

Criminology and the homosexual subject: A queer critique

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This essay will begin with an analysis of how sodomy as crime has been implanted into Indian society in the form of Sec 377 of the Indian Penal Code. The reasoning and logic of Lord Macaulay as well as the understanding of the Courts in India of the crime of sodomy will be analyzed. How well into the twenty first century the legal structure in its various manifestations continues to produce knowledge of the homosexual as criminal will be sought to be understood. Even the contemporary context with the coming into force of the Constitution has not played any significant role in disturbing the colonial continuity of Sec 377. Equally of import is the role that the constitution of the 'eunuch' as a subject of the criminal law, in fact specifically as a 'criminal tribe,' needs to be understood. How has this impacted the treatment of hijras by the criminal justice system in contemporary times needs to be explored.

While it remains a very important task to understand the role that the law has played in constituting the homosexual as criminal the queer enterprise cannot stop at that. What is the social role, which is served by the constitution of carnal intercourse as an offence? Of course the reason for criminalization can be read in the Judaeo Christian framework of morality animating the colonial administrators of the day. However the continued resilience of Sec 377 and its imperviousness to any form of social change requires us to revisit the question as to the social function served by the anti-sodomy law. In the changed context of an independent India, what is the notion of India, which it serves to uphold? What role does it play in keeping in place the 'normality' of everyday life and in keeping in place the structure of family and community? Is the idea of heterosexuality as normal really underpinned by the continued stigmatization of the homosexual as abnormal?

The other aspect which one must necessarily explore is the response of the homosexual to the criminological enterprise. Invoking Foucault, what is significant is the project of resistance to the attempt to define the homosexual. Power by its nature is never absolute and the homosexual resists the project of the 'expert knowledges' by taking on the very identity of the homosexual as a political resistance identity. It is important to understand the series of steps by which the homosexual is transformed from being a mute subject of the criminal law to a vocal participant in the discussions around the role of the criminal law.

Finally the essay will explore the implications of the emergence of the homosexual voice for the future of the criminological enterprise. Is criminology doomed to be an integral part of disciplinary power or will we see the emergence of the queer criminologist? When violence against homosexuals remains a part of the contemporary situation, what is the role of criminological theory? Can it respond by understanding the social role that violence towards queer people plays? Can criminology factor in the queer critique and move forward in its understanding of the homophobic basis of crime?

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