



THE COLONIAL STATE, LAW AND PROSTITUTION

Sangeeta Besoya

Abstract

The social stigma attached to prostitutes has a long history, state-backed violence against Indian prostitutes is tied to the increasing involvement of the police, public health officials, and military administrators in controlling prostitution in the nineteenth century and early twentieth century. The very goals that drove state regulation- preserving public health and public order- led to the criminalization of women who did not work in state-sanctioned forms of commercial sex. By the early nineteenth century, literature made full use of this simultaneity of exotic temptation and horrifying debasement. It was in the nineteenth century, though, that prostitution came to be most intensely scrutinized and debased, pathologies as a significant and growing problem of social and scientific concern. Alongside the literary allusions to chastity, slavery, and desire, an excess of sociological and medical literature delineated the prostitute. Her (prostitutes) medical history was explored for signs of unusual physiology, her life history for clues to her motives, and her habits for patterns suggestive of danger. The changing landscape of both colonial and urban expansion alongside larger and more mobile populations increased the scope both of the sex trade and of investigations into it. The growth of cities, their physical layout, and the changing structure of entertainment in them offered new avenues for solicitation as well as greater obscurity for hawker and client alike.

Keywords: Abolition, Criminalization, Morality, Rationality, Suppression

Introduction

The nineteenth century, women in India increasingly became direct objects of colonial law. Measures such as prohibition of widow immolation in 1829, permitting widow remarriage in 1856, prohibiting woman infanticide in 1870, and increasing the Age of consent for consummation of girl to twelve in 1892 constitute a commonly cited occasions of legal

reform. Interestingly, these reformed practices were often related to widely circulating conceptions about female sexuality: early marriage, for instance, was increasingly seen to fuel sexual precocity among girls, and remarriage for widows was believed to channel their potentially untrammelled sexuality in appropriate directions. Flavia Agnes have highlighted in her text *Women and Law in India* that legislations failed to bring equality despite of the lip service of the policymakers .The process of legal change had limited boundaries thus it never meant to bring the equality.A number of scholars studying the era have suggested that laws configured a new sexual order in the late colonial period.¹ The criminalization of prostitutes may be seen as one dimension of this sexual order. This paper situates under colonial state and laws on prostitution within the context of such wider changes that occurred in colonial times.

The state intervention in prostitution appears to affect not only specific bodies but entire politics. Laws aimed at restricting sex trafficking and medically regulating prostitutes have engaged those across a political spectrum ranging from religious missionaries, nationalist social reformers, and military officials to feminists and labour organizers. Vibrant movements to decriminalize and unionize sex workers have used the issue as a lens to explore the very nature of work and citizenship. There is no doubt that prostitution attracts an unusually interested political gaze. This study of Bombay, adopting in its framework the potential for disjuncture between the legal discourses about prostitution, law enforcement practices, and forms of prostitution.

Prostitutes in Bombay have largely remained victims of state violence whether laws swung between phases of regulation, acceptance, or abolition of prostitution. In the nineteenth century, the prostitute became “the object of repeated regime of inspection and regulation in the successive idioms of nineteenth-century morality and science,” and these

¹ Uma Chakravarti, *Rewriting History: The Life and Times of Pandita Ramabai*. New Delhi: Kali for Women, 1998; Janaki Nair, *Women and Law in Colonial India: A Social History*. New Delhi: Kali for Women, 1996a,



idioms not infrequently, as we have seen, overlapped².

For the British colonial state, prostitution was a problem but it was also both a necessity and a convenient work on which to eradicate the greater evils or dangers of uncivilized colonial peoples. Prostitution was challenging in part because of the close associations, typically drawn in the nineteenth century, between the sex trade and sexually transmissible diseases. Prostitution provided a picture of what prowled behind the necessary facade of manners and rules, made manifest in those regions of the globe yet to feel the impact of civilization. Like the putrefying civilizations or “primitive” social structures to which she was compared, the prostitute was a throwback, a reminder of why imperial expansion was a “civilizing mission.” Modernity and rationality implied containing and channelling sexual characters in ways that colonists claimed were beyond the reach of less advanced peoples. The east's problem was its failure to move beyond the primitivism of flowing nature, to contain sex within boundaries that made it productive and purposeful rather than merely carnal and enjoyable.

To be natural was to be in a state of barbarity, to be pre-rational. Shame was allegedly absent in colonial cultures, normalizing prostitution in “degraded” societies. This trope was key to the ways in which British imperial opinion commented not only on the sex trade in colonial domes but also on colonial societies more generally. Prostitution became a symbol of considerable significance in the censure of societies regarded as immoral. This mind-set allowed colonial practices to differ evidently from domestic. Colonial ordinances implemented policies that would have been unallowable in the domestic context. In many parts of the empire, for example, civil and military authorities classified the brothel trade into a first, second, and third class. Justified through the sentiment that colonial societies were less rigorous in matters sexual, such thinking provided colonial authorities an appropriate and effective means to employ a variety of regulatory

systems aimed at controlling women prostitutes. The domestic Contagious Diseases Acts of the 1860s stopped short of legalizing the brothel, fully aware that bourgeois Victorian susceptibilities would not allow such a policy in Britain. In the colonies, however, the legalization and management of the brothel lay at the heart of the regulation schemes of the later nineteenth century.

In the mid-nineteenth century that prostitutes became the *target* of retaliatory laws that prohibited petitioning. Many scholars observe that women in the performing arts, such as courtesans and temple dancers, suffered an erosion of status in this period. The exclusivity of courtesans, for instance, declined in the latter part of the nineteenth century as their sources of patronage dwindled with the losses suffered by royalty and court culture in the colonial time. Colonial administrators decisively characterized prostitution as a long-standing and constant Indian custom, even though the forms and scale of the sex trade endured a deep transformation in the colonial period. There was a political logic to administrators' position: the preservation of British prestige authorised clear racial and civilizational boundaries between Indian and English people, and Indian prostitution presented a powerful symbol of Indian moral degradation. At the same time, Indian prostitutes in military camps and ports provided sexual recreation for British soldiers and sailors, thus fulfilling practical ends, apart from their ideological uses.

The British generally chose to emphasize what they saw as indigenous examples of prostitution rather than to recognize the effects of their own rule on local society. In this context the Contagious Disease (CD) ordinance constitute the most formal articulation of a significant policy shift throughout the British Colonial world in the nineteenth and early twentieth centuries. Vern and Bonnie Bullough have argued that regulation systems routinely serve “not to protect the prostitute but her customers”³. In the imperial arena, regulation worked also to protect notions of racial hierarchy and the very power structures necessary to colonialism. It was white male sexual desire, which was thought to be heightened by prolonged exposure to the tropics or to

² Jane Caplan, “Educating the Eye’: The Tattooed Prostitute,” in *Sexology in Culture Labelling Bodies and Desire*, ed. Lucy Bland and Laura Doan (Chicago: University of Chicago Press, 1998), pp. 101.

³ Vern L and Bonnie Bullough, *Women and Prostitution: A Social History* (Buffalo, NY: Prometheus Books, 1987) pp. 293.



sexually “looser” population that concerned the state. While prostitution between local stood as an index of a society’s lack of morals that between the white man and the local woman, subject to intense scrutiny was deemed inevitable if regrettable. The elaborate schemes of regulations adopted in most of the empire focused virtually exclusively on protecting white man from the consequences of venereal disease.

Contrary to its presumed civilizing mission, then, the colonial government institutionalized the very practices that it was called on to decry by Victorian ideologies. And rather than expressing a Victorian sexual restrictiveness, colonial prostitution laws expressed the pornographic imagination of the state. Some of the best writing on institutional forces affecting prostitution in colonial India focuses on the Contagious Diseases Acts of the 1860s–1880s. Ballhatchet’s engaging account of the conflict between colonial military administrators and British reformists is path-breaking in this regard⁴. Banerjee’s “history from below” of prostitutes in Calcutta also covers the consequences of the Contagious Diseases Acts, recovering the voices of prostitutes by analysing songs, letters, and plays of the period. However, neither book extends beyond the Contagious Diseases Acts era, nor Banerjee focuses exclusively on Bengal⁵. D’Cunha’s study of Indian laws on prostitution also focuses only on the Contagious Diseases Acts when discussing the colonial period⁶. The Contagious Diseases Acts of the 1870s and 1880s do provide ample archival resources for study; in fact my analysis begins with that era in Bombay. However, the Contagious Diseases Acts cannot be seen as fully representative of a colonial approach to prostitution, because they were one specific historical moment in a longer process. These laws alone cannot explain

the persistent criminalization of the prostitute in India.

The Colonial State In India And Prostitution

The history of Bombay’s sex trade is closely tied to the city’s rise as a port, as indeed is much of Bombay’s history. Bombay as a port comes from records of the Silhara dynasty (810–1260 CE), but its rise as such occurred under British colonial rule after 1668, when the island became a part of Catherine of Braganza’s dowry to Charles II in a marriage deal between Portugal and Britain. At the time it became the regional headquarters of the East India Company in 1687, British colonial records described it as a “marshy outpost”⁷.

With Bombay’s rise to eminent as a commercial seaport, the city also became a key destination in a global sex trade circuit. After the opening of the Suez Canal specifically in 1869, women from as far away as Poland came to work in its brothels. The city had a significant client base of European sailors as well as resident soldiers (it was the headquarters of troops in Western India) and British administrators (it was the seat of provincial government). By the turn of the twentieth century, Bombay hosted the largest number of European prostitutes of all Indian cities⁸.

The scale of prostitution in Bombay, and the city’s increasing national prominence in the late nineteenth century, meant that the laws passed on prostitution in this setting also set trends that influenced other parts of the subcontinent. For instance, the city passed one of the earliest anti soliciting measures in 1902 and was the first to ban

⁴Kenneth Ballhatchet, *Race, Sex, and Class under the Raj: Imperial Attitudes and Policies and Their Critics, 1793–1905*. New York: St. Martin’s Press, 1980.

⁵Sumanta Banerjee, *Under the Raj: Prostitution in Colonial Bengal*. New York: Monthly Review Press, 2000.

⁶Jean D’ Cunha, *The Legalization of Prostitution: A Sociological Inquiry into the Laws relating to Prostitution in India and the West*. Bangalore: Wordwatch, 1991.

⁷Christine Dobbin, *Urban Leadership in Western India: Politics and Communities in Bombay City, 1840–1885*, 1972, London: Oxford University Press, pp. 01.

⁸Bombay was reported to have the largest number of European prostitutes in the country in 1912: 126, in comparison with the reported 50 in Calcutta, 2 in Madras, and 6 in Karachi (HD 1913, 221) cited in Ashwini Tambe, *Codes of Misconduct: Regulating Prostitution in late colonial Bombay*, Zubaan Publication imprint for Woman, New Delhi, 2009, pp. XIX.



brothels in the 1930s, leading other cities to follow⁹. Bombay was also the setting for the rise of a significant pan-Indian nationalist middle class, who directed national-level legislation on subjects related to prostitution. Hence an analysis of Bombay's sex trade states us a story both about the rise of the city as well as the changing legal streams at a national level. In accounts of prostitution in ancient and medieval India, prostitutes appear to have enjoyed a good standing before the state and even state support. It is only in the mid-nineteenth century that prostitutes became the target of disciplinary laws under British colonial administrators, and the term "common prostitute" was established in Indian legal texts.

An appropriate starting point for theorizing prostitution's legal status is the longstanding and aggravated various academic engagement with this topic. In the radical feminist view, prostitution is an emblem of female sexual servility and male coercion. As an institution, it denotes a group of women set aside for attending exclusively to men's sexual needs. In the socialist feminist view, prostitution is one among several pink-collar occupations that economically needy women rely on to survive. Prostitution can nonetheless represent a particularly intense form of alienation because, as Alison Jaggar¹⁰ notes, rephrasing Marx, it takes away from women that which is most their own—their sexual selves. Liberal feminists do not examine in the same depth the nature of sex work but defend the right of sex workers to practice their profession without harassment¹¹. In the poststructuralist view, sex work is a heterogeneous field of meaning

because sex, and its relationship to the self, is itself indeterminate and multivalent. Wendy Chapkis and others argue that the denigration of sex work relies on viewing sexual activity as the expression of an authentic self. If sexual activity is delinked from selfhood, however, and seen in performative terms, then sex work can potentially be understood as a source of agency—depending on the control that the sex worker exerts over the transaction.

In the same context a key mechanism of control instituted in the colonial period was a structure of state-sponsored legislation. Conservative historians present colonial rule as having introduced a rational and stable structure of law-making normally referred to as a "rule of law". Nevertheless, the legal paramount of the colonial state was backed by significant physical force. Changes in the fortunes of political parties in England had mixed effects on colonial policies. Francis G. Hutchins credibly argues that as the power of the Liberal Party grew in Britain, India became a refuge for Conservative policymakers. The era of the Contagious Diseases Acts is a good example: when the Liberal Party was in power (1868–74, 1880–86, 1892–94), conservative administrators in India fought to preserve the policy of regulated prostitution¹². At the same time, the prevalent social reform introduced in Britain by the Liberal Party in the first decade of the twentieth century also stimulated Indian legislators to pursue reform of colonial policies on prostitution. However, on the whole, the attitude of the colonial state remained impervious, in that it was consistently more coercive than the metropolitan state.

They stress that the so-called rule of law that the colonial state introduced was established without the consent of the ruled, interpreting it a different thing from the bourgeois liberal state in England. While Subaltern study's authors are right in pointing out that the colonial state had no legitimacy—with legitimacy understood specifically as fulfilment of the representative function of the state—practices of collaboration between intermediary classes and colonial administrators that strengthened British rule

⁹The secretary to the Government of Bombay was the central authority implementing the International Conventions on Trafficking of 1904 and 1921 in India (HD 1932, 2), cited in Ashwini Tambe, *Codes of Misconduct: Regulating Prostitution in late colonial Bombay*, Zubaan Publication imprint for Woman, New Delhi, 2009, pp. XX.

¹⁰Allison Jaggar, "Prostitution." In *The Philosophy of Sex: Contemporary Readings*, edited by Alan Soble, 348–68. Totowa, N.J.: Rowman and Allan held, 1985.

¹¹A typical representative of the liberal approach is the U.S. group COYOTE (Call Off Your Old Tired Ethics). See Wendy Chapkis, 1997. *Live Sex Acts: Women Performing Erotic Labor*. New York: Routledge.

¹²Francis G Hutchins, *The Illusion of Permanence: British Imperialism in India*, Princeton, N.J.: Princeton University Press, 1967.



did exist. Such collaboration has been the subject of Cambridge School histories¹³.

A portrayal of colonial law on which historians congregate, however, is that the law achieved the expression of imperial interests in timeless, universal terms. Disputes concerning law were expressed in terms of general statements of principle rather than particular statements of private interest. This made the law an especially powerful form of discourse and an important instrument of domination. Durba Ghosh talks about how on the basis of multi ethnic and inter racial foundations racial hierarchies were developed which addresses the ways in which native women were drawn in maintaining and reproducing colonial regimes that were crucial in maintaining race, gender and class hierarchies. Lata Mani shows that sexual discipline and moral superiority were central to maintaining empire as colonial bureaucracies. In the process of 'making empire respectable' colonial officials substantiated their legitimacy to rule by phasing out inter racial unions. Much feminist attention has been focused on the slew of laws passed in the nineteenth and early twentieth centuries that reformed women's status. Scholars such as Uma Chakravarti¹⁴ question colonial historians' hypothesis that the state served a new ordering and rationalizing function.

What was new in the colonial period, according to Uma Chakravarti, was the emergence of a choice of laws used to govern women. Women became subject to a dual authority structure: their everyday lives continued to be subject to the social power of the community, while property-related disputes

¹³This label is applied to a set of historians focusing primarily on eighteenth century Indian states who stress continuities between the precolonial and colonial states and adopt an analytical, generalization-seeking approach to Indian history. The title emerged soon after the publication of a set of essays in *Modern Asian Studies* 7, no. 3 (1973). Some works commonly identified with this school are Bayly 1983, Bose and Jalal 1998, and Chandavarkar 1994, 1998, cited in Ashwini Tambe, *Codes of Misconduct: Regulating Prostitution in late colonial Bombay*, Zubaan Publication imprint for Woman, New Delhi, 2009, pp. 04.

¹⁴ Uma Chakravarti, *Rewriting History: The Life and Times of Pandita Ramabai*. New Delhi: Kali for Women, 1998.

made them subjects of the state. A meshing structure came into place, with both upholding male-dominant family forms. Janaki Nair's¹⁵ analysis of law in the colonial period also supports the claim that a dual structure came into place. The colonial state presented itself as a representative of an advanced civilization that would introduce the upliftment of Indian women from centuries of suffering. The "lax morals" of Indian society became a key of colonial discourse, and the tropical climate was said to contrive with the so-called distinctive corruptibility of Indians to produce widespread immorality. Early marriage, promiscuity among widows, and prostitution were seen as examples of these traits¹⁶.

Colonial prostitution laws played a significant role in constructing such a dichotomous order. The colonial state introduced the term "common prostitute" to Indian legal discourse, in that way upholding the rise of a devalued, proletarian form of prostitution. By legally tolerating brothels, it also institutionalized the identity of the brothel worker. The colonial state's laws on seduction, temptation, and elopement also contributed to the dichotomous construction of respectable bourgeois womanhood and the prostitute. The specific measures that the colonial state took to control prostitution were shaped by a racialized imaginary. As observed in several other contexts, the latter half of the nineteenth century gave rise to a specifically scientific racism among European colonizers, leading states to control interracial sexual unions and prevent miscegenation¹⁷. Such policies were a departure

¹⁵Janaki Nair, *Women and Law in Colonial India: A Social History*. New Delhi: Kali for Women, 1996a.

¹⁶As examples, Uma Chakravarti, *Rewriting History: The Life and Times of Pandita Ramabai*. New Delhi: Kali for Women, 1998, points to tracts produced by practitioners of medicine on immorality within high-caste Hindu homes, which listed abortions, liaisons between widows and other householders, and murder of females in the name of family honor.

¹⁷ Frederick Cooper, and Ann Laura Stoler, eds., *Tensions of Empire: Colonial Cultures in a Bourgeois World*. Berkeley: University of California Press, 1997; Ann Laura Stoler, "Making Empire Respectable: The Politics of Race and Sexual Morality in Twentieth-Century Colonial Cultures." In *Dangerous Liaisons: Gender, Nation,*



from the early stages of colonialism, when concubinage and even intermarriage with natives were permitted, as they saved colonizer men the time and financial responsibilities of European style family life. Studies of prostitution in military bases sanction that alarm over interracial mixing between soldiers and foreign women encouraged regulated prostitution. For the colonial state in India, the most unmanageable segment of European males was the soldiers who, after the 1860s, served for short periods of seven years¹⁸. Regulated sex between soldiers and prostitutes came to be seen as the most effective way in which the colonial administrators could prevent permanent unions developing with native women.

'Sanitizing' Bombay : Regulating Brothels And Prostitutes

The first Police Rule, Ordinance, and Regulation of 1812, a set of rules that laid the basis for police administration of the Bombay city for nearly half a century, listed brothels as one of the several sources of disruption to neighbourhood peace¹⁹. Prostitution was presented as a trade that was instrumental to the commission of crimes; it was not, however, considered a crime on its own. Along with public bars, opium houses, and gambling houses, brothels were to be issued licenses that could be revoked if owners did not maintain order on their premises. Street fights and drunkenness were actually noted as common problems in several historical accounts of early colonial Bombay, and they were attributed to the large number of liquor shops²⁰. In subsequent

and Postcolonial Perspectives, edited by A. McClintock, A. Mufti, and E. Shohat, 344–73. Minneapolis: University of Minnesota Press, 1997.

¹⁸David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India*. Berkeley: University of California Press, 1993.

¹⁹The Police Rule, Ordinance, and Regulation of 1812 specified that a small fee had to be taken from each registered house of prostitution in order to defray the expense of watching these “dangerous trades, houses or modes of life” cited in S. R. Kapse, *Police Administration in Bombay, 1600–1865*. Bombay: Himalaya, 1987, pp. 203.

²⁰S. R. Kapse, *Police Administration in Bombay, 1600–1865*. Bombay: Himalaya, 1987; PhirozeMalabari, *Bombay in the Making: Being*

police regulations of 1827 and 1860, brothels or “houses of ill-fame” were specified in the same manner as in 1812, as an annoyance to public peace. Brothel keeping was not an offense, then, as long as it was orderly. Desirably or “carrying away” women and girls *into* prostitution became a crime with the Police Regulation of 1827. However, what was criminalized was not so much the activity of prostitution as the dispossession of the husband or father of their wives or daughters²¹.

Prostitutes were not seen as criminals by law, the police nonetheless viewed them with suspicion. For instance, the secretary of the Government of India advised the Government of Bombay in 1838 that constables should be allowed to apprehend “every common prostitute . . . behaving in a notorious or indecent [manner].”²² This 1838 note was the first recorded use of the term “common prostitute” in the Bombay context. In Bombay, nonetheless, the prostitute did not figure as a criminal in the language of the law, except as a party to recruiting others into prostitution. The 1860 Indian Penal Code formally cherished as crimes a range of acts that involved buying, selling, or kidnapping of children for the purposes of prostitution. Although the code had been under formulation for over twenty years since

Mainly a History of the Origin and Growth of the Judicial Institutions in the Western Presidency, 1661–1726. London: T. Fisher Unwin, 1910; Dulcinea Correa Rodriguez, *Bombay Fort in the Eighteenth Century*. Bombay: Himalaya Publishing, 1994.

²¹Regulation of 1827, title 14, article 3 reads: “The Court of Petty Sessions shall have power of summary convictions in all cases of persons enticing or conveying away married females or unmarried females under the age of thirteen, out of the protection, and against the will of the Husband or Father . . . for the purpose of prostitution in any way . . . such offenders to be punishable by fine not exceeding five hundred rupees . . . or imprisonment . . . for a time not exceeding six months.” Quoted in S. R. Kapse, *Police Administration in Bombay, 1600–1865*. Bombay: Himalaya, 1987, pp. 216.

²²This quote is found in a letter from the secretary of Government of India to Government of Bombay, Judicial Department 1838, vol. 68/512, 44, cited in S. R. Kapse, *Police Administration in Bombay, 1600–1865*. Bombay: Himalaya, 1987, pp. 2.



Thomas Macaulay first drew up a draft in 1837, it was only in 1860 that prostituting minors was added as a crime. The Penal Code of 1860 after introduced the key sections 372 and 373, aimed at protecting girls and women from being sold or bought into prostitution, which remain in place today.

Even as the law grew more refined in defining a host of activities associated with procuring women for prostitution, in military cantonments the state concomitantly *participated* in recruiting women for brothels. The story of regulated prostitution in military camps, or cantonments, is a familiar one to feminist eyes; in numerous contexts, military occupations have fostered the sexual instrumentalisation of local women.²³ The case of British India merits attention because of its scale. The British Army was stationed in over fifty cantonments across India, which made it one of the largest standing military presences in the colonial world.²⁴

After the Revolt of 1857, a majority of the roughly 60,000 stationed soldiers were single, since their salaries were often insufficient to support children and spouses.²⁵ Soldiers were confined mostly to barracks, where the canteen and bazaar were their main avenues of entertainment. It is within these bazaar areas that regimental brothels were established. Regimental brothels were reserved for soldiers alone, managed by mistresses or *dhais* appointed by cantonment authorities to ensure that women were disease-free.²⁶ Apart from staving off soldiers' boredom, such brothels also strengthened the upper-class persuasion that

soldiers, drawn from the ranks of the poor, had uncontrollable sexual urges and were incapable of curbing their animal passions. "Mercenary love," as prostitution was termed, was preferable to marriage with native women. It was also preferable to homosexual relations between soldiers, which were viewed as an immorality, and to masturbation, which was believed to lead to physical and mental disorders²⁷.

The only hindrance to this rooted system of sexual restitution was the rising incidence of venereal disease. Because more British soldiers in India died from diseases than from combat, administrators were attuned to this problem. Between 1815 and 1855 alone, the death of soldiers from disease in India cost the British government ten million pounds.²⁸ Venereal disease rates for British soldiers in India were also high compared to other parts of the empire. In keeping with precepts of colonial medicine that ascribed disease to the Indian climate, sanitation, and mores, Indian women were seen as a part of a disease-bearing environment²⁹. The first attempt to deal with venereal disease therefore

²³Cynthia Enloe, *Bananas, Beaches, and Bases: Making Feminist Sense of International Politics*. Berkeley: University of California Press, 1989.

²⁴David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India*. Berkeley: University of California Press, 1993.

²⁵ *Ibid*, pp. 84.

²⁶E. F. Chapman, Quartermaster General in India, wrote in a circular memorandum that "the employment of Dhais, and insistence upon the performance of the acknowledged duties, is of great importance" (June 17, 1886), printed in Kate Andrews, and Elizabeth Bushnell. *The Queen's Daughters in India*. London: Mogar and Scott, 1898, pp. 3-4.

²⁷These various justifications are discussed by Ballhatchet in *Race, Sex, and Class under the Raj: Imperial Attitudes and Policies and Their Critics, 1793-1905*. New York: St. Martin's Press, 1980. The widespread belief that masturbation was harmful to the body was backed by official medicine, as seen in the surgeon general's statement that "(masturbation) as is well-known, leads to disorders of both body and mind" (Government of Bombay 1886).

²⁸Upper-class army officials cast soldiers as mechanical objects in need of maintenance and worthy of state spending. One report on the health of troops warned that "the British soldier, as he lands in India, is a very costly article, and I think it is only wise economy to leave no means untried for the preservation of his health and efficiency" (RHBBC 1877, pp. 39). Also see David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India*. Berkeley: University of California Press, 1993, pp. 64-65.

²⁹ *Ibid*, pp. 23, 28-43; terms this the "environmentalist" paradigm of medicine. See for instance, the words of the surgeon general: "There is an additional gravity attaching to disorders when they occur in the Eastern Tropics."



came in the form of confining diseased prostitutes to buildings called “lock hospitals” for extended periods of time. The reported incidence of venereal disease did not respond to this measure introduced in the 1820s and in fact grew higher toward the middle of the century. As it became clear that the lock hospital system was not an effective solution, new rules emerged in the 1860s. The Cantonment Acts of 1864 instituted compulsory medical examinations for all practicing prostitutes in cantonments, apart from confining only those who were diseased. Medical authorities had to carry out regular check-ups on prostitutes, and police had to enforce retaliatory measures if prostitutes refused.³⁰

Interestingly, legislators anticipated no resistance to such measures: they assumed that poorer Indian women would not object to medical examination because they were free from any embarrassment regarding their bodies. Legislators even held that a “special awareness about corporeal examination,” that quality idealized in Englishwomen, did “not exist in Indian women”.³¹ Most importantly, officials held that prostitution was “a profession recognized in Hindu law books” and that “courtesans’ regulation causes no offense to native receptivity”³². Because prostitutes appeared to play an organic role in Indian society, it was assumed that they would willingly cooperate with the colonial state.

A Contagious Diseases Act was first enacted in Bombay in 1870, following the passage of the Indian Contagious Diseases Act of 1868 in other parts of India and the British Empire such as Hong Kong³³.¹⁷ It was suspended after a year and then

reintroduced in 1880 and stayed in effect until 1888. The Act aimed to control venereal disease through enforcing medical checks on prostitutes, building on measures laid down in Cantonment Acts and applying them to cities. This kind of colonial prostitution, and understandings of it, were integral to imperial as well as racial and sexual politics. Such understanding always required energetic affirmation of racial and other differences as fundamental and defining. Colonial populations, after all, were heterogeneous bodies define easy categorization. But their differing demographic profiles interconnected with the handling of sexuality, affecting how sexual behaviour were defined and understood. To maintain the necessary ruling gap between colonizers and colonized, differences among colonized peoples were frequently minimized leading to palpable misunderstanding local practices customs and values. On the one hand, colonial laws insisted on delineating difference in order to separate verities of regulation appropriate to individual colonies. On the other hand colonialist yoked together as immoral a host of distinct culture and societies merely because they were regarded too relaxed about sex commerce. One of the veteran Indian system, for example, claimed that only “perfect registration and compulsory periodical examination” would ensure the lock hospital’s success. “But” he knew, “such a perfect registration is impossible in India without registering every women and every man in the country, which no public opinion would ever allow.”³⁴ Compressed in such equations were material differences in the organizations of sex in the colonies as well as satisfactory definitions of prostitution. Colonial societies were morally wanting, a common thread of concupiscence of their defining features.³⁵

³⁰The Cantonment Act was applied in 1867 in Bombay with some alterations. The rules were less harsh than those followed elsewhere: the Bombay government published a notification that although the act would be operated beyond cantonment limits, penalties could not be imposed for breaches of rules in these areas (HD 1887). Right from the inception of the regulation, it appears that the Bombay government followed a lenient course in applying the central government’s measures.

³¹Parliamentary Papers 1888a, pp. 234

³² Ibid.

³³Philippa Levine, *Prostitution, Race, and Politics: Policing Venereal Disease in the British Empire*. New York: Routledge, 2003, on the sequence of its

application in other colonies such as Hong Kong, Singapore, and Queensland.

³⁴ C.B. Mayne, “*How Far Past Legislation Has Proved Effecting and Securing the Health of the Troops in India, With Suggestions as to Future Legislation on this Important Subject* (London: Horace Marshall, 1987), pp.12.

³⁵Clive Moore, “A Precious Few: Melanesian and Asian Women in Northern Australia,” in *Gender Relations in Australia: Domination and Negotiation*, ed. Kay Summers and Raymond Evans (Sydney: Harcourt Brace Jovanovich, 1992), pp. 61 also see D.C.S. Sissons, “*Karayuki-San: Japanese*



Scarcely a memoir written by a male western traveller does not include a description of the local red light district and its populace. Even where the tone is that of the experience worldly wise narrator who does not deny his own indulgence, his remains nonetheless the voice of the modern, observing the chaos and fleshliness of the absurd and the backward. The idea of the east as place of a passion and lust was the perfect binary thwart for the west's self-representation as cool and modern and rational. Since accepted forms of prostitution could hardly be dismantled in a short space of time, they argued, and since outlets for colonial male desire were necessary, local immorality was a convenience that could be scorned even while it was sampled. The idea of the empire as web of lust and sexual intrigue and temptation rested on an idea of sexuality as a pre-modern phenomenon that modernity and rationality had learned to contain to network. The east's problem was its failure to move beyond the primitivism of unchanged nature, to contain sex within boundaries that made it productive and purposeful rather than merely sensual and pleasurable. To be natural was to be in a state of savagery to be pre-rational. And yet even this depiction constantly collapsed for at the same time as colonised peoples were defined by their sexuality, they were seen simultaneously as prim. The difference that local administrators and colonial office staffs found in the practice of prostitution in the various colonies. Often had more to do with prejudices about local customs than with an attention to the effects of colonialism on the local populace.

Famine and poverty were constantly noted as major contributors to the problem and if doctors fail to link these economic issues colonialism's grasps, they nonetheless endlessly witnessed its results. In spare years, when famine devastated rural peoples, medical officers reported that "the pangs of hunger" drove "women's previously chaste" to prostitution and forced rural prostitutes "into the larger towns" seeking more money-spinning custom.³⁶ In Puna, noted the medical officer, "scarcity of food and consequent distress" drove "large number of

starving women....to practise unlicensed prostitution³⁷." The press of desperate poverty, off course, forced prices down, and doctors everywhere were convinced that bad years for colonial peoples were intimately linked to arise in military Venereal Disease.

The pejorative of colonial sites as moral sinks was crucial to the overall picture of their inferiority. But the vocabulary of modern rationality was never quite enough. The idea of prostitution as singularly female was so deep-seated it barely required discussion³⁸. Drafting rules for a new Indian Cantonment Act in 1890, legal writers declared, true to British law, that masculine included the feminine, "unless there is something offensive in the subject or context³⁹." Since the principle reason for revamping the Act was the late 1880's quarrel over regulating prostitution. The rider had considerable resonance. In the context of identifying the prostitute as an exclusively female person, the idea of an overarching masculinity would be found to be offensive.

The prostitute terrifyingly represented the idea of woman in her natural state, untamed and unchanged from modesty and pro-priority. Prostitution disrupted dominant visions of female purity and submission. Powerful as this reading of womanhood was, there was a fear that woman might break out and prove something other than meek. Prostitution provided a picture of what lurked behind the necessary façade of manners and rules, made manifest in those reason of the globe yet to feel the impact of civilization. Like the crumbling civilizations or "primitive" social structures to which he was compared, the prostitute was a throwback, a reminder of the crumbliness and of the necessity for

Prostitutes in Australia, 1887-1916," Part I: *Historical Studies* 17 (1977), pp. 323-341.

³⁶*Annual Report on the Lock Hospitals of the Madras Presidency for the Year 1978* (Madras: Government Press, 1879), 14, OIOC, V/24/2287.

³⁷*Fourth Annual Report on the Working of the Lock Hospitals in the Bombay Presidency for the Year 1877* (Bombay, n.p., 1978), Puna Report, 6-7, OIOC, V/24/2290.

³⁸For Discussion of the gendering of Prostitution, See Susan S.M. Edwards, "Sex or Gender: The Prostitute in Law," *British Journal of Sexual Medicine* 9 (1982): pp. 05. Also see Philippa Levine, "Public and Private Paradox: Prostitution and the State," *Arena*, n.s. 1 (1993): pp. 131-144.

³⁹ Major General E.F. Chapman, Quarter Master General to Secretary to Government of India, Military Department, 6th September 1888, enclosing draft rules, OIOC, P/3473, no.2907.



imperial expansion. Outside civility, she could be treated according to harsher rules. Prostitutes, thought a medical officer in India, might be "subjected to a little wholesome coercion for their own good and that of the community⁴⁰."

Noah Zatz argues that the law has been central in "suppressing sex workers' attempts to articulate their practices as a form of work and promote its (sic) interpretations as fundamentally a sexual act⁴¹". Concerned with contemporary legal grammars or sexual control, Zatz's point nonetheless illumines a much older and a critically important western history. Work occupied a central place for Victorians as the authentication of individual productivity and of respectability, more particularly as the influence of inherited wealth began its decline. Work define not just respectability but also, and crucially, gender. Despite a huge female workforce confined to a narrow band of jobs, Victorian rhetoric countered the working man with the domesticated women whose household sphere complemented his public work. Within this value system, the woman wage earner was already walking the tightrope of "womanliness". Prostitution, while it might on woman good money, broke completely the link between preflight and social approbation. Woman "became the site in which questions of economics intersected with questions of morality⁴²."

Prostitution, crime, and mobility formed a heady-trio or prejudices. Woman convicts transported to Australia for such non sex related crimes as theft were branded as sexually immoral, as potential if not actual prostitutes, their lawlessness and lack of fixity the evidence of their dangerous sexuality⁴³.

⁴⁰Report on the Lock Hospital established at Bangalore, July 1855, 2132, OIOC, P/3473, no. 2907.

⁴¹ Noah D. Zatz, "Sex Work/Sex Act: Law, Labour and Desire in Constructions of Prostitution," *Signs* 22, no. 2 (1997), pp. 284.

⁴²AshrufaFaruquee, "Conceiving the Coolie Woman: Indenture Labour, Indian Woman and Colonial discourse," *South Asian Research* 16, no.1 (1996), pp. 74.

⁴³ Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia* (Cambridge: Cambridge University Press, 1996), also see Joy Damousi, *Depraved and Disorderly: Female*

The reality of poverty and the uncertainty of alternative employment for woman ensured that this was a chimerical divide. Many woman saw prostitution as one of a number of money making opportunities. For many "woman 'prostitution' is not a singular identity, but merely one of a range of economic and social identity that make up their livelihood strategies⁴⁴." Prostitution was as much a discourse on moral authority as it was a pragmatic if blemished solution serving the dictates of male desire. Its apparent ubiquity in female colonial populations was its definition, the guarantor and prove of lesser moral standing, a phenomenon that made apparent the need for the boundaries of rule. That it was a throwback to primitivism, that it was female, and that it was common place among the colonised attached the sex trade to categorise the race, nation and gender. "Brothels in towns in India are at present an unpleasant but real necessity⁴⁵." Prostitutions' representation of the wrongs of other peoples helped fuse the idea that colonialisms was necessary, an antidote to what a pamphlet issued to British Soldiers called "queer and uncivilized countries⁴⁶."

Conclusion

The law expressed a will to control the entire population of women in prostitution, and not just those who were responsible for public disturbances. The law made it compulsory for women to be registered if they were going to practice prostitution anywhere. Prostitution thus served state interests in complicated ways, not only in providing sexual services for colonizing men, but in offering an index of humiliation. The colonial government formulated laws that were enormously repetitive activities such

Convicts, Sexuality and Gender in Colonial Australia (Cambridge: Cambridge University Press, 1997).

⁴⁴ Doug J. Porter, "A Plague on the Borders: HIV, Development and Traveling Identities in the Golden Triangle," in *Sites of Desire, Economics of Pleasure: Sexualities in Asia and the Pacific*, ed. Lenore Manderson and Margaret Jolly (Chicago: University of Chicago Press, 1997), pp.223.

⁴⁵ Major C. Powney Thompson, Deputy Commissioner, Kangra to Registrar, Chief Court, Punjab, 1 June 1911, OIOC, P/8954.

⁴⁶ Health Memorandum for British Soldier in the Tropics, n.p., 1919, WL, AMSH Papers, box 313.



as procuring women and girls for prostitution pimping and soliciting men for prostitution. But these laws rarely work in straight forwardly efficacious ways. The state's position is marked by an instrumentalist approach towards sex workers in fact it was much more committed to preventing ill health among the client population than among sex workers. In keeping with such a perspective. Prostitutes in Bombay have remained victims of state violence. In fact laws swung between phases of regulation, acceptance or abolition of prostitution.

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The secretary to the Government of Bombay was the central authority implementing the International Conventions on Trafficking of 1904 and 1921 in India (HD 1932, 2), cited in Ashwini Tambe, *Codes of Misconduct: Regulating Prostitution in late colonial Bombay*, Zubaan Publication imprint for Woman, New Delhi, 2009, pp. XX.

Allison Jaggar, "Prostitution, In *The Philosophy of Sex: Contemporary Readings*, edited by Alan Soble, 348-68. Totowa, N.J.: Rowman and Allan held, 1985.

A typical representative of the liberal approach is the U.S. group COYOTE (Call Off Your Old Tired Ethics). See Wendy Chapkis, 1997. *Live Sex Acts: Women Performing Erotic Labor*. New York: Routledge.

Francis G Hutchins, *The Illusion of Permanence: British Imperialism in India*, Princeton, N.J.: Princeton University Press, 1967.

This label is applied to a set of historians focusing primarily on eighteenth century Indian states who stress continuities between the precolonial and colonial states and adopt an analytical, generalization-seeking approach to Indian history. The title emerged soon after the publication of a set of essays in *Modern Asian Studies* 7, no. 3 (1973). Some works commonly identified with this school are Bayly 1983, Bose and Jalal 1998, and Chandavarkar 1994, 1998, cited in Ashwini Tambe, *Codes of Misconduct: Regulating Prostitution in late colonial Bombay*, Zubaan Publication imprint for Woman, New Delhi, 2009, pp. 04.

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The Police Rule, Ordinance, and Regulation of 1812 specified that a small fee had to be taken from each registered house of prostitution in order to defray the expense of watching these "dangerous trades, houses or modes of life" cited in S. R. Kapse, *Police Administration in Bombay, 1600-1865*. Bombay: Himalaya, 1987, pp. 203.

S. R. Kapse, *Police Administration in Bombay, 1600-1865*. Bombay: Himalaya, 1987; Phiroze Malabari, *Bombay in the Making: Being Mainly a History of the Origin and Growth of the Judicial Institutions in the Western Presidency, 1661-1726*. London: T. Fisher Unwin, 1910; Dulcinea Correa Rodriguez, *Bombay Fort in the Eighteenth Century*. Bombay: Himalaya Publishing, 1994.

Regulation of 1827, title 14, article 3 reads: "The Court of Petty Sessions shall have power of summary convictions in all cases of persons enticing or conveying away married females or unmarried females under the age of thirteen, out of the protection, and against the will of the Husband or Father . . . for the purpose of prostitution in any way . . . such offenders to be punishable by fine not exceeding five hundred rupees . . . or imprisonment . . . for a time not exceeding six months." Quoted in S. R. Kapse, *Police Administration in Bombay, 1600-1865*. Bombay: Himalaya, 1987, pp. 216.

This quote is found in a letter from the secretary of Government of India to Government of Bombay, Judicial Department 1838, vol. 68/512, 44, cited in S. R. Kapse, *Police Administration in Bombay, 1600-1865*. Bombay: Himalaya, 1987, pp. 2.

Cynthia Enloe, *Bananas, Beaches, and Bases: Making Feminist Sense of International Politics*. Berkeley: University of California Press, 1989.

David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India*. Berkeley: University of California Press, 1993.



David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India*. Berkeley: University of California Press, 1993, pp. 84.

E. F. Chapman, Quartermaster General in India, wrote in a circular memorandum that "the employment of Dhais, and insistence upon the performance of the acknowledged duties, is of great importance" (June 17, 1886), printed in Kate Andrews, and Elizabeth Bushnell. *The Queen's Daughters in India*. London: Mogar and Scott, 1898, pp. 3-4.

These various justifications are discussed by Ballhatchet in *Race, Sex, and Class under the Raj: Imperial Attitudes and Policies and Their Critics, 1793-1905*. New York: St. Martin's Press, 1980. The widespread belief that masturbation was harmful to the body was backed by official medicine, as seen in the surgeon general's statement that "(masturbation) as is well-known, leads to disorders of both body and mind" (Government of Bombay 1886).

Upper-class army officials cast soldiers as mechanical objects in need of maintenance and worthy of state spending. One report on the health of troops warned that "the British soldier, as he lands in India, is a very costly article, and I think it is only wise economy to leave no means untried for the preservation of his health and efficiency" (RHBBC 1877, pp. 39). Also see David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India*. Berkeley: University of California Press, 1993, pp. 64-65.

Ibid, pp. 23, 28-43; terms this the "environmentalist" paradigm of medicine. See for instance, the words of the surgeon general: "There is an additional gravity attaching to disorders when they occur in the Eastern Tropics."

The Cantonment Act was applied in 1867 in Bombay with some alterations. The rules were less harsh than those followed elsewhere: the Bombay government published a notification that although the act would be operated beyond cantonment limits, penalties could not be imposed for breaches of rules in these areas (HD 1887). Right from the inception of the regulation, it appears that the Bombay government followed a lenient course in applying the central government's measures.

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