</sup> My goal is not merely to narrate the analytical convergences between the two field formations; rather I am interested more in what I will call the “comparative imaginaries” that animate such a conversation. By “comparative imaginaries,” I mean to gesture to the incursions of temporality, to the “politics of time” that emerge in our desire for knowledge, and in our ethical stances toward otherness.<sup>2</sup>

In many ways, the recent focus on transnationalism has made a conversation between area studies and sexuality studies, in all its historical variants, not only more pressing but also more difficult than ever before. Let me begin then with some provisional and situating generalizations. The current fetishization of all matters “transnational”—understood both as the rearrangement of geopolitical formations and the scholarly analysis of that shift—appears to be under considerable conceptual strain. On the one hand, there is still much to be gained from its prominence as a theoretical rubric. Even as the turn to transnationalism can be generally attributed to the structural inequities created by a dominant post-Fordist

global economy, and even as such a turn (despite its “trans” label) rarely eclipses the hegemony of the nation form, transnationalism has emerged as a heuristic modality with endless promise, creating connecting conversations across a diverse and previously segregated range of spatialities and temporalities. For many of its followers, the “transnational turn” instantiates a powerful political metaphoric, a vigorous corrective to the hegemony of national and temporal boundaries, particularly in an era of increased surveillance and U.S. imperialism.<sup>3</sup>

On the other hand, this enthusiastic embrace of transnational talk, as it were, has equally occasioned serious debate on the precise value of such an emphasis and on the false rapprochement between a progressive politics and the politics of the transnational. The critical question for many scholars is whether a transnational approach can indeed articulate an innovative perspective that foregrounds ignored and underrepresented knowledge formations and publics within the more-flattening discourses of globalization.<sup>4</sup> In the case of area studies, for example, the transnational turn has certainly strengthened the critique of a spatially bound area-studies model by underscoring the contested geographies that undergird national and international borders. Yet, for the most part, such critiques have focused largely on contemporary configurations of empire (specifically, U.S. empire) and rarely provide analysis that places earlier anticolonial thought alongside new forms of critique that take on the ideological circuits of contemporary neoimperialism. For sexuality studies, the emphasis on transnational approaches has provided more of a cautionary tale, a haunting reminder of the colonial genealogies that found the very languages of its articulations. Thus, while we may now agree upon the need for a more-situated (and wonderfully diverse) understanding of the entanglements of sexuality and geopolitics, racialized and uncritically appropriative consumption of sites of alterity continues to abound. I want to be careful here and add that this is not a facile reduction (or dismissal) of the languages of transnationalism; rather, the struggle here is to carve out theoretical spaces that supplement the complex graphings of empire.

One such theoretical space of supplementarity, I want to suggest, is the renewed interest in what one could call “comparative imaginaries.” The term “comparative”—often falsely used interchangeably with terms such as “global,” “international,” and even “transnational”—has had an overdetermined and often problematic disciplinary history. Largely mobilized to explicate and stabilize entrenched geopolitical relationalities, the term was previously consigned to the disciplines of anthropology (as a rubric for approaching cross-cultural work), history (as a method of accessing

multiple temporalities), political theory (as a concept for assessing capital development) and literature (as a mode of reading and constituting “worlds” of literary texts). Rather than rehearsing the different genealogies of comparative frameworks in each of these disciplinary formations (a task that lies beyond the limited scope of this chapter), it would suffice to say that these early appropriations of the comparative model relied primarily on axes of similarity and difference and rarely interrogated the Eurocentricity of the normative categories that founded the very grounds of comparison.<sup>5</sup>

More recently, however, such flattening and hierarchical habits of comparative analysis have largely been jettisoned, making way potentially for what Ann Stoler has termed as a more sustained “politics of comparison” (23–70). For Stoler, the project of comparative analysis must not just move beyond the national framework but also attend to what objects of study constitute the terms of comparison and what is at stake for us to continue to do so. Stoler’s call for a more self-reflexive language of comparison thickens the turn to transnational analysis by rendering locations of the metropole and the colony not as discrete units to be rapidly traversed or linked but more as a singular analytical field. Such a shift to thinking of locations of difference (west vs. east, north vs. south, metropole vs. colony) as conceptually commensurate is made possible through Stoler’s commitment to histories of intimacy, histories that exemplify the “tense and tender ties” (Anderson 2) binding the project of colonial expansion. What is of most interest here is that such practices of comparison are not just resonant with current historiographical methods but rather echo comparative frameworks mobilized by colonial governments themselves.<sup>6</sup>

In light of recent debates in the field of comparative literature, scholars such as Rey Chow have further pushed for a revitalization of the comparative modality against and beyond its older formulation as “Europe and Its Others.” The “and” here does not refer to a mere matter of “taxonomic addition or inclusion,” but rather gestures to “a relation of temporality” that produces Europe as a “cluster of lingering ideological and emotional effects whose force takes the form of a lived historical violation, a violation that preconditions linguistic and cultural consciousness” (89).<sup>7</sup> Working against similar facile understandings of the comparative as merely the multilingual (the piling up of linguistic alterities under the sign of comparative expertise), Chow proposes an alternative paradigm of comparison. For Chow, comparison becomes a Foucauldian archaeological project, whose historical remnants “interpret cultural narratives symptomatically, as fragments

that bear clues—often indirect, perverse, and prejudiced—to a history of ideological coercions and exclusions” (89).

Chow’s invocation of metaphors of violence (“violation, coercion”) situates new and old comparative practices squarely within a landscape of spatial and temporal incommensurability. It is this insistence on epistemic and material violence that most animates Gayatri Chakravorty Spivak’s contributions to the comparative debate. While Spivak’s text *Death of a Discipline* (2003) predates Chow’s work, in many ways it offers a supplementary reading to many of the questions Chow raises. Comparative literature’s Eurocentric romance with national literary cultures, Spivak argues, is as epistemologically dangerous (and irrelevant) as area studies’ geopolitical ambitions. More specifically, area studies lacks the imaginative potentialities of comparative literature (an attentiveness to figuration and close reading), while the latter flattens the worlds outside of (Western) Europe and (Northern) America. For Spivak, the “politics of friendship,” needed to conjoin the estranged fields of area studies and comparative literature, thus depends not just on the acquisition of non-metropolitan languages or self-reflexive models of cross-cultural analysis (not that those languages or models are not necessary) but also on more ethical forms of comparative imaginaries. The Spivakian text exhorts its reader to approach the “ungraspable other” (32) through the imaginative process of “teleopoiesis,” a movement into emergence, into futurity, that copies rather than cuts, pastes rather than erases, a movement that is both singular and unverifiable.<sup>8</sup> “Teleopoiesis” (a term Spivak borrows from Derrida) becomes a reading practice that gives in to subaltern learning without the guarantee of prediction: “This is imagining yourself, really letting yourself be imagined (experience the impossibility) without guarantees, by and in another culture, perhaps. Teleopoiesis” (52).

In what follows I attempt to carve out a space for such comparative imaginaries within the conjoined field formations of South Asian studies and queer-sexuality studies. Spivak’s insistence that we transform the site of cross-cultural (for lack of a better word) knowledge into an open field of new self-other relations is of particular significance to sexuality studies. That is, even as we ask what can sexuality studies learn from sites of alterity, we might equally conclude that our most challenging task is not just to acknowledge the “other” as producer of knowledge but rather to question our very responsibility as scholars within such a process. To consider such questions, I examine contemporary legal struggles around the eradication of Section 377 of the Indian Penal Code in India alongside the historiography of a failed sodomy case in late colonial India. Overall, this chapter has a rather modest end: to understand how the languages of

contemporary legal reform are constantly deflected by, if not into, a revisionist comparative framework produced and institutionalized by certain forms of nationalist and queer historiography.

### NOT HERE, NOT NOW

"Time" is a word to which we give flesh in various ways.

—Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason*

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section. The offence made punishable under this section requires that penetration, however little, should be proved strictly. Thus an attempt to commit this offence should be an attempt to thrust the male organ into the anus of the passive agent. Some activity on the part of the accused in that particular direction ought to be proved strictly. A mere preparation for the operation should not necessarily be construed as an attempt. Emission is not necessary.

—*Of Unnatural Offences*, Section 377, Indian Penal Code

In 2001, Naz Foundation, a Delhi-based HIV/AIDS prevention nongovernmental organization, with the assistance of a progressive legal-reform group, the Lawyers Collective, filed a petition against the Union Government seeking to declare Section 377, the antisodomy statute of the Indian Penal Code (IPC) as violative of the right to equality (Article 14), the right to freedom (Article 19), and the right to life and liberty (Article 21) of the Indian Constitution. The petition cautiously and strategically staged its arguments through careful references to the mushrooming global discourse of gay civil rights, alongside a more aggressive attentiveness to local instantiations within the context of postcolonial India. More significantly, the petition relied not on questions of gay identity, but more on the relationality between sexual acts and civil rights, developing its defense of a citizen-subject's privacy as the organizing constitutional right for the repealing of Section 377.<sup>9</sup> Hence, for example, the petition carefully mobilized the term MSM (men having sex with men) and not "gay" men, as the placeholder for community actions adversely affected by the continued enforcement of the law. That is, the enforcement of Section 377 was read as a major obstacle to HIV/AIDS prevention and outreach work within the MSM community, as it arguably drove high-risk behavior underground and beyond the reach of safe-sex interventions. This,

of course, is in marked contrast to the shift in the United States, where gay civil-rights legal activism has shifted from a focus on privacy issues to speaking more in the language of discrimination—that is, a shift from the protection of acts, to a protection of identity, which often leads to the legal paradox of states that have both antisodomy statutes and extensive domestic partnership laws.<sup>10</sup>

Despite such carefully staged shifts in legal strategy, the central challenge for the petition lay in breaking the stranglehold of the Westernization narrative, the familiar argument, not unique to India in many ways) that “unnatural acts” (more specifically, sodomy) and homosexuality were not part of an Indian past and were mimetic byproducts, remaindered through the onslaught of an aberrant and contaminating Western temporality and spatiality. To break such a stranglehold meant providing the state with convincing evidence of sodomy’s indigeneity within the Indian context—an indigeneity that needed to narrate a history of presence, markedly distinguishable from colonial figurations of ontological perversity. To accomplish such a goal, the petition returns over and over again to a diffuse language of “history” as a site of recovery and legitimacy to sanction its argument, where the historical turn is mandated through a language of temporal breaks, with the late colonial period marking the space of critical transformation in the shift from sodomy as “something we did” to sodomy as “something we were criminalized for.”

To bolster such a claim, sodomy is recovered amid a stretch of archival evidence, threaded together by claims to diverse temporalities and spatialities that make it constitutively Indian and not an extension of Western influence or behavior. Same-sex texts, subjects, and themes are discovered amid a wide array of archival materials, ranging from literature, anthropology, sociology, art history, and even medical evidence; thus, the process of “queering” Indian history is executed through corrective reformulations of “suppressed” and misread colonial materials (see Vanita 1–14). Such formulations carefully reiterate an ironic reversal of the Indian state’s accusations of Westernization: within the logic of historicity that the petition attempts to stage, to criminalize sodomy is to embrace a judicial Westernization (the constitution of the IPC by the British, drafted, as the petition reminds us, within a Judeo-Christian frame of temporality and morality that condemned not only “unnatural acts” but also a range of other native sexual and social behaviors). Thus, even as the geopolitical ubiquity of same-sex behavior is acknowledged by the petition’s references to evidence from around the world, the emphasis remains on its prevalence and acceptance within a landscape and archive that is wholly Indian. For example, the petition pointedly cites excerpts from texts understood

as conventionally Hindu: the *Upanishads*, the *Bhagwad Gita*, the *Kama Sutra*, and so on. By referring to citations from a Hindu canon of texts, the petition refuses the Hindu-right's repeated coupling of sodomy with Islamic bodies and texts (see Kapur 51–94; Menon).

Throughout the petition, the turn to the historical is deliberately used to narrate a different version of coeval temporalities whereby we learn that to outlaw sodomy is to represent an “outmoded” Christian colonial state, making decriminalization of sodomy a decisively “modern” intervention. Within such critical oscillations, India is both in time, and out of time, folded into a peculiar time-lag of modernity. Its embrace of sodomy in the historical past marks India's modernity, its “in-time-ness,” just as its denial of sodomy in the present marks its out-modedness” with the “West” (a geopolitical marker that shifts from including England to including England and the United States). The Eastern past thus now becomes the Western present. Yet, such hermeneutical mutations work with varied effect as they often reproduce the very temporal orders they hope to exceed. To claim “sodomy” and “same-sex acts” as traditional, as a “historical value,” and as part of who we essentially are as Indians is to merely invert the language of historical ontology (if one understands, historical ontology, as Ian Hacking does, as concerned with objects or their effects that do not exist in any recognizable form until they are objects of study) and to engage in a “dynamic nominalism” that fixes even as it tries to shift meaning (1–27). Thus, one set of assumptions pathologizes the ontological connection, while the other affirms it.

On 2 September 2004, after two years of delays and postponements, the Delhi High Court brought up the petition, only to dismiss it summarily. The grounds for the dismissal were clear and unambiguous: There can be no petition, the court's judgment stated, if there are no alleged victims. Any public interest litigation, the court added, must be filed on the behalf of persons. Hypothetical and academic archival inquiries into the potential violation of constitutional rights enabled by a continued enforcement of Section 377 were not sufficient grounds for a repeal of Section 377. Without victims, without literal bodies seeking redress, the petition had no legal standing—it was merely an academic exercise, seeking redress for an imagined community of victims it had, as yet, not managed to produce. Moreover, while the petition may have marshaled interdisciplinary evidence to “naturalize” same-sex behavior, the state argued that they provided no “convincing reports” that homosexuality or other offences were acceptable in Indian society.<sup>11</sup>

The dismissal of this petition understandably came as an enormous blow to the Naz Foundation and members of the Lawyers' Collective,

who are currently in the process of appealing the court's judgment. Collective outrage from various quarters of the Indian intelligentsia has also been on display on multiple fronts, from public protests to signed collaborative statements of support. While such efforts are clearly important and worth sustaining, some gestures of outrage bear particular scrutiny. In his widely circulated statement of support on the need to do away with Section 377 of the Indian Penal Code, Amartya Sen begins by stating that "even though I do not as a general rule, sign joint letters, I would like, in this case to join my voice." He goes on to add that the "criminalization of gay behavior goes not only against fundamental human rights, but it also works against the enhancement of human freedoms in terms of which the progress of human civilization can be judged." Sen then concludes his brief statement by noting that the Civil War in the United States began the same year as the establishment of 377 (1861) and that while the United States had managed to abolish slavery as a result of the war, the Indian state had, as yet, not stepped up to its promise as a modern democracy by refusing to abolish Section 377 (Sen). While I am one of the many individuals who signed and supported the statement, what interests me about Sen's tentative support of the petition is his mobilization of the "gay case" as the limit case for India's entry into modes of civilizational progress. As such, he cannot but support the petition to abolish 377. His pat comparison of the abolition of 377 to the abolition of slavery notwithstanding, what is worth noting is Sen's absorption of the colonial into a standardized paradigm of the modern without any sense of historical irony.

While much has been written about the flawed recourse to legal reform and the perils of the gay rights debate in sites such as India, I want to leave those questions aside for a moment and assume that the conceptual agon of the Spivakian invocation of "we cannot not want rights" necessarily founds our political struggle.<sup>12</sup> What I want to do instead is to speculate on the ideologies of historicity and causality that animate both the petition and the language of its dismissal by the state and to focus, in particular, on the referent of the "colonial record" within such formulations. Such speculations cannot, of course, be attempted without an attentiveness to the larger shifts in historiography that animate the political and intellectual landscape of contemporary India. To make some space-clearing generalizations here, two forms of recuperative historicizing appear to dominate: the first, a largely progressive and expansive enterprise, has rigorously extended the categories that define the historical, and the second, a more conservative project, has contracted the historical form onto itself by returning to categories of static identity and exclusion. The expansion

model (exemplified in the work of the Subaltern Studies Group, as well as feminist and queer historians) recruits the language of a success-in-failure model to accentuate the coming of Indian history into its own, whereby divergent historical temporalities and spatialities exist within a model of a differentiated politics. On the other hand, the contracted model (exemplified in the recent textbook rewritings by the right-wing Hindu Sangh Parivar) celebrates a past that stabilizes homogeneity and externalizes difference, as opposed to staging it as constitutive of Indian history.

The critical challenge here, for me, lies in thinking about such models of historicity and causality within a historiography of sexuality of colonial India that is attentive to the political exigencies and pitfalls of revisionist history, even as it maintains the radical indeterminacy of sex. Some questions to consider here include the following: If revisionist history, to cite Radha Radhakrishnan here, is always in some ways tautological, in “a hermeneutical time-lag, where one returns to take a second look at what already was,” how do we produce records of sexuality such that their repetition is both a return to and a rupture of their founding indeterminacy? How does the crime of sodomy provide us with forms that do not emerge purely out of teleological necessity? What categories remain fixed in a landscape of such historical rewritings? Can the “colonial record” be both the marker and the erasure of possible (radical) histories? Let me turn to one such possible interpretation.<sup>13</sup>

#### THE PAST PRESENT

On 13 August 1946, a criminal appeal was filed in the Allahabad High Court by Mirro, a resident of Agra. The archival materials available on the case place us in *medias res*, with Mirro, the accused, appealing his sentencing to “rigorous imprisonment for seven years” under Section 377 for having “committed unnatural offence upon a boy named Ram Dayal” (*Mirro v. Emperor*) The details of the appeal as provided in the summary judgment are sketchy and follow a tangled temporal and spatial narrative: Ram Dayal, a young Chamar boy, goes to the shop of a man named Sakoor, a blacksmith, where he is accosted by Mirro, who attempts to take him away. A series of strange altercations are described where Mirro is slapped around by Sakoor and yet somehow manages to forcibly whisk Ram Dayal to the house of his brother-in-law, Ajmeri, where the offence is then allegedly committed. Even as the offence is being committed, at peak public-activity hours, between 4:30 and 5 pm, Sakoor runs off to inform the members of Ram Dayal’s family and the larger Chamar community. A motley crew of Ram Dayal’s supporters is gathered (Sia Ram, Ghasi, Girander Singh, Ram Chand) who then proceed to Ajmeri’s house

and ostensibly “caught the accused red-handed” (Mirro v. Emperor) and beat him severely with lathis. The assistant sessions judge who first heard the case in 1945 found Mirro to be guilty of the crime, despite the “unanimous opinion of the assessors” who all found Mirro not guilty.

In his appeal of the sessions judge’s decision, Mirro’s advocate argued that the charge of “unnatural offence” was trumped up by the Chamar community, of which Ram Dayal was a member, to punish Mirro for the “enmity” [*sic*] that existed between the Chamars and the Muslim community. His defense addressed the conflicting and contradictory nature of the evidence submitted, all of which was equally available the first time the case was brought before the court to bolster the appeal. For instance, the medical evidence, the deciding factor of the colonial legal process in such matters, produced no conclusive forensic traces of the crime—no subtended anus in Ram Dayal and inconclusive marks of semen on Mirro’s dhoti. To a large extent, medical jurisprudence became the most reliable truth technology of a colonial legal system ravaged by disputes over witness unreliability, codification, and orders of evidence. As legal medicine crystallized as a discipline, it emerged as a powerful form of colonial knowledge, allowing a distinctly ethnographic understanding of native ontologies to acquire truth value in court.<sup>14</sup> The medical evidence in this case, we are told, did not provide us with a truth narrative and “does leave a gap in the story” (Mirro v. Emperor), a gap that is barely filled by the other evidence provided. Other confusing and absurd details also emerge: Ram Dayal claimed the offence took five minutes, while the eyewitnesses to the account claim the offence took 15 to 20 minutes. Yet we are told that the learned assistant sessions judge at the time disregarded these evidentiary incoherencies and concluded that Mirro must have indeed committed the crime solely on the basis that the “the station officer, Imdad Husain, was a Musalman and it was impossible that he should have brought a false case against an innocent Musalman” (Mirro v. Emperor). When addressing Mirro’s appeal and reviewing the evidence, the appeals judge overturned the earlier judgment and concluded that while he wished no ill will against his predecessor, “there was no warrant for introducing this communal tinge in the case. Sakoor, the principal prosecution witness, is a Musalman. All the assessors who found the accused not guilty, are Hindus” (Mirro v. Emperor). In his final assessment, the judge added that “a careful examination of the entire evidence does leave an impression that the accused is an undesirable person who has made many enemies and the case is an outcome of that enmity” (Mirro v. Emperor).

Several significant historical details emerge in dizzying account of a case filed under Section 377 in the 1940s. Indeed, its appearance a mere year or two before the 1947 brutal partition of India and its complex

narration of communal relations all make it a case worthy of careful exploration. As many historians of colonial India have previously noted, Agra (and the larger region of what is now known as Uttar Pradesh) functioned as a critical testing ground for both the emergence of Indian nationalism as well as that of Indian communalism. The rise of the Indian National Congress, the Muslim League, the Hindu Mahasaba made the region a veritable hotbed of Indian politics, where the differences between Hindus and Muslims became the representational playing field for nationalists and colonial officials alike. Yet as scholars such as Salil Misra have carefully argued, the overdetermined focus on communalism was a cover story needed for eliding unified caste and class mass movements. Others such as Sanjay Joshi, Sandria Freitag, and C. A. Bayly have similarly noted that that Uttar Pradesh's key role in the early stages of self-governance (produced through the famous Morley-Minto enfranchisement reforms and the Government of India Act of 1935) made it impossible to disarticulate mythologies of communalism from structures of electoral politics (see also Brass; Pandey). As the Mirro case demonstrates, communal differentiation, more than communal violence, appears attached to the crime of sodomy. Chamars, while Hindu, were and are a lower-caste dominant majority in the region and not easily folded into the language of Hindu hegemony and Muslim minoritization. In fact, the period between 1930 and 1947 marked the rise of various mass Adi-Dharma movements, one of the earliest organized casteless movements in British India, wherein lower-caste Hindus, such as the Chamar community, came together to found religious communities that openly opposed the dominance of upper-caste Hindus (Rawat). In the Mirro case, then, the scene of sodomy is one of profound exaggeration and estrangement from the popular mythology of communal discord.

Yet, despite such immense historical potential, no references to the Mirro case appear either in the petition against Section 377 or in any of the available critical materials on sodomy. It is a narrative in which sodomy's presence and absence is both questioned and asserted. What happens if we think of the case less as another instantiation of colonial legal bungling than as a challenging (and potentially subversive) colonial record? Located in its topography, we find figurations of scattered violence (e.g., dangerous slapstick communal humor, mob mentality) that make the crime of sodomy more a crime of narrative corroboration than a crime of action. For sodomy to emerge, it must be corroborated, its form sedimented in a history of recall that, in this case, neither the witnesses nor the evidence can sustain. We must know and not know the colonial record, not once, but twice. Such a reading radicalizes our understanding

of the historical turn in recording the “cognitive failure” at the heart of both our past and present readerly attempts, making the distinction between success and failure indeterminate. The most successful historical record of sexuality becomes, as it were, a successful record of cognitive failure (see Spivak, “Subaltern”).

#### CODA

To contemplate the kinds of comparative imaginaries I have been outlining here means acknowledging that the field of sexuality studies, like other field formations, too, has a sedimented politics of time. And that, for better or for worse, that politics often reproduces subjects, critical genealogies, and methodological habits that duplicate the very historiographies we seek to exceed. The shift I have in mind here has attempted to push against the stabilizing of time’s corpus, toward a historiography of sexuality that settles into uncertainty as the very possibility of return.

#### POSTSCRIPT

Even as this collection goes into press, much has changed in the political landscape of lesbian, gay, bisexual, and transgender (LGBT) rights in India. In the two years since I wrote this chapter, the Naz foundation-led campaign against Section 377 has made significant headway. Most recently, on 2 July 2009, the Delhi High Court finally passed a decision repealing Section 377, even as it sternly added that such a repeal was in no way an indication of the court’s “tolerance” of homosexuality in India (see Repeal). While there has clearly been much (understandable) euphoria over the court’s decriminalization of consensual same-sex behavior, there has also been some sustained skepticism about the continued focus on Section 377 as a sign of LGBT liberation. To link the repeal of Section 377 to the idea of a stable community of (gay) subjects, as scholars such as Jason Fernandes have argued, prioritizes the interests of urban, English-speaking, middle-class leaders at the expense, or rather elision, of the very subalternity they claim to represent. That is, one of the primary arguments against Section 377 has been the fact that it is arbitrarily mobilized by corrupt policemen to intimidate and extort monies from sex workers soliciting MSM clients. The reading down of the law may thus now ostensibly allow for same-sex acts within private spaces, yet it ironically offers no protection for same-sex practices outside the normative parameters of home and domesticity. Solicitation continues to be outside the law, making it unlikely that policemen will cease their harassment and brutalization of sex workers (Fernandes). In searching for a moment

through which to figure a more differentiated relationship to sexuality, we might thus do well to turn to the cautionary tale of Section 377 to meditate on what (post)colonial legal activists must often absent to produce a more timely “gay” corpus.

#### NOTES

1. I am of course not the first one to make this claim. Other scholars, such as Ara Wilson, have argued for a “queer regionalism” that more locally translates the relationship between Asian studies and queer studies. See also Boellstorff, Murray, and Robinson’s introduction. My engagement, however, lies more with the broader historiographical questions undergirding such possible dialogues.
2. I borrow the expression “politics of time” from Prathama Bannerjee’s meditations on history writing and the time(s) of the primitive in a post-colonial world.
3. For example, see Grewal, Gupta, and Ong’s introduction to a special issue on the subject. The authors argue for a “transnational mode of analysis” to complicate current area studies, comparative studies, and disciplinary understandings of locality.
4. Coopan provides an excellent analysis of the “split personality” of current globalization discourses.
5. A strident and, by now, well-known critique of the similarity-difference model of comparison in cross-cultural explorations comes from the anthropologist Johannes Fabian: “There would be no *raison d’être* for the comparative method if it was not the classification of entities or traits which first have to be separate and distinct before their similarities can be used to establish taxonomies and developmental sequences” (26–27). For a sustained discussion of the entanglements of normative categories and comparative analysis, see Cheah.
6. Stoler’s project echoes and complicates some of the claims made by Benedict Anderson’s canonical text *The Spectre of Comparisons*. Anderson challenges the falseness of regional assemblages and argues for a more nuanced comparative framework that understands (and is indeed haunted by) pre- and postcolonial arrangements of geopolitics and disciplinary formations. One must compare, he argues, from “simultaneously close up and from afar” (2).
7. Chow’s focus on the epistemic violence of such Eurocentric time-space alignments echoes McClintock’s earlier formulations on the intersections of empire and sexuality. For McClintock, the colonial site (specific but not restricted to questions of sexuality) remains fixed within the languages of what she terms as “anachronistic space” and “panoptical time” (1–35).
8. Worth noting here is that Spivak begins her theorizations on “teleopoiesis” through an invocation of what she calls the “originary queerness” of the subaltern trace. While Spivak steps back from extending her usage of the

- term “queer” beyond signaling its potentiality as a reading practice, her “queer” turn, as it were, certainly bears further exploration.
9. I thank Sameera Khan and members of the Mumbai-based Lawyer’s Collective for early access to these materials. See also Fernandez.
  10. For a more extensive reading of this shift, see Katyal.
  11. See the Counter Affidavit in *Naz Foundation v. Govnt. of Delhi*.
  12. For specific critiques of legal scholarship in colonial and postcolonial South Asia, see Parker; Kolsky; see also Roberston.
  13. I have elaborated more substantially on the project of archival hermeneutics and histories of sexuality elsewhere (see Arondekar).
  14. A notable example of the tenets of medical jurisprudence is Chevers, *Manual*. See also Chevers, *Commentary*.

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