

*Stolen Skin and Children Thrown: Governing sex and abortion in early modern South Asia**

DIVYA CHERIAN 

Princeton University
Email: dcherian@princeton.edu

Abstract

What did women's bodies in pre-colonial South Asia have to do with the birth of capitalism? South Asia's pre-colonial integration into a globally emerging, early modern capitalist order reached deep into the hinterland to transform both state and society in eighteenth-century Marwar. Driving the change was an emergent elite, consisting largely of merchants, that channelled its energies towards reshaping caste. Merchants, in alliance with Brahmans, used their influence upon the state to adjudicate the boundary between the 'illicit' and the 'licit,' generating in the process a typology and an archive of deviant sex. In the legal framework that generated this archive, women were configured as passive recipients of sexual acts, lacking sexual personhood in law. Even as they escaped legal culpability for 'illicit' sex, women experienced, through this body of judgments, a strengthening of male proprietary controls over their bodies. Alongside, the criminalization of abortion served as a means of sexual disciplining. These findings suggest that post-Mughal, pre-colonial state formation in South Asia intersected with global economic transformations to generate new sex-caste orders and archival bodies.

Introduction

Sex played no small part in the history of early capitalism. There has been much theoretical and historical engagement with the intensification of

* I am grateful to the three anonymous readers and the editors of *Modern Asian Studies* as well as to Janaki Bakhle, Nicholas Dirks, Molly Greene, Sumit Guha, Gyan Prakash, and Wendy Warren for their excellent feedback on earlier drafts of this article. Audiences at the University of Wisconsin-Madison's South Asia Center and at the University Seminar on South Asia at Columbia University asked helpful questions that have enriched this article. Finally, thanks are due to the American Institute of Indian Studies for supporting the archival research on which this article is based.

sexual discipline and the emergence of a discourse of sex in early modern Europe.¹ But was this just a European story, another aspect of the ‘great divergence’ that separated the West from the rest? Was it only with colonialism that states began to intervene in the sexual lives of their subjects in the non-Western world? Or did early modern capital accumulation, playing out in pockets across the globe, have consequences for status and sexuality elsewhere in the world? Through a focus on the western Indian principality of Marwar, governed by the Rathor dynasty, I suggest that the changes unleashed on the ground by the early capitalist order worked to both sharpen and reshape caste and gender hierarchies in parts of eighteenth-century South Asia. This played out through an intensification of sexual discipline, particularly upon merchant and Brahman women, and the generation of a fragmented archive dwelling on ‘illicit’ sex. In the legal imaginary of this archive, sex within caste-sanctioned marriage was the most licit type of sexual relations, while sex outside such a marriage was categorized into degrees of illicitness. In the legal logic undergirding the taxonomy of ‘illicit’ sex that emerged,² the state only held men culpable for illicit sex and did not accord agency in sexual acts to women.³ Women’s willing or unwilling participation was beside the point in the eyes of state law. I argue that this passivity in sexual acts which some state-enforced legal regimes attributed to women denied them sexual agency and, therefore, sexual personhood in law, which in turn strengthened the conception of women as a type of property.

¹ See, for example, Michel Foucault, *The History of Sexuality. Volume 1: An Introduction* (New York: Vintage, 1990); Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford: Clarendon Press, 1989); and Merry E. Wiesner-Hanks, *Christianity and Sexuality in the Early Modern World: Regulating Desire, Performing Practice* (Routledge: New York, 2000).

² For later, colonial-era efforts to generate a typology of women’s deviant sexuality, see Durba Mitra, *Indian Sex Life: Sexuality and the Colonial Origins of Modern Social Thought* (Princeton: Princeton University Press, 2020), pp. 62–77.

³ The attribution of passivity is not just a characteristic but an expectation of all those who belonged in a subordinated position in dyadic relations, such as husband-wife. Persianate discourse also reflected this framework (Indrani Chatterjee, ‘Alienation, Intimacy, and Gender: Problems in the History of Love in South Asia’, in *Queering India: Same-Sex Love and Eroticism in Indian Culture and Society*, (ed.) Ruth Vanita (New York: Routledge, 2002), pp. 61–76; and Katherine B. Schofield, ‘The Courtesan Tale: Female Musicians and Dancers in Mughal Historical Chronicles, c. 1556–1748’, *Gender and History* 24, 1 (2012), pp. 150–171). These studies are limited to literary sources conveying ethical prescriptions. My findings here show that in parts of eighteenth-century India, such prescriptions extended beyond ethical ideals into state-enforced law and practice.

By ‘sexual personhood’, I mean the attribution of agency in sex acts. This denial stood in contrast to women’s ability in eighteenth-century Rathor law to be held culpable for a range of other violations, such as theft or murder. These findings corroborate the idea that personhood in pre-colonial South Asia was contextual and fluid, unlike the bounded individuals that modernity introduced.⁴ Rachel Sturman, for instance, suggests, drawing on Sumit Guha’s findings, that proprietary claims could be read as among the qualities that constituted persons and bodies in pre-colonial Maharashtra.⁵ So when it came to sexual acts, women lacked personhood in law even as they possessed it for other kinds of actions.⁶ Women’s legal status in sexual ‘crimes’, then, offers us a glimpse of the role of law in pre-modern societies in crafting conceptions of personhood. Elsewhere in the early modern world, the possession of property came to be viewed as a necessary attribute of personhood.⁷ In parts of early modern South Asia such as Marwar, the intensification of male proprietary controls over women—through the negation of women’s sexual personhood—may similarly have been part of new political regimes that shaped elite male claims to localized political membership (such as in merchant caste organizations) and social standing (such as status in temple communities and Jain *sanghs*, or congregations). In keeping with the contextual nature of early modern personhood, among the ‘crimes’ that women were liable for, as I will

⁴ The contextual nature of personhood in law can also be observed in other parts of the world. For instance, until the late nineteenth century, under the doctrine of coverture, married women in England were not persons in civil disputes as they were in criminal cases. Tim Stretton and Krista J. Kesslerling, *Married Women and the Law: Coverture in England and the Common Law World* (Montreal: McGill-Queen’s University Press, 2013), Introduction, pp. 3–23. I thank the anonymous reviewer of this article who drew this point to my attention.

⁵ Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women’s Rights* (New York: Cambridge University Press, 2012), p. 59.

⁶ Caste too could serve to deny full personhood or exalt it in certain contexts. So it was that artisanal castes were considered ‘three-quarter’ persons (*pūn*) and highly respected male aristocrats could be ‘one-and-a-quarter’ (*‘savān*’) persons, even as men from both these categories could be full persons when it came to the law. On ‘three-quarter’ persons, see Nandita P. Sahai, ‘Artisans, the State, and the Politics of Wajabi in Eighteenth-Century Jodhpur’, *Indian Economic and Social History Review* 42, 1 (2005), p. 68. The lexicographer Sitaram Lalas, however, suggests that when describing castes, *‘pūn*’ derived from *‘pāvan*’ or ‘wind’, but does not explain what connection this has with the castes or their status (Sitaram Lalas, *Rājasthānī-Hindī Saṅkṣipt Śabdakoś*, Vol. II [Jodhpur: Rajasthan Oriental Research Institute, n.d.], pp. 47, 93).

⁷ Sturman, *Government of Social Life*, pp. 11–14.

show, was the termination of an unwanted pregnancy. The Rathor state considered abortion illegal but this seemingly universal legal stance impacted most on women of aspirant and upwardly mobile castes.

In the fragmented archive dwelling on sex, it is certain subjects—women and vagrant, landless castes—that emerge as inherently resistant to obedience and who elicited anxieties on the part of pre-colonial administrators. An absence in Rathor records is the woman protagonist of sexual violence and abortion, who emerges only as an archival silence, as a ‘surplus’ or ‘excess’ of state anxieties.⁸ Rather than trying to recover her consent or resistance to sexual relations, I seek instead to reflect upon why it was that Rathor law in the eighteenth century expended so much energy on persecuting sexual deviance even as it did not place emphasis on whether women willingly or unwillingly participated in ‘deviant’ sex. This is in contrast to some other contemporary legal frameworks, such as the Hanafi law practised in Mughal India, that did assign significance to women’s consent in ‘illicit’ sex. I approach these issues not as autochthonous changes stemming only from the inner processes of South Asian society. Instead, I consider local and sub-continental developments, even as I suggest that this history was a local chapter of a global story: the birth of the modern world.⁹

As Frank Perlin has shown, by the eighteenth century, prior to colonialism, the Indian economy had become deeply intertwined with European commerce creating closer ties than before between South Asia and regions such as the Americas, Africa, and East Asia. The emergence of the capitalist order, he suggests, was a global process which saw Indian mercantile capital develop stronger control over domestic production and which facilitated capital accumulation both in South Asian merchants’ hands as well as further afield in western Europe.¹⁰ While the business and economic history of early modern South Asia has received much attention, with some scholars demonstrating the enmeshing of trade and finance with statecraft, the impact of this global integration and an early capitalist world

⁸ Ann Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2009), pp. 2, 14, 60, 97, 252; Anjali Arondekar, *On Sexuality and the Colonial Archive in India* (Durham, NC: Duke University Press, 2009).

⁹ Here I am inspired by Sanjay Subrahmanyam’s call to write connected histories and by Sebastian Conrad’s invitation to think across scales such that seemingly local events may be the culmination of changes at local, regional, as well as global levels. Sanjay Subrahmanyam, ‘Connected Histories: Notes towards a Reconfiguration of Early Modern Eurasia’, *Modern Asian Studies* 31, 3 (1997), pp. 735–762; Sebastian Conrad, *What is Global History?* (Princeton: Princeton University Press, 2016).

¹⁰ Frank Perlin, ‘Proto-Industrialization and Pre-Colonial South Asia’, *Past and Present* 98, 1 (1983), pp. 93–94.

order on society at large is an area that demands further inquiry.¹¹ In the pages that follow, I suggest that the same global processes that reshaped flows of capital and the production of goods in South Asia also help to explain the intensification of caste and gender hierarchies and proprietary controls over women in parts of the region as it stood on the cusp of colonial modernity. The rise of a more integrated global economy, then, holds significance not only for the ports and court cities of the pre-colonial, non-Western world but also for seemingly disconnected localities in the hinterland.

I will show that this the quickening of global economic integration reshaped social relations and the administration of sexuality in four ways. First, social relations became mediated to a greater degree than before by money, and the intersection between money and social relations became a key site for the state's intervention in the making and breaking of social bonds such as marriage. Money became the salve healing social ruptures caused by injury as well the glue sealing social and political bonds. The regime of fines, cesses for state recognition of marriages and remarriages, and payments of dowries and bridewealth in cash kept capital on the move. Even as constant circulation, rather than investment into fixed income, was a characteristic of early modern commercial capitalism,¹² the ubiquity of these monetary transactions across Marwar demonstrates how the exchange of women facilitated this movement.¹³ Second, the imprint of these economic changes can be seen on the sources upon which this study is based. These began to be compiled in Marwar only in the mid-eighteenth century, that is, the period in which mercantile power was at its peak. Mercantile participation in the state, then, had an influence on the nature of the state's documentary regime. These records—the *Jodhpur Sanad Parwana Bahis*—resembled merchant ledgers and account books, also known as *bahis*. Third, merchants—primary beneficiaries in South Asia, and particularly in Marwar, of the

¹¹ Irfan Habib, 'Banking in Mughal India', *Contributions to Indian Economic History* I (1960), pp. 1–20; I. Habib, 'Usury in Medieval India', *Comparative Studies in Society and History* 6, 4 (1964), pp. 393–419; Om Prakash, 'The System of Credit in Mughal India', in *Money and Credit in Indian History: From Early Medieval Times*, (ed.) Amiya Kumar Bagchi (New Delhi: Tulika and the Indian History Congress, 2002), pp. 41, 47; André Wink, 'Maratha Revenue Farming', *Modern Asian Studies* 17, 4 (1983), pp. 591–628; and Muzaffar Alam, *The Crisis of Empire in Mughal North India: Awadh and the Punjab, 1707–48* (New Delhi: Oxford University Press, 1986), pp. 39–42, 199–200.

¹² Perlin, 'Proto-Industrialization', p. 92.

¹³ Gayle Rubin, 'The Traffic in Women: Notes on the "Political Economy" of Sex', in *Deviations: A Gayle Rubin Reader* (Durham, NC: Duke University Press, 2011), pp. 33–65.

intensified trade and expanding credit markets that global exchange brought—deployed their skills with accounting and writing to wield greater influence not just on the economy but also within state bureaucracies and localized societies. Brahmans, also beneficiaries of early modern processes of circulation and state formation, began to command greater influence at court in Marwar than they had prior to the eighteenth century. Merchants and Brahmans translated their participation in the state, I suggest, into an effort to elevate their caste groups to the pinnacle of local caste society. A central plank upon which this effort rested was the regulation of their women's bodies. Fourth, the intensification of proprietary regimes due to early modern economic and political processes was a key plank through which these upwardly mobile communities tightened their control of women's bodies. This manifested through the state's implementation of the aforementioned property-like qualities of women as wives and daughters which until then may have been more open to negotiation in practice.

Marwar in the eighteenth century

[To the Nagaur magistracy, 1776 CE] There is much illicit sex in the town and abortions are common (*sāihar maiṃ chāmchorī ghaṇī huwai hai nai adhūrā nakhijai hai*). Such deeds should not occur. Be especially vigilant about this (*visekh talās rākhjō*).

The Muslims let their daughters grow a lot before they get them married (*musalmānān nai dāvdīyān ghaṇī moṭī kar pamāvai hai*). This is not okay (*duras nahūn*). In future, have it ensured (*tākād kar denī*) that they should not let them grow so much.

—By the order of (*duwāyatī*) the Pyad Bakhshi [Officer in Charge of Non-Military Personnel, at the time, Brahman Purohit Bansidhar]¹⁴

¹⁴ *Jodhpur Sanad Parwana Bahi* (henceforth, JSPB) 17, VS 1833/1776 CE, f 43a. The JSPB are housed in the Rajasthan State Archives (RSA), Bikaner, Rajasthan. In the notes below, references to these records list the *bahi* or register number (as assigned by the RSA and written on each *bahi*), the Vikram Samvat ('VS') year and the year in CE of its inscription, and the folio number ('f') and side ('a' or 'b') within the *bahi* on which the information being cited is written. When an issuing office is listed with an order, I have identified the officer occupying it by consulting published lists of Rathor office bearers, for example, in R. K. Saksena, *The Apparatus of the Rathors (A Study of Marwar): Assignment of Jagirs, Award of Offices, Titles and Honours to the Rathor Nobility (1764 to 1858 V.S.)*, Vol. 1

The office of the king of the western Indian principality of Marwar, occupied by the Rathor dynast Vijai Singh (r. 1753–1793), dispatched these words in 1776 to its provincial magistracy headquartered in the busy trading and pilgrimage town of Nagaur.¹⁵ The above command was just one of many that the Rathor state issued in the latter half of the eighteenth and the early years of the nineteenth century that pertained to the sexual activities of its subjects. These commands reflect not just the legislative agenda of the Rathor king and his state bureaucracy but also the petitions, appeals, and customs of a vast array of the people of Marwar. They make it clear that abortion and ‘illicit’ sex were not just immoral but criminal from the perspective of eighteenth-century Marwari state authorities. Commands such as these also bear the imprint of the role of officers of merchant and Brahman castes in shaping governmental policy, as is suggested in the above order by the role of a Brahman, Purohit Bansidhar, in issuing an order applicable to the entire town of Nagaur prohibiting ‘illicit’ sex and abortion while also directing that girls ought to be married by a certain (unspecified) age.

The eighteenth century in South Asian history was witness to a wide range of changes, prominent among which was the emergence of new social bases of power. Groups of peasant origin, such as the Sikhs, Jats, and the Marathas, became martial and kingly, while other ‘middling’ groups such as merchants and scribal communities began to more successfully translate their social and economic capital into political authority.¹⁶ In Marwar, as elsewhere in Rajasthan, mercantile communities took the lion’s share of the opportunities created by an elaboration of state bureaucracies that had been unfolding in many parts

(Jodhpur: Maharaja Mansingh Pustak Prakash Research Centre, 2006), pp. xlviii–liii; and in Hukamsimh Bhati, *Mārvād ke ohdedārom kā itihās mein yogdān* [Historical Contributions of the Officers of Marwar] (Jodhpur: Maharaja Mansingh Pustak Prakash Shodh Kendra, 2013).

¹⁵ I sometimes use the term ‘province’ to translate ‘pargana’. Parganas were the primary administrative units into which the Rathors divided their kingdom.

¹⁶ See Muzaffar Alam, *The Crisis of Empire in Mughal North India: Awadh and the Punjab, 1707–1748* (Oxford: Oxford University Press, 2013 [1986]); Kumkum Chatterjee, ‘Scribal Elites in Sultanate and Mughal Period Bengal’, *Indian Economic and Social History Review* 47, 4 (2010), pp. 445–472; Rosalind O’Hanlon, ‘The Social Worth of Scribes: Brahmins, Kāyasthas, and the Social Order in Early Modern India’, *Indian Economic and Social History Review* 47, 4 (2010), pp. 563–595; and V. Narayana Rao and Sanjay Subrahmanyam, ‘Notes on Political Thought in Medieval and Early Modern India’, *Modern Asian Studies* 43, 1 (2009), pp. 175–210.

of South Asia since the sixteenth century.¹⁷ That is, merchants in Rajasthan, most of whom were Osval Jains and Vaishnavs and were designated by the umbrella caste title 'Mahajan', parleyed their literacy and facility with accounting into administrative positions such as *kotwal* (magistrate), *hakim* (provincial governor), and *diwan* (chief minister to the king).¹⁸

In the quest to transform Marwar from a clan-based, fraternal polity into a monarchy, Rathor kings built a bureaucracy and staffed it not with Rajputs (who could assert blood- and caste-based challenges to Rathor monarchs) but with men from mercantile and, to a lesser extent, Brahman and scribal castes.¹⁹ As Mughal authority weakened in the eighteenth century, Rathor efforts at state building and expansion were kept in check by the rise of the Marathas from the Deccan. In Vijai Singh's reign, the Marathas repeatedly defeated the Rathors and other Rajput kings in battle, forcing them to pay heavy indemnities and tribute.²⁰ Vijai Singh showed resilience in the face of Maratha demands and managed to win over the rich province of Godwad from the neighbouring kingdom of Udaipur in exchange for military aid.²¹ His forces also conquered Umarnot in Sindh in 1782. With steps such as these, Vijai Singh managed to create new revenue streams to meet the exigencies of the military-fiscal order of eighteenth-century South Asia.²²

Lists of office-bearers from Vijai Singh's reign in both the central and provincial administration, including the offices that decided the types of petitions discussed in this article, are compiled in volumes called the *Ohda Bahis*.²³ These lists reflect the grip that Jain and Vaishnav

¹⁷ Norbert Peabody, *Hindu Kingship and Polity in Pre-Colonial India* (Cambridge: Cambridge University Press, 2003).

¹⁸ G. D. Sharma, *Rajput Polity: A Study of Politics and Administration of the State of Marwar, 1638–1749* (New Delhi: Manohar, 1977).

¹⁹ On the changing form of the Rathor polity, see Norman P. Ziegler, 'Some Notes on Rajput Loyalties during the Mughal Period', in *The Mughal State, 1526–1707*, (eds) Muzaffar Alam and Sanjay Subrahmanyam (New Delhi: Oxford University Press, 1998), pp. 169–210.

²⁰ G. R. Parihar, *Marwar and the Marathas (1724–1843 AD)* (Jodhpur: Hindi Sahitya Mandir, 1968). On the basis of amounts listed in Parihar's study, I calculated that the total amount that Vijai Singh paid to the Maratha general, Mahadji Sindhia, came to roughly Rs 2.5 million (pp. 89, 96, 97, 100, 103, 104, 130).

²¹ *Ibid.*, p. 103.

²² *Ibid.*, p. 108.

²³ 'Ohda' means 'office'. The Rathor *Ohda Bahis* are today in the Rajasthan State Archives, Bikaner. I have consulted it through scholarly transcriptions into modern Hindi in published form. The lists pertaining to Vijai Singh's reign are in *Ohda Bahi* No. 1.

merchants and, to a lesser extent, Brahmans had on the rank and file of Rathor bureaucracy.²⁴ Rajputs, by dint of their blood-based claims upon land and rank, remained key planks of the polity but merchants used their command over political office, combined with their hold over capital flows locally and across the sub-continent, to emerge as powerful players in state and society.²⁵

Brahmans, another ‘high’ caste group, were in an anomalous position. Nominally, they were at the highest echelons of the caste order due to a type of ritual authority rooted in their monopoly over Sanskrit learning and indispensable role in key life-cycle, religious, and kingly rituals. On the basis of this ritual authority, Brahmans received hereditary tax-free grants of land (*sāsan* or *dohli*) or shares of the state’s tax collections, adding a material aspect to their ritual dominance.²⁶ Like merchants, Brahmans in the region also saw an improvement in their standing by the eighteenth century. For some, this rested on the expansion of trade and moneylending and for others, on a heightening of their ritual prominence within the Vaishnav devotional sect of the Vallabh Sampraday, which in turn was deeply influential upon merchants as well as upon leading Rajput lineages, including the maharaja himself.²⁷ As Rathor bureaucracy expanded, Brahmans’

²⁴ R. K. Saxena, *The Apparatus of the Rathors* (Jodhpur: Maharaja Man Singh Pustak Prakash Research Centre, 2006), Part 1, pp. xlviii–liii; Bhati, *Mārāḍ ke ohdedārōin*; Jitendrasimh Bhati, *Rājasthān kī praśāsanik vyavasthā* [The Administrative Organization of Rajasthan] (Jodhpur: Rajasthan Granthagar, 2011), pp. 66–67, 77–78; and Richard D. Saran and Norman P. Ziegler, *The Merṭyō Rāthōrs of Merṭo, Rājasthān: Select Translations Bearing on the History of a Rājput Family, 1462–1660*, Vol. 2 (Ann Arbor: University of Michigan Press, 2001), p. 449.

²⁵ Claude Markovits suggests that Marwari merchants’ pre-eminence as capitalists starting in the eighteenth century can be attributed to the authority they enjoyed within the state (Claude Markovits, ‘Merchant Circulation in South Asia (Eighteenth to Twentieth Centuries): The Rise of Pan-Indian Merchant Networks’, in *Society and Circulation: Mobile People and Itinerant Cultures in South Asia, 1750–1950*, (eds) Claude Markovits, Jacques Pouchepadass and Sanjay Subrahmanyam (New Delhi: Permanent Black, 2003), pp. 132–134).

²⁶ For instances of hereditary tax-free grants to Brahmans and Charans, see JSPB 5, VS 1823/1766 CE, f 71a and 274a; JSPB 14, VS 1831/1774 CE, f 98b; JSPB 15, VS 1832/1775 CE, f 309b; JSPB 24, VS 1837/1780 CE, f 23a, 28b, 29a, 77b and 77b–78a; JSPB 32, VS 1842/1785 CE, 314a; JSPB 45, VS 1850/1793 CE, f 114a, 376b–377a and 556a–b; and JSPB 71, VS 1876/1819 CE, f 3a.

²⁷ V. S. Bhatnagar, ‘Attempts at Revivalism or Reassertion of Vedic and “Shastriya” Traditions through Open Debate in the 18th Century’, in *Religious Movements in Rajasthan: Ideas and Antiquities*, (ed.) S. N. Dube (Jaipur: Centre for Rajasthan Studies, 1996); and

literacy resulted in their incorporation into the state.²⁸ Elsewhere in South Asia, Brahman beneficiaries of the political and economic changes made possible by the Mughal and post-Mughal orders took the lead in ‘reforming’ their caste through efforts at unity and uniformity.²⁹

Unlike in peninsular India, where Brahmans had been beneficiaries of particular trajectories of agrarian and state expansion since the medieval period, by the dawn of the early modern era Brahmans in North India, including in Rajasthan, had not been able to amass economic and political power to accompany their high ritual status.³⁰ In Marwar, Brahmans were not able to commandeer political authority and key offices to the extent that their counterparts in the Maratha polity famously had done; they came to some political power by occasionally holding influential positions in the Rathor administration. Still, some Brahman castes in Marwar, such as the Palliwals and Nandwana Bohras, thrived as traders and moneylenders.³¹ To that extent, like merchants, the literacy of Brahmans positioned them to also become beneficiaries of the expanding play of credit and trade. In Marwar, where local ritualists such as Charans had a historically rooted command on ritual authority and where land was under the control of Rajputs, all of the above factors combined to make the eighteenth century one of new opportunity for Brahmans.

The mid-eighteenth century saw the merchants and Brahmans of Marwar capitalizing on their slow accumulation of wealth, scribal skills, and political authority over the past centuries to attempt inclusion into

Monika Horstmann, *Visions of Kingship in the Twilight of Mughal Rule*, 13th Gonda Lecture (Amsterdam: Royal Netherlands Academy of Arts and Sciences, 2006).

²⁸ On the role of Brahmans in Rathor administration, see Bhati, *Rājasthān kī praśāsanik vyavasthā*, pp. 100–103.

²⁹ Rosalind O’Hanlon, ‘Contested Conjunctions: Brahman Communities and “Early Modernity” in India’, *American Historical Review* 118, 3 (2013), pp. 765–787; and Rosalind O’Hanlon, ‘Disciplining the Brahman Household: The Moral Mission of Empire in the Eighteenth-Century Maratha State’, in *Looking Within, Looking Without: Exploring Households in the Subcontinent through Time. Essays in Memory of Nandita Prasad Saha*, (ed.) Kumkum Chatterjee (Delhi: Primus Books, 2015), pp. 367–388.

³⁰ Faisal Chaudhry, ‘Repossessing Property in South Asia: Land, Rights, and Law across the Early Modern/Modern Divide. Introduction’, *Journal of the Economic and Social History of the Orient* 61, 5–6 (2018), p. 780.

³¹ For Brahman participation in global trade, albeit from the Konkan coast, see Rosalind O’Hanlon, ‘Letters Home: Banaras Pandits and the Maratha Regions in Early Modern India’, *Modern Asian Studies* 44, 2 (2010), p. 211; and Francesca Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New Haven: Yale University Press, 2009), pp. 177–193.

the top-most rung of this localized caste order, occupied until then by Rajputs. Mughal consolidation and peace as well as the intensification of commercial flows in the course of the early modern period had fuelled this diasporic spread of Marwari merchants.³² In addition, the merchants of western India—Gujarat and just north of it, Marwar—worked as money changers (*sarrafs*), brokers (*dallals*), and bankers (*sahukars*, *seths*, and Mahajans) for the European trading companies that became active in South Asia at this time. They could loan money and remit it over long distances using bills of exchange.³³ Deposit banking, insurance, and bottomry were other sources of profit for bankers as South Asia became drawn into webs of global exchange. The eighteenth century saw North Indian banking firms, prominent among which were Vaishnav and Jain Marwaris, stepping in to underwrite the investments of ‘portfolio capitalists’, state officers whose investments spanned revenue farms, military infrastructure, and trade.³⁴

This combination of political office and economic power resulted in an assertion of distinction and distance from the mass of peasants and artisanal castes through the imposition of new forms of social and sexual discipline among their members. In this effort, the state, of which they were part, served as a powerful instrument. The judgments and decrees that I discuss below were issued by precisely these same Vaishnav and Jain merchants and Brahmans, as the records themselves often testify. The ‘Rathor state’ or ‘crown’ that I refer to in the pages to

³² Samira Sheikh, *Forging a Region: Sultans, Traders and Pilgrims in Gujarat, 1200–1500* (New Delhi: Oxford University Press, 2010), pp. 51–52, 86, 141–147; Stephen F. Dale, *Indian Merchants and Eurasian Trade, 1600–1750* (Cambridge: Cambridge University Press, 1994), pp. 60, 105; Sanjay Subrahmanyam and C. A. Bayly, ‘Portfolio Capitalists and the Political Economy of Early Modern India’, *Indian Economic and Social History Review* 25, 4 (1988), pp. 414–415; Thomas A. Timberg, *The Marwaris: From Traders to Industrialists* (New Delhi: Vikas, 1979), p. 42.

³³ Ifan Habib, ‘The System of Bills of Exchange (*Hundis*) in the Mughal Empire’, *Proceedings of the Indian History Congress* 33 (1971), pp. 290–303; J. F. Richards, ‘Mughal State Finance and the Pre-Modern World Economy’, *Comparative Studies in Society and History* 23, 2 (1981), p. 290.

³⁴ Subrahmanyam and Bayly, ‘Portfolio Capitalists’, p. 414. For the widespread influence of Vaishnav *bhakti* (loosely, devotion), particularly that of the Brahman-led Vallabhite sect, on the merchants of western India, see Shandip Saha, ‘The Movement of Bhakti along a North-West Axis: Tracing the History of the Puṣṭimārg between the Sixteenth and Nineteenth Centuries’, *International Journal of Hindu Studies* 11, 3 (2007), p. 304; and Shandip Saha, ‘Creating a Community of Grace: A History of the Puṣṭi Mārga in Northern and Western India (1493–1905)’, PhD thesis, University of Ottawa, 2004, pp. 115–118.

come was not an anonymous or abstract body but rather one run by merchants and was linked to them not only as its personnel but also as influential members of society and as fiscal actors.

The caste order of Marwar, then, was in a state of flux. Mid-seventeenth century sources such as the *Mārvād rā Parganām rī Vigat* and *Mumhṭā Nainṣī rī Khyāt*, both compiled by the merchant-administrator Mumhta Nainsi at the behest of the Rathor court, offer a picture of Marwari state and society that is quite different from that which emerges from eighteenth-century records.³⁵ The *Vigat* and the *Khyāt* reflect a polity in which, even as merchants were participants as warriors and administrators, Rajputs stood at the pinnacle of the order due to their caste- and descent-based claims to superior rights over land and labour as well as their alliances with Mughal overlords.³⁶ In its compilation of local lore, the *Khyāt* for instance remains centred on Rajput clans. The Rathor polity emerges as one that was in the process of attempting a transition from being a more fraternal and decentralized order to a monarchy.³⁷ From these texts, it does not appear that the seventeenth-century Rathor state was involved in adjudicating localized disputes at the scale it did in the latter half of the eighteenth century. In addition, loyalty-based webs of service (*naukarī*, *chākari*) and kinship (*sagā*) enjoyed greater value in seventeenth-century Rajasthan, while the eighteenth century saw the spread of cash salaries and debt relations.

Ledgers and archives

Eighteenth-century Marwaris, like others across time and place, had sex both within and outside wedlock. By this time, however, the courtly Rajput households of western India were experiencing a hardening of

³⁵ Mumhta Nainsi, *Mumhṭā nainṣī rī likhī māvār rā parganām rī vigat*, Vols 1–3, (ed.) Narayansimh Bhati (Jodhpur: Rajasthan Oriental Research Institute, 1968); and Mumhta Nainsi, *Mumhṭā nainṣī rī khyāt*, Vols 1–4, (ed.) Badriprasad Sakariya (Jodhpur: Rajasthan Oriental Research Institute, 1984–2006). The most in-depth studies of these two texts can be found in Norman P. Ziegler, ‘Action, Power, and Service in Rajasthani Culture’, PhD thesis, University of Chicago, 1973; and Richard D. Saran, ‘Conquest and Colonization: Rajputs and Vasis in Middle Period Marwar’, PhD thesis, University of Michigan, 1978.

³⁶ Sharma, *Rajput Polity*.

³⁷ Ziegler, ‘Some Notes on Rajput Loyalties’.

boundaries between wives and other female sexual partners.³⁸ The status of ‘wife’ was now the preserve of Rajput women alone and was not open to women of other caste groups. In Marwar, Maharaja Vijai Singh’s attachment since the early 1770s to his concubine, Gulab Rai, and her involvement at court provoked much resentment and ended ultimately in her assassination in 1792.³⁹ In the courtly Mughal context as well, ethical discourse warned against attempting to incorporate a courtesan into one’s household, whether as wife or consort.⁴⁰

Did ‘popular’, less elite attitudes differ from the aristocratic ones described above? The Rathor record suggests that more quotidian sexual activity too was tightly policed by custom and law into fitting within the straight and narrow path of the licit. What was licit, in turn, was coded by custom and could vary by status. Women’s sexual purity indexed the honour of their families and their caste groups, and their bodies were sites for the reformulation of caste rank. This idea of sexual purity rested on women only having sex within a caste-approved marriage and intersected, particularly for elite castes, with notions of bodily purity. When it came to women, ideas of caste purity intersected with chastity and adherence to caste-specific sexual codes. Further, these records show that unlike aristocratic, Rajput women, the disciplining of whose bodies and desires was much more the preserve of their male kinsmen, merchant and other castes whose grasp on power was more recent were open to channelling the more public authority of the state towards enforcing sexual discipline upon their women. This in turn generated complaints, petitions, judgments, and orders—an archive—centred on the sexual relations of the residents of Marwar in general and of merchants and Brahmans in particular.

This fragmented archive is scattered through the *Jodhpur Sanad Parwana Bahis*, which are annualized compilations of the orders issued by the

³⁸ Varsha Joshi, *Polygamy and Purdah: Women and Society among Rajputs* (Jaipur and New Delhi: Rawat Publications, 1995), pp. 120–122; Ramya Sreenivasan, ‘Honoring the Family: Narratives and Politics of Kinship in Pre-colonial Rajasthan’, in *Unfamiliar Relations: Family and History in South Asia*, (ed.) Indrani Chatterjee (Delhi: Permanent Black, 2004), pp. 46–72; and R. Sreenivasan, ‘Drudges, Dancing Girls, Concubines: Female Slaves in Rajput Polity, 1500–1850’, in *Slavery and South Asian History*, (eds) Indrani Chatterjee and Richard Eaton (Bloomington: Indiana University Press, 2006), pp. 144, 154.

³⁹ Brajesh Kumar Singh (ed.), *Mahārājā śrī vijai singhī nī khyāt* [The Chronicle of Maharaja Vijai Singh] (Jodhpur: Rajasthan Oriental Research Institute, 1997), pp. 152–158.

⁴⁰ Schofield, ‘The Courtesan Tale’.

Rathor state's central headquarters to pargana administrators. These orders can be decrees applicable to the whole kingdom and responses to petitions submitted by subjects or to reports brought by news writers (*itlak naves* or *waka naves*).⁴¹ We know from Mughal historians that *parwanas*, one of the kinds of documents transcribed in these records, were orders issued not by the king himself but by his high-ranking deputies.⁴² Many, though not all, orders name an issuing officer ('*duwāyatī*' or 'by the command of'), with the names often not accompanied by any office or rank. When checked against Rathor officer lists, these names largely do not correspond with prominent office bearers. At the same time, these names are overwhelmingly those of merchants and, occasionally, of Brahmans and Kayasth Pancholis.⁴³ The *Sanad Parwana Bahis* were inscribed and compiled at the *śrī hajūr rā daftar* or the royal chancery, housed in Fateh Pol in Mehrangarh Fort in the capital Jodhpur.⁴⁴ The office of the head or *darogha* of the royal chancery, we know from Rathor officer lists in the *Ohda Bahi*, was held by Mahajans or Brahmans throughout the latter half of the eighteenth century. This office entailed not only scribal skills but also knowledge of the customs and practices of the many peoples and places within Marwar.⁴⁵ This suggests that the holder of this office played a role in the resolution of disputes and petitions that subjects brought to Jodhpur. In addition, this office came under the authority of the *diwan* (akin to the foremost minister) of Marwar. This office too was held by merchants throughout most of the eighteenth century.⁴⁶ All of this indicates that many of the orders proclaimed in the name of '*śrī hajūr*'

⁴¹ The Rathor administration included news reporters—*wākā naves* (a vernacularization of the Persian '*waqi'a navis*' or 'news writer')—who provided local news directly to the capital, paralleling the information flows through regular bureaucratic channels.

⁴² Nandini Chatterjee, *Negotiating Mughal Law: A Family of Landlords across Three Indian Empires* (New York: Cambridge University Press, 2020), p. 33. *Sanads*, the other kind of document gestured to in the name given to these records, were confirmatory orders.

⁴³ Despite Kayasth Pancholis appearing as occasional holders of high office in the Rathor administration, I have not engaged with them in this article because they rarely showed up as petitioners or defendants in the records I studied. This may have been because Kayasths were not numerous in Marwar and it appears that Kayasth authority in Marwar administration was on the wane in the eighteenth century (Saxena, *Apparatus of the Rathors*, Part 1, p. xxxv).

⁴⁴ Bhati, *Rājasthān kī praśasanik vyavasthā*, p. 100.

⁴⁵ *Byav ri Bahi* 1, VS 1776/1719 CE, f 214, cited in *ibid.*, p. 99.

⁴⁶ Bhati, *Rājasthān kī praśasanik vyavasthā*, pp. 101–102.

or the king in Marwar were in practice issued not by the king himself but by his administrators.

Even as the issuing authority of these orders is often identified in them, they usually designate the recipients of the orders by their offices rather than their names. So the orders were addressed to the magistracy (*kotwali chauntra*) or the governor's office (*kachaidi*) rather than to the individuals occupying them. Once again, we know from the officer lists of the Rathor court that the governors (*hakims*) and the magistrates (*kotwals*) of Rathor parganas were overwhelmingly merchants. These documents, then, were orders written by merchant and Brahman officers in the capital to their merchant and Brahman subordinates in the provinces.

Studies of documents from Mughal and Maratha territories have noted the role of community attestation, visible as signatures, seals, or symbols, in the generation of authoritative documents.⁴⁷ These studies have read these documents as evidence of the role of local power relations in shaping judicial decisions, particularly vis-à-vis property, in early modern South Asia. The *Sanad Parwana Bahis*, however, do not quite fit the pattern observed for these other kinds of documents. This might be because the passages inscribed in the *Bahis* were copies of the original orders dispatched from the capital to pargana authorities. It may well be that the original orders, sent to the parganas, bore the seal of the *darogha* of the *śrī hajūr rā daftar* and perhaps of other participants in the adjudication of the case. The copies of these orders entered into the *Sanad Parwana Bahis*, however, do not bear any seals, signatures, or marginalia. Still, the role of locally rooted adjudication is legible in the records in other ways, as I will show below.

What do we make of the unattested and unadorned nature of the *Jodhpur Sanad Parwana Bahis*? These are long, plain pages, roughly two to three feet in length and ten inches or so wide. When bound together, they can run into hundreds of folios. In their current form, they are bound in cloth-covered canvas. Written in a neat, scribal hand and in black ink, these documents are in Old Marwari language and the local variant of the Devanagari script. It is worth noting that in physical form, the *Sanad Parwana Bahis* are exactly like the

⁴⁷ Nandini Chatterjee, 'Mahzar-namas in the Mughal and British Empires: The Uses of an Indo-Islamic Legal Form', *Comparative Studies in Society and History* 58, 2 (2016), pp. 379–406; Chatterjee, *Negotiating Mughal Law*, pp. 158–162, 186; Sumit Guha, *History and Collective Memory in South Asia, 1200–2000* (Seattle: University of Washington Press, 2019), pp. 91–93, 100; Hasan, 'Property and Social Relations', pp. 862–870.

account-books (*bahis*) of the merchants of western India. Thus the mercantile scribes and accountants that constituted the bureaucracy of the Rathor state also shaped its documentary regime. Rather than bundles of loose paper, as was the case for the seventeenth-century records of the neighbouring kingdom of Jaipur and in the eighteenth-century Peshwa kingdom, Marwari merchant-bureaucrats generated a new documentary system—well-ordered, bound together by Vikram Samvat (VS) year into books very much like their own ledgers, and reflect an economy, standardization, and efficiency of language. In anonymizing addressees (the officers to whom the command was addressed) and sometimes even the issuing authorities, the merchants of Marwar may have shepherded the kingdom towards a new type of state form in which offices held greater symbolic authority than their occupants.

The acceptable

As middling groups aspired to the prestige of *ancien régime* elites, they channelled their power over and participation in the state and economy to reshape their own caste cultures in pursuit of an embodied distinction from the mass of ‘commoners’ beneath them. In this quest, they embraced a culture of chastity and expected conformity from both men and women. In practice, however, women were held to a higher and far more exacting standard. This changed milieu generated not just disapproval of sex outside of wedlock, but by the eighteenth century, a typology of sexual relations. Responses to ‘illicit’ acts ranged from tolerance to total opposition.

The ideologically most acceptable sexual relationship across the entire caste order in Marwar was that which occurred within a marriage.⁴⁸ This attitude was in conformity with that prevalent among elites, as discussed above, in which sex and reproduction within wedlock enjoyed the highest esteem. Among marriages, that of a man with a virgin bride was the most ideal and was formalized through ritual and the payment of a cess to local representatives of the state. In return for the payment of the cess, the groom’s family received papers recognizing the marriage.

⁴⁸ Even in courtly and aristocratic contexts, in which relationships with courtesans and marriages outside of accepted kinship circles were common and tolerated, such marriages were ritually marked off as distinct (Joshi, *Polygamy and Purdah*, p. 120; Schofield, ‘Courtesan Tale’; Sreenivasan, ‘Honoring the Family’; and Sreenivasan, ‘Drudges’).

Remarriage (*nātā*) of a widow or divorcée was permissible to all but the most elite women. Non-elite castes also tolerated ‘*ghar main ghālnā*’ (literally, to put in one’s home) or living together out of wedlock, as long as it was between a man and a divorced or widowed woman of the same caste.⁴⁹ The Rathor handling of a small sample of such ‘live-in’ relationships highlights this pattern:

[To the governor of Merta, 1766] Jat [peasant] Kana of the village Boruda was living with (*ghar main ghālī thi*) the wife (*lugāi*) of Jat Davar of Kharchiya village. For this you asked him to pay a fine of 45 rupees and handed the wife back to Davar. Give a discount of 20 rupees on the fine that you have affixed. The jat woman has since given birth to a girl. The jat caste group should be made to arrive at a consensus and whatever is decided by them as customary (*wājābī*) should be done. This is by the order of the crown (*śrī hajūr*).⁵⁰

[To the governor of Sojhat, 1777] Balai [leatherworker] Deva of Ramasni Charna village came here and said: ‘My daughter had been married in Malwa [a region several hundred miles south-west, in modern-day Madhya Pradesh] around 15 years ago to Balai Baliya of the same village. In Samvat 1822 [1765 CE], I came back [to the village in Marwar] from Malwa with my daughter. She had told her husband that she would return to Malwa soon. Yet, she soon received news that her husband had taken in another woman (*aur hī lugāi ghar main ghāl baitho*) and that he had no room for her in his home. I now have my daughter re-married [*nātai dīyū chhū*]. I am a *vasī* [bonded laborer] of Kalavat Bhiva’s and now Bhiva is refusing to let me go forth with this re-marriage.’ Call Bhiva over and tell him that the girl was no longer welcome in her husband Baliya’s house. Summon Baliya as well, giving him four months’ notice. If he does not show up in four months, then tell Bhiva to not prevent the girl’s father from giving her away in re-marriage to someone else. Tell him to take the customary [*vājābī*] amount as *rīl rā rūṣyā* [a wedding cess] and issue the papers needed.

—Issued by [Mahajan] Singhvi Tilokmal⁵¹

[To the Merta magistracy, 1780] Mehra [a mercantile caste] Rupa informed *śrī hajūr* that Mehra Toda had taken Rupa’s aunt (*kākī*) into this home (*ghar main*

⁴⁹ Sahai (‘Crossing the Golden Gate? Sunars, Social Mobility, and Disciplining the Household in Early Modern Rajasthan’, in *Looking Within, Looking Without*, p. 402) has translated ‘*ghar main ghālnā*’ as another term for remarriage. The usage of this term in the JSPB records, however, suggests that *ghar main ghālnā* arrangements were more casual than remarriage, in that they did not involve a wedding ceremony nor the participation of the woman’s guardians. The term ‘*ghar main ghālnā*’ is even used in these documents to label households set up with married women and by incestuous couples, that is, couples who would certainly not have been allowed to marry. In the case of Marwar then it seems that ‘*ghar main ghālnā*’ was distinct from remarriage (*nātā*).

⁵⁰ JSPB 5, VS 1823/1766 CE, f 87b. This record does not name an issuing authority.

⁵¹ JSPB 18, VS 1834/1777 CE, f 75a.

ghālī thī). The chauntra [magistracy] here investigated it and she was released from the relationship (*chhudāy dīvī*). Now, Mehra Toda has taken Rupa's aunt off to Merta. The order is that the Mehra woman should be thrown out of Toda's home and the two should be expelled from the town of Merta.

—Issued by [Rajput] Parihar Manrup and [Brahman] Asopa Fatehram⁵²

[To the governor of Jaitaran, 1785] *Shri hajur* (the crown) received this news from the news writers' (*itlak naves*) reports and the following orders have been issued: The brother of Dhobi [washerman] Rama, of Sojhat, was married into a dhobi family from Talakiya village. Another dhobi, of Nilva village, took her into his home (*ghar main ghālī*) while her husband was still alive. For this you fined the dhobi of Talakiya [her father] 21 rupees but did not fine the dhobi of Nilva [with whom she moved in] at all. Instead, you dismissed the summons against the dhobi of Nilva... [Discussing another, unrelated case.] The dhobi of Nilva should be fined. Why did you not do so? Now, fine him in proportion to his means.⁵³

[To the town (*kasbā*) of Bilada, a provincial capital, 1787] Jatni [peasant woman] Sujki came here to the crown (*sri hajūr*) and submitted an appeal (*aray*) stating: 'I had been married to Jat [peasant] Dipa of Patva village. He died after which I started to live with (*ghar main paūhī*) Jat Ratna of Chhitariya village. I was expecting a child fathered by him when we fell out (*mhārāi nai ūṅ nai nā banīyo*) so he left me (*monai chhod dīvī*). A mutually agreed upon deed (*āmāsāmā likhat*) was written up. Since then, I have given birth to a boy that Ratna had fathered and my eyes are wounded. How am I supposed to make ends meet?' Her eyes are injured and [the father of her child] Ratna has left her. The order is to give her 12 rupees from the kachaidi [the governor's office] there. Her daughter lives in Khariya village. Summon the daughter's in-laws and assign the funds meant for Sujki to them. Take a written commitment from them stating that they will never let her come here again.⁵⁴

—Issued by the officer of the court of justice (*adālat rā ohdedar*)⁵⁵

The sample cases above, which involve peasants and artisans, show that among 'lower' caste groups, live-in relationships with widows and divorcées of the same caste were common and acceptable. It was when such relationships involved a still-married partner or if they crossed caste boundaries that they became 'deviant'.⁵⁶ It is also noteworthy that

⁵² JSPB 24, VS 1837/1780 CE, f 102a.

⁵³ JSPB 32, VS 1842/1785 CE, f 155b. This order does not mention who issued it.

⁵⁴ JSPB 36, VS 1844/1787 CE, f 318a.

⁵⁵ This use of the term '*adālat*' is rare in the Bahis, nor is it described in scholarly studies of Rathor administration in the eighteenth century.

⁵⁶ Of the 31 cases of non-marital cohabitation that I found, 26 involved men and women of peasant, artisanal, or service castes. The tolerance towards *ghar main ghālnā* relationships as long as they conformed to rules governing marital ties is also upheld in all these cases

state administrators, as the case involving a Mehra man and woman above shows, were not willing to tolerate non-marital cohabitation even if it involved an unmarried man and a widowed woman of the same sub-caste, unlike the case with artisanal and peasant castes. This was one of many ways in which merchants were in a process of effecting a move into the region's elite. Research from nineteenth-century Bengal too has shown the ubiquity of a range of cohabitation arrangements among non-elite castes in Bengal, which British colonial authorities sought to sweep under the umbrella category of 'temporary' marriages.⁵⁷ There too a mark of non-elite caste status was the practice of remarriage and non-marital cohabitation. These findings from Bengal are suggestive of a similar strengthening of patriarchal controls over women of mercantile castes, with consequences for women's labour and wealth, as they lost the ability to remarry, divorce, or enter into non-marital sexual relations.

A number of other points also emerge from the references above. First, it becomes clear that paper documents could be issued as proof of state recognition and that possession of such papers helped cement a marital bond. Second, the role of money is once more in evidence in the form of fines, levied here as state punishment upon male participants in 'live-in' relationships deemed illicit. Third, the enmeshing of these moral concerns with economic ones is indicated by a command shown above in which an unnamed Jat woman's cohabitation in a Merta village with two different men in a short span of time caused confusion over which of the two men should be recognized as the father of her child. The paternity of the child was clearly of importance, probably for a range of reasons such as the need for a male guardian who could be held responsible for raising her and in case future disputes over inheritance ever arose. This need for a male guardian is also noteworthy in the case of the Jat widow Sujki above, whom the state

involving peasants, artisans, and service castes: JSPB 6, VS 1824/1767 CE, f 110a; JSPB 8, VS 1825/1768 CE, f 118b; JSPB 15, VS 1832/1775 CE, f 203b; JSPB 24, VS 1837/1780, f 5b, f 12a, f 69a–b, and f 106b; JSPB 26, VS 1839/1782 CE, f 71a; JSPB 28, VS 1839/1782 CE, f 287a–b; JSPB 30, VS 1841/1784 CE, 210a; JSPB 32, VS 1842/1785 CE, 155b; JSPB 33, VS 1842/1785 CE, f 73b; JSPB 36, VS 1844/1787 CE, f 34a; JSPB 36, VS 1844/1787 CE, f 113a–b, f 212b–213a, f 264a–b, f 290a, f 318a; JSPB 38, VS 1845/1788 CE, f 63b and f 124a; JSPB 40, VS 1846/1789 CE, f 226b–227a, f 310a, and f 311a–b; JSPB 47, VS 1852/1795 CE, f 343a–b; and JSPB 57, VS 1860/1803 CE, f 128a.

⁵⁷ Samita Sen, 'Offences Against Marriage: Negotiating Custom in Colonial Bengal', in *A Question of Silence? Sexual Economies of Modern India*, (eds) Mary John and Janaki Nair (London and New York: Zed Books, 2000), pp. 84–85.

assigned, possibly due to the absence of a son, to the charge of her daughter's marital family and not to the daughter herself.

Fourth, many of the cases demonstrate the local and socially rooted nature of the judicial resolution of cases, which Nandita Sahai has already observed for eighteenth-century Marwar.⁵⁸ It is possible to see that Rathor authorities in Jodhpur often returned the case to local caste elders or a creditor in control of a bonded labourer at the heart of the dispute.⁵⁹ This evokes Nandini Chatterjee, Farhat Hasan, and Sumit Guha's findings,⁶⁰ discussed above, about the role of attestation by members of the local community in pre-modern documentary regimes. While orders such as the ones about non-marital cohabitation in the *Sanad Parwana Bahis* do not bear the physical marks of the sort of community adjudication that Guha and Chatterjee have identified for early modern documentation, the content of the orders conveys the role of localized community in adjudication. That said, 'community', 'trusted informants', or the establishment of what was 'correct' cannot be divorced from the play of local politics and asymmetric power relations on the ground. To that extent, merchants, as creditors and state officers, could have had an upper hand in reshaping custom in their favour or producing a favourable judgment. In addition, there were limits to the local and caste-wise variability of law, for there also were occasions, such as the blanket ban on abortion, in which the

⁵⁸ Sahai, 'Artisans, the State'.

⁵⁹ It is possible in the *Bahis* to glean the procedures through which petitions and disputes were resolved. This spanned a range. Disputes over property could entail proof in the form of written documents or the word of trusted local informants. If a quarrel was within a caste, then the crown would order the pargana authorities to turn it over to the concerned caste's local council (*nyāit*). Crime such as theft, murder, and the cases of illicit sex discussed here could also involve an inquiry among local notables and the questioning of those who claimed to be witnesses. Other crimes, such as accusations of witchcraft, could entail verification through ordeals (*dhiy*). A large number of orders simply ask local officers to do what is '*wājabi*' (loosely, 'correct'). (See Sahai, 'Artisans, the State'.) References such as the ones above also show that local or supra-local caste councils, the office of the governor of the pargana, and the city magistrate were local nodes of authority with overlapping jurisdictions, particularly in disputes over property and custom. The crown in Jodhpur stood at a level above these local authorities and had the power to overturn their rulings. There was then a dynamic tension between local society and centralizing authority in Jodhpur. Merchant-bureaucrats, however, served as links between central authority and provincial administration, with some of them being transferred to different parganas and moving up the ranks over time.

⁶⁰ Chatterjee, *Negotiating Mughal Law*; Guha, *History and Collective Memory in South Asia*; Hasan, 'Property and Social Relations'.

Rathor crown sent out orders that would override locally variable and caste-based custom.

Fifth, the role of money (here, as *rīt rai paisē*) in mediating social relations is notable in the payment of a small cess by the groom's side to local authorities (for bonded peasants, this would mean the creditor in whose debt they were) for state recognition of marriage or remarriage ties. The importance of money and documentation can be seen in other types of tolerated sexual relations as well. Craftspeople, farming castes, and service groups—that is, a majority of Marwar's population—also practised remarriage.⁶¹ For a remarriage and, ideally, also to set up a non-marital household, the man involved would secure papers (*kāgad*) recognized by the state that documented the woman's guardians' assent (*phārgatī*) to the remarriage, pay a widow price (*rīt rai paisē*) to her guardians, and hand over a small cess (*sukrāṇā*) to the state. In Marwar, as in many other parts of South Asia, elite women did not remarry, only non-elite women did.⁶²

The coexistence of these two orders of sexual exchange—chaste widowhood for elite women and remarriage for non-elites—was accompanied by two different kinds of economic transactions.⁶³ Marriage among the elite castes, the same ones that did not permit women's remarriage, entailed the giving of dowry, whether in cash or kind, from the bride's family to the groom's. Among peasant and artisanal groups, it was the opposite: the groom's family gave money (bridewealth) to the bride's at the time of marriage. In this latter marriage, the gift of the bride was a debt for the groom's family, who repaid it in the form of bride price. In elite marriages, such as among

⁶¹ Nandita P. Sahai, 'The "Other" Culture: Craft Societies and Widow Remarriage in Early Modern India', *Journal of Women's History* 19, 2 (2007), p. 37. Sahai has cautioned that artisanal and peasant women's bodies and sexual relations were subject to a different order of policing, one that enforced remarriage upon them and dictated who their marital partners could be.

⁶² As already recognized for remarriage by Sekhar Bandyopadhyay, 'Caste, Widow Remarriage and the Reform of Popular Culture in Colonial Bengal', in *From the Seams of History: Essays on Indian Women*, (ed.) Bharati Ray (Delhi: Oxford University Press, 1995), pp. 8–36; and Sahai, 'The "Other" Culture'. As a result, if a caste group sought upward mobility, it did so by suppressing widow remarriage by its members, as happened with the goldsmiths (*sunars*) of eighteenth-century Marwar (Sahai, 'Crossing the Golden Gate?', pp. 389–408).

⁶³ Here I concur with Gayle Rubin's ideas about kinship and the sexual economies accompanying it as being significant for understanding the oppression of women. (Rubin, 'The Traffic in Women').

Rajputs and, increasingly, Brahmans and merchants, the gift of the bride did not place a debt upon the groom's family. Instead, the gift of the woman generated honour for her natal family, for which they incurred a debt to the groom's family. This debt was repaid in the form of a dowry. Among elites, then, a daughter could be exchanged for honour and political power, which incurred the added price of a dowry.⁶⁴ Among peasants and artisans, a daughter or widowed daughter-in-law was exchanged for something more fungible than honour—money. Even as the coexistence of these two economies of sexual exchange demarcated 'low' from 'high', this traffic in women facilitated the circulation of capital—between families and between state and society. Among the elite, the money earned from dowries would no doubt have been invested in trade and moneylending as capital.

Elite status generally inhered in entire caste groups, and by the late eighteenth century in Marwar, Mahajans joined the Rajputs and Brahmans in most effectively claiming it. For Mahajan women, the expression of elite rank meant a severe restriction of their sexuality within the bounds of the one marriage they were permitted in their lifetimes. Elite widows elsewhere in eighteenth-century South Asia, such as in the Peshwa-ruled Deccan and early colonial Bengal, also suffered the same expectations.⁶⁵

Defying norms

Perhaps due to its informality and familiarity to most of Marwar's population, the practice of living together out of wedlock also created an opening for the establishment of marriage-like relations between individuals whom caste and social codes deemed ineligible for sexual intercourse with each other. Examples of unacceptable non-marital households included those that crossed caste lines, those within the same family, or those involving at least one still-married partner.

⁶⁴ This perhaps is why the spread of hypergamy, or marrying one's daughter into a higher-ranked caste, was accompanied by an expansion of dowry in place of bridewealth.

⁶⁵ For the Peshwa-ruled western Deccan, see Uma Chakravarti, 'Wifehood, Widowhood and Adultery: Female Sexuality, Surveillance and the State in 18th Century Maharashtra', *Contributions to Indian Sociology* 29, 1–2 (1995), pp. 3–21; and O'Hanlon, 'Disciplining the Brahman Household', pp. 381–382; and for early colonial Bengal, see Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (New Delhi: Oxford University Press, 2000), pp. 112–113, 115.

In upholding these proscriptions, local caste groups held men and women to different standards. So if a still-married man started living with another woman, the local caste group often turned a blind eye and it was only if his wife or her family protested that the state or the caste took action to address the issue.⁶⁶ In contrast to the possibility of tolerance towards married men cohabiting with women who were not their wives, married women did not receive the same degree of latitude. If a married woman started living with another man, the local caste group would mobilize to rectify the situation, often appealing to the state for help. Recorded instances of this involved merchants, peasants (Jat), camel herders (*raibari*), washermen (*dhobi*), barbers (*nai*), and potters (*kumbhar*).⁶⁷ Notably, in all cases it was the men who were punished for the violation of social norms and the law, whether through fines, arrest, or both.⁶⁸ This suggests that men were the only accountable subjects in the eyes of Rathor law when it came to sexual deviance. While women were capable of participating in illicit acts, they were deemed incapable of resisting them.

Given the ranked nature of caste, inter-caste cohabitation raised the danger of intimacy with those lower in station. Establishing marriage-like ties with members of castes lower in the social order was risky for the entire local caste group, raising the prospect of sliding lower in social rank. Cobbler (*mochi*) Padiya's local caste group (*nyāt*) excommunicated him because his wife was said to have earlier moved in with a *balai*, an 'Untouchable' caste of leatherworkers.⁶⁹ The cobblers refused to include Padiya in their communal feasts, a key marker of caste membership.⁷⁰ Cobblers were only a degree removed from leatherworkers, but as artisans working with treated leather, they enjoyed higher status than leatherworkers who did the much more 'polluting' work of skinning animal carcasses and treating hides.

⁶⁶ JSPB 15, VS 1832/1775 CE, f 203b; JSPB 18, VS 1834/1777 CE, f 75a; JSPB 24, VS 1837/1780 CE, f 12a; JSPB 36, VS 1844/1787 CE, f 212b–213a.

⁶⁷ JSPB 5, VS 1823/1766 CE, f 87b; JSPB 11, VS 1828/1771 CE, f 131b–132a; JSPB 15, VS 1832/1775 CE, f 160a; JSPB 32, VS 1842/1785 CE, f 155b; JSPB 33, VS 1842/1785 CE, f 73b; JSPB 36, VS 1844/1787 CE, f 290a.

⁶⁸ Ibid.

⁶⁹ I use the term 'Untouchable' following usage in Rathor records which use the word '*achhef*' (literally, 'untouchable') to name a category of caste groups that explicitly included leatherworkers. See Divya Cherian, 'Ordering Subjects: Merchants, the State, and Krishna Devotion in Eighteenth-Century Marwar', PhD thesis, Columbia University, 2015, pp. 145–155.

⁷⁰ JSPB 40, VS 1846/1789 CE, f 226b–227a.

Occupational proximity perhaps made the cobblers more sensitive to maintaining social boundaries with leatherworkers. For this reason, the cobblers of Sojhat refused to reintegrate Padiya into their local caste. He appealed to the crown at Jodhpur for help. After the court's mediation, the local caste agreed to take Padiya back if he atoned by making a pilgrimage to the Ganges, which is likely to have been an expensive undertaking. But when Padiya returned from his pilgrimage, the cobblers of Sojhat still refused to take him back, in all likelihood because they had made the earlier concession under state pressure. Padiya petitioned the crown in Jodhpur again and in response, the crown ordered its functionaries in Sojhat to ensure that the local cobblers kept their word and took Padiya back into their caste.⁷¹

As with most cases inscribed in these records, it is unclear how the dispute was eventually resolved, but the episode illustrates the limits of tolerance towards non-marital cohabitation in eighteenth-century Marwar. Unlike among aristocratic and landed elites, inter-caste cohabitation risked the blurring of caste boundaries and the loss of social status for more ordinary Marwaris. Inter-caste live-in relationships also held the danger of producing children of uncertain caste, creating room for disputes over property inheritance.⁷² So, while wealthy Rajputs were able to attach lower-caste women as consorts and female slaves to their households, albeit at a distinct and lower station than wives, for artisanal and peasant castes, socio-economic precarity served to corral long-term sexual relationships within caste lines. If members of a local caste group failed to break up an inter-caste household they would rather see dissolved, they often succeeded in petitioning the Rathor state to intervene in their favour.

The unacceptable

Lagvād (lit. 'attachment') was a pejorative label given to 'illicit' sexual relationships, that is, those covertly conducted between parties across caste boundaries or against kinship rules.⁷³ In *lagvād* relationships, it is possible to discern the willing participation of women as well as traces of

⁷¹ Ibid.

⁷² JSPB 38, VS 1845/1788 CE, f 63b (in which the caste fellows of a Jat man began to speculate that the woman he had been living with and from whom he had fathered three children was of unknown social origin and was probably not a Jat. In the face of this social pressure, the Jat man then threw the woman out of his home.)

⁷³ JSPB 15, VS 1832/1775 CE, f 282a.

affect, of love. The men and women involved had to meet the following conditions for their *lagvād* relationship, if discovered, so that it could be rendered into a more tolerable ‘*ghar main ghālnā*’ or live-in union: they had to be of the same caste group, their caste group permitted women’s remarriage, they were not already kin, and they were unmarried at the time.

If a married woman fell in love with another man, even of the same caste, she could not initiate divorce in order to free herself for a second marriage. Driven to desperation, some women conspired to kill their husbands so as to set up new households with their lovers.⁷⁴ False allegations of *lagvād* and the investigations and fines they resulted in could be used as a means of exacting revenge.⁷⁵ When no witnesses were available to verify *lagvād* allegations, local authorities could rely on ordeals (*dhīj*) to establish the truth of the matter.⁷⁶

The Rathor state, along with local caste groups, worked to end *lagvād* relationships generally by issuing fines and sometimes by supporting creative solutions.⁷⁷ For instance, when Mahajan Kesro of Nagaur had an affair with another Mahajan’s wife, the local Mahajan community forced him to marry his lover’s daughter. A continuation of the affair would therefore take it into the even more serious territory of incest. Even after taking this step, the Mahajans of Nagaur continued to taunt and humiliate Kesro.⁷⁸

Lovers who transgressed the boundaries of caste received punishments from both their caste fellows as well as the state and had to contend with insurmountable obstacles to be together. Faced with the imminent consummation of his betrothal to a Brahman girl, Brahman Sama of a

⁷⁴ See, for instance, the allegations against Bishnoi Pemla (JSPB 11, VS 1828/1771 CE, f 88b); Tikma, the widow of Sirvi (a peasant caste) (JSPB 30, VS 1841/1784 CE, f 210a), and the woman with whom clothprinter Chhimpa Isak had been living for over a decade (JSBB 36, VS 1844/1787 CE, f 113a–b). When a Jat woman moved in with a Rajput man, her husband was killed (the killer was unspecified; JSPB 10, VS 1827/1770 CE, f 260a).

⁷⁵ JSPB 15, VS 1832/1775 CE, f 236a.

⁷⁶ JSPB 26, VS 1839/1782 CE, f 66a.

⁷⁷ JSPB 37, VS 1844/1827 CE, f 180b–181a (a Rajput fined seven rupees for his *lagvād* with a Brahman woman); and JSPB 57, VS 1860/1803 CE, f 111b–112a (a Rajput policeman of Sojhat dramatically caught trying to sneak out of the home of the married *nai* or barber woman he was involved with in the dead of the night. As punishment, his wages were withheld for four months and he was issued with a stern warning to refrain from such behaviour). With regard to the latter episode, it ought to be noted that men of elite castes could turn a blind eye to the bodily ‘lowness’ of ‘low’-caste women in order to have sexual relationships with them.

⁷⁸ JSPB 14, VS 1831/1774, f 78a–b.

village near Merta preferred to run away with a woman from the carpenter (*khathi*) community. Local authorities rounded up all of the Brahman's male kinsmen and may also have exerted pressure on the woman's family. The woman carpenter soon returned but Sama preferred to stay on the run rather than return to the fate, marital and otherwise, that his family and caste had arranged for him.⁷⁹ Mahajan Manrup's sister ran away from her village in Koliya province into the desert with her Rajput lover. The Mahajan girl's father and brother petitioned the state for help, and the state in turn ordered its provincial officers to harass the Rajput's kinsmen into helping in the effort to trace the eloped couple.⁸⁰

In the 30 orders responding to *lagvād* that I found, the majority (unsurprisingly) were issued by Mahajans. Some of the authorizing officers named in the orders are Singhvis Tilokmal, Dhirajmal, and Motichand; Bhandaris Gangaram, Dayaldas, Shivchand, and Bhavanidas; and Muhnot Bhani Das and Sibhukaran. The Rathor bureaucracy, staffed largely by men of mercantile castes, then, was most intensely focused on the sexual activities of the region's elite. The other significant feature of the state's response to *lagvād* reports is that only in cases of incest were women punished. Otherwise, as with live-in relationships, the state did not punish the women involved as it did the men, if caught. It appears that each act of incest, as defined by caste and state in eighteenth-century Marwar, was so grave a threat to the moral and social order at large that Rathor law drew women too into the ambit of culpability. Often, men and women discovered to be in an incestuous relationship committed suicide, indicating the power of the incest taboo and hinting at the severity of extra-state punishments for it.⁸¹ Despite the policing of illicit relationships, *lagvād*'s inscription into the archive shows that there were occasional, yet significant, instances of individual defiance against the writ of the family, caste, and state in the pursuit of love.

Rape or adultery?

Farhat Hasan has observed with respect to Mughal cities that, 'Exchange of property was more often seen as a transaction in prestige, one that compromised for the vendor the honour of his person and family—and,

⁷⁹ JSPB 16, VS 1833/1776 CE, f 56b–57a.

⁸⁰ JSPB 30, VS 1841/1784 CE, f 325b.

⁸¹ See, for instance, JSPB 26, VS 1839/1782 CE, f 32b and 36a in which a man accused of incest took his own life by consuming a fatal dose of opium (*amal*).

if the person purchasing it came from outside his social group, that compromised the honour of his community and kin, as well.⁸² Even though Hasan's study is focused on material exchanges, it is striking how much the argument he makes here about property is applicable also to the exchange of women, as suggested by my arguments above about the relationship between prestige, on the one hand, and sexual relations within or outside the caste group, on the other. The line between licit and illicit when it came to sexual exchange, then, was deeply enmeshed with the honour and prestige of caste and family. This helps to explain the lack of concern in Rathor law for women's willing or unwilling participation, that is, consent, in other kinds of 'illicit' sex as well.

It is worth pausing here to ask if a discussion of 'consent' in eighteenth-century, pre-colonial South Asia ahistorically imposes upon the past an expectation of the liberal notion of the choice-making individual.⁸³ Early modern South Asian conceptions of selfhood, the body, and of gender, as in other pre-modern societies,⁸⁴ differed from those that developed in the colonial era. Responses to being forced to have sex, especially that which violated customary norms and brought 'dishonour' to caste and family, would surely have differed from twenty-first century reactions. From scholarship on other parts of the early modern world we know that even if a term for rape existed, its definition in law was often left vague, such as in early modern England,⁸⁵ and its prosecution was rare and nearly impossible in places as far afield as Massachusetts, England, Ottoman Aleppo, Xhosaland in southern Africa, and China in the eighteenth century.⁸⁶

⁸² Farhat Hasan, 'Property and Social Relations in Mughal India: Litigations and Disputes at the Qazi's Court in Urban Localities, 17th–18th Centuries', *Journal of the Economic and Social History of the Orient* 61, 5–6 (2018), p. 852.

⁸³ Lyndal Roper, 'Will and Honor: Sex, Words and Power in Augsburg Criminal Trials', *Radical History Review* 43 (1989), pp. 45–46.

⁸⁴ See, for instance, Elizabeth S. Cohen, 'The Trials of Artemisia Gentileschi: A Rape as History', *Sixteenth Century Journal* 31, 1 (2000), pp. 47–75.

⁸⁵ Anne Greenfield (ed.), *Interpreting Sexual Violence* (London; New York: Routledge, 2013), Introduction, pp. 5–6; and Mary R. Block, "'For the Repressing of the Most Wicked and Felonious Rapes or Ravishments of Women": Rape Law in England, 1660–1800', in *Interpreting Sexual Violence*, pp. 23–25.

⁸⁶ On the lack of a distinct term for rape vis-à-vis illicit sex in Xhosaland (South Africa), see Elizabeth Thornberry, *Colonizing Consent: Rape and Governance in South Africa's Eastern Cape* (New York: Cambridge University Press, 2019), pp. 12–14, 70–71. On the difficulty of conviction in rape cases in the eighteenth century, see, for England, Block, 'For the

Yet, to identify the absence of a concern for consent—defined purely as permission—in sexual acts is not ahistorical, as is made amply clear by the contemporary recognition of its relevance for adjudicating cases in the practice of Hanafi law in the eighteenth century, as we know from Ottoman territories.⁸⁷ The importance of consent in adjudicating adultery and rape trials has been observed, for instance, for Ottoman Aleppo.⁸⁸ While historians are yet to study such cases in Mughal India, the Ottoman example is suggestive since the Mughals, like the Ottomans, favoured the Hanafi interpretation of Islamic law.⁸⁹ The Marwar region was an important part of the Mughal empire for more than a century, with parts of it being directly governed by the Mughals in Delhi. The lack of significance attached to consent in eighteenth-century Rathor law and in other Rajput kingdoms, then, is important when read alongside the contemporary recognition of it in other legal approaches current at the time in early modern, pre-colonial South Asia.

I argue that an underlying link between Rathor treatments of ‘illicit’ cohabitation and the lack of significance of women’s consent in sex was a denial of sexual personhood—the agency of a participant in sexual acts—in law to women. This was a legal conception of women as passive recipients, rather than agents, when it came to sex. I suggest here that the eighteenth century saw the merchant-run Rathor state enact and implement this denial of women’s sexual personhood, taking it from the realm of a localized, diffuse, and more negotiable operation

Repressing’, p. 32; for Ottoman Aleppo, Elyse Semerdjian, *‘Off the Straight Path’: Illicit Sex, Law, and Community in Ottoman Aleppo* (Syracuse: Syracuse University Press, 2008), pp. 145–156; for Qing China, Vivien Ng, ‘Ideology and Sexuality’, *Journal of Asian Studies* 46, 1 (1987), pp. 57–70; for Massachusetts, Barbara S. Lindemann, ‘To Ravish and Carnally Know’, *Signs* 10, 1 (1984), pp. 63–82. For continuities in low rates of conviction, despite a move to new methods and law codes under the English colonial regime in Bengal, see Elizabeth Kolsky ‘The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805–57’, *Journal of Asian Studies* 69, 4 (2010), pp. 1093–1117.

⁸⁷ Hina Azam’s discussion of Maliki and Hanafi legal approaches to sexual violation testifies to ways in which rape—with or without a legal name—made its way into Islamic jurisprudence. See Hina Azam, *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure* (New York: Cambridge University Press, 2015).

⁸⁸ Semerdjian, *‘Off the Straight Path’*, pp. 145–150.

⁸⁹ The Hanafi school of law is one of four Sunni schools of jurisprudence. Abu Hanifa (d. 767) was its founder and the Abbasids favoured it. In the centuries that followed, the school became widely influential in Khorasan, Transoxiana, and Afghanistan, and eventually many other parts of the world, including much of South Asia.

into a more standardized and state-enforced practice. This was part of an intensification of proprietary controls, seen also in the tightening of controls over other kinds of property, such as bonded labour, at this time.⁹⁰ In the countryside, this was most visible in the shift of the *vasī* (originally, a dependent of a Rajput) from a loyal attaché to a bonded labourer.⁹¹ The expansion of debt and the intensification of proprietary controls accompanied other shifts in the economy such as growing monetization, the proliferation of credit, and the growing power of merchants and landlords.⁹² The handling of illicit sex as a proprietary crime accompanied this larger strengthening of the hands of male holders of productive resources such as land, labour, and capital.

The *Sanad Parwana Bahis* reflect that, apart from *lagvād*, another type of relation was both illicit and illegal in eighteenth-century Marwar: that designated ‘*chāmchorī*’ (literally, ‘theft of skin’, suggesting the theft of something bodily). Unlike *lagvād* relationships, which were ongoing and continuous, the episodes described as ‘*chāmchorī*’ appear to be sporadic, or even one-time, occurrences. In some documents, *lagvād* and *chāmchorī* are used interchangeably, which is noteworthy because it indicates an overlap between the two terms: what they had in common was their naming of sexual deviance.

This slippage between the two terms suggests that, to a certain extent, it did not matter whether a ‘deviant’ sexual relationship was a one-time event or ongoing. What mattered more was that it defied custom and was thus illicit. Rathor records also occasionally use the terms ‘*chūknā*’ (‘to have sexual intercourse with’) and ‘*harām karnā*’ (‘to commit *harām*’) to describe cases that involve the same transgressions and responses as *chāmchorī*. Arrogating the moral authority to adjudicate the boundary between the licit and the illicit was an important aspect of state and caste formation in the eighteenth century. By way of example, below

⁹⁰ A glimpse of which can be seen in the *ghar main ghālnā* dispute involving Balai Deva of Sojhat pargana discussed above.

⁹¹ On the loyalty-based attachment of *vasīs* in seventeenth-century sources, see Saran, ‘Conquest and Colonization’. On their reduction to bonded labour by the mid-eighteenth century, see the discussion of debt and agrestic servitude in Nandita Sahai, *Politics of Patronage and Protest: The State, Society, and Artisans in Early Modern Rajasthan* (New Delhi: Oxford University Press, 2006), pp. 144–152.

⁹² On the growing power of moneylenders and the rise of indebtedness in Marwar, see Sahai, *Politics of Patronage*, and elsewhere in Rajasthan, see Dilbagh Singh, ‘The Role of Mahājans in the Rural Economy of Eastern Rajasthan’, *Social Scientist* 2, 10 (1974), pp. 30–31. On the intensification of the exploitative power of Rathor state officers upon artisans, see Sahai, *Politics of Patronage*, pp. 202, 223–224.

are three of the 52 state orders in response to reports of *chāmchorī* sent from Jodhpur to provincial offices that I found:

[To the Nagaur magistracy] *Luhār* (blacksmith) Mehmuda appealed to the crown that his son was accused of doing *chāmchorī* with a *khaṭīknī* [woman from the caste of butchers]. For this Mehmuda was fined 51 rupees. He said he was poor (*nādār*) and had four unmarried daughters. He can only pay the fine if granted a discount. The order is, collect 17 rupees.⁹³

[To the *sayar*⁹⁴ in Sojhat] Mahajan Chaina of Khambhal village came to *shri hajur* [the crown] and submitted an appeal stating his son Hemla was under arrest due to being accused of having done *chāmchorī* with a *dhedhni* [leatherworking woman]. Chaina said his son did not have sex with her. The order is, properly enquire into the matter there and release Chaina's son. Don't harass him. If solid evidence of his having done *chāmchorī* reaches you, fine him in proportion to his means.⁹⁵

[To the governor of Koliya] Shri Hajur found out through the news writers' reports that [rajput] Sakhla Ajbo committed the crime of *chāmchorī* with brahman Rama's daughter who is a widow. For this he was fined 101 rupees, of which he paid 30 and not the rest. He is a prosperous cultivator. The order is, why did you release him without collecting the entire fine? Explain this and collect the rest of the sum from Ajba quickly.⁹⁶

In nearly all of the cases of *chāmchorī* that I came across, it was the guilt of men that was of primary concern and the state's punitive efforts were directed only at them. There is only a single instance that I could find of a woman being fined for *chāmchorī*.⁹⁷ The punishment for *chāmchorī* could be arrest, fines, or, as in just the one case, death. Fines were the most common type of punishment for the crime and these varied from a few rupees to as much as 600 rupees.⁹⁸ As with many other crimes,

⁹³ JSPB 16, VS 1833/1776 CE, f 32b.

⁹⁴ An office under the provincial governor's supervision, tasked with collecting non-agrarian cesses.

⁹⁵ JSPB 38, VS 1845/1788 CE, f 172b.

⁹⁶ JSPB 45, VS 1850/1793 CE, f 483a–b.

⁹⁷ This was a woman from a *banīya* or trading family who was fined 450 rupees, later reduced to 212 rupees, in connection with *chāmchorī*, though how exactly she was guilty or involved is unspecified in the order (JSPB 34, VS 1843/1786 CE, f 196b–197a). The order is in response to her request for the fine to be reduced and offers no further detail. While it is hard to guess why only this woman was fined, a possibility is that she was answerable for a fine imposed upon her son and, in the absence of a male guardian, it was she who came before the crown asking for a discount.

⁹⁸ In 1784, officer Singhvi Khubchand forwarded some of the proceeds that the Rathor state earned through fines on *chāmchorī* and other unspecified crimes to Sojhat's governor, asking him to use 400 rupees from those funds to desilt and repair the lake in Sojhat (JSPB

the quantum of the punishment was decided on the basis of the gravity of the offence and the economic standing of the guilty. Deciding the quantum of punishment, as with other types of crime, was the source of frequent disagreement between the crown and its provincial officers.

In these records the ubiquity of fines as a means of justice—as a way of righting wrongs, ending disputes, and healing harms—is noteworthy. This suggests that money was no longer just a store of value or a medium for the exchange of economic goods. Alongside increases in commercial agriculture, manufacturing for the market, the spread of credit relations, and state revenue demands in cash, fines levied by regional governments such as that of Marwar are an important, if neglected, aspect of the history of monetization of South Asia. The commutation of crime into cash alludes to the expiatory powers of money, the payment of a monetary fine restoring ruptured social bonds and seen as causing suffering upon the guilty that was commensurate with the gravity of the crime. Expiation through money, then, took its place alongside older forms of performing repentance, such as hosting a feast for the local caste group or making a pilgrimage to the River Ganges. Even though the idea of monetary fines was not unknown prior to the early modern period, the sheer mass of monetary transactions between states and subjects as fines and payments to formalize marriages and remarriages reached unprecedented proportions in the course of the early modern period. If the high fluidity of capital, its constant circulation instead of investment in fixed capital, was a feature of proto-capitalism or commercial capitalism of the early modern age, then the economy of fines and marriage dues (in addition to dowry and bride price) certainly were a significant part of the infrastructure keeping money on the move.

Rathor administrators' punitive response was another field of overlap between *chāmchorī* and *lagvād* or long-term sexual relationships. Once more, this overlap between how different kinds of sexual relations, whether long-term or one-time, were seen by the Rathor state suggests that when it came to its subjects' sexual acts the line of greatest significance for the Rathor state was that which separated the licit from the illicit. Consent was immaterial.

In these documents, moreover, there is no distinct term for rape, that is, for sex without the consent of both involved persons. The absence or presence of consent was not significant in the eyes of the state nor for

30, VS 1841/1784 CE, f 181a). The policing of subjects' sexual activities then, along with the Rathor state's larger regime of fines, was also a revenue stream in and of itself.

society at large in deciding whether or not a sexual act was objectionable, deviant, or illegal. Rather, in the legal adjudication of *chāmchorī* and *lagvād* cases, and in their designation as such, state and society were primarily concerned with whether or not the sex was illicit, which in turn rested on whether or not sex between the two parties defied customs governing caste and kinship.

While existing studies on *chāmchorī* in eighteenth-century Rajasthan suggest, or at most identify, the fluidity between rape and adultery in legal records, they do not make much of this absence of a distinct term for rape. Instead, they try to read rape into the record.⁹⁹ Nandita Sahai, for instance, finds it noteworthy that adultery by goldsmith women is described in the revenue records of eighteenth-century Marwar as *chāmchorī*, a term she translates as rape.¹⁰⁰ Perhaps to find a resolution, Sahai suggests that rape was termed ‘*zorāvārī* [forced] *chāmchorī*’ while adulterous but consensual sex was just ‘*chāmchorī*’, which then allows her to read the *chāmchorī* cases as examples of adultery.¹⁰¹ This distinction in terminology is difficult to sustain from my survey of the same records in which I am yet to see the use of *chāmchorī* qualified with ‘*zorāvārī*’. Other scholars of Rajasthani history, such as Singh and Kumar, have tried to push a reading of *chāmchorī* as consensual adulterous relations to argue that instances of it constituted defiance against patriarchal codes.¹⁰² This interpretation, however, is challenged

⁹⁹ Fatima A. Imam, ‘Decoding the Rhetoric of Morality in Eighteenth Century India: The Interventionist Nature of the Jaipur State’, *Indian Journal of Gender Studies* 21 (2014), p. 412; and Dilbagh Singh, ‘Regulating the Domestic: Notes on the Pre-Colonial State and the Family’, *Studies in History* 19, 1 (2003), p. 74. Nirmal Kumar, ‘Crime and Gender in Eighteenth-Century Rajasthan’, *Indian Historical Review* XXX 1, 2 (2003), p. 47, on the other hand, translates ‘*chāmchorī*’ and all other terms related to illicit sex as ‘adultery’ and reads them as consensual.

¹⁰⁰ Sahai, ‘Crossing the Golden Gate?’, p. 399. However, she does not offer any examples of documents using the term ‘*zorāvārī chāmchorī*’ to support her claim. See also Sahai, *Politics of Patronage and Protest*, pp. 92–94. While conceding the range of acts included under ‘*chāmchorī*’, Fatima Imam’s analysis chooses to lean towards interpreting it as rape, which then permits her to view the eighteenth-century Jaipur state as adopting the stance of a paternalistic protector of women when it fined the men accused in *chāmchorī* cases (‘Decoding the Rhetoric’, pp. 412–415).

¹⁰¹ Dilbagh Singh, in his reading of eighteenth-century Jaipur court records, also tries to read into them a distinction between rape and adultery, suggesting that ‘*zorāvārī*’ (‘forced’) was sometimes prefixed to ‘*chāmchorī*’ to designate rape cases. But he also concedes that the absence of the ‘*zorāvārī*’ prefix did not always mean that the *chāmchorī* case under review was a consensual one (Singh, ‘Regulating the Domestic’, p. 74).

¹⁰² *Ibid.*, p. 76; Kumar, ‘Crime and Gender’, p. 42.

by their own admission, elsewhere in the same essays, that they were unable to identify which cases classed under the umbrella term ‘*chāmchorī*’ were consensual and which were not.¹⁰³

This approach reads into the pre-colonial records of kingdoms such as Marwar a legal category that did not yet exist—that is, rape. Rather than trying to parse *chāmchorī* cases into consensual and non-consensual ones, historians need to take seriously the very fact that in eighteenth-century Marwari jurisprudence, the difference between rape and adultery did not matter enough to merit a different category or even emphasis in case descriptions. Similarly, in the eighteenth-century Peshwa state in the western Deccan, a few cases can be discerned as non-consensual due to the prefixing of ‘*jabardastī*’ (‘forced’) before the term used to designate illicit sex more broadly (such as *badkarma*, *badfāilī*, *badamal*, and *sinālī/sinalkī*).¹⁰⁴ The lack of a distinct legal category for rape, and the occasional indication of a lack of consent through the modification of the umbrella term for ‘illicit’ sex, then reflects that under the laws implemented by the Peshwa court too, consent was of secondary significance, if at all, in deeming sex ‘illicit’. From the ancient through to the early modern period in South Asia, Sanskrit law codes produced and commented upon also appear to lack a distinct category or term for rape. They do, however, discuss sexual relationships that are tantamount to rape, categorizing sex with a woman while she is asleep, intoxicated, or deranged as *paiṣāca* marriage, a low and undesirable type of marriage,¹⁰⁵ and elsewhere as one of three types of *saṅgrahaṇa*, translated as unlawful sex or adultery.¹⁰⁶ Acts that are condemned for lack of consent are thus classed with other types of undesirable or illicit sexual relationships. The lack of consent in and of itself does not merit, even in dharmashastric law, the constitution of a distinct category of rape. The *Sanad Parwana Bahis* neither cite shastric law nor do they reference consultations with experts.

¹⁰³ Singh ‘Regulating the Domestic’, p. 74; Kumar, ‘Crime and Gender’, pp. 47–48.

¹⁰⁴ N. K. Wagle, ‘Women in the Kotwāl’s Papers, Pune, 1767–1791’, in *Images of Women in Maharashtrian Society*, (ed.) Anne Feldhaus (Albany: SUNY Press, 1998), p. 16.

¹⁰⁵ Stephanie Jamison, ‘Marriage and the Householder’, in *The Oxford History of Hinduism: Hindu Law, a New History of Dharmasāstra*, (eds) Patrick Olivelle and Donald R. Davis (Oxford: Oxford University Press, 2017), pp. 125–136.

¹⁰⁶ P. V. Kane, ‘*Strīsaṅgrahaṇa* (Adultery or Unlawful Intercourse with a Woman)’, in *A History of the Dharmashastra*, Vol. III, (ed.) P. V. Kane (Poona: Bhandarkar Oriental Research Institute, 1973; 2nd edn), pp. 531–533.

At the same time, in Islamic law as well, including, for instance, in its application in the Ottoman empire, there was no distinct legal term for rape. Instead, it was classed under the overarching category of ‘*zina*’, or illicit sexual acts, which included adultery.¹⁰⁷ Unlike in Marwar, however, women could be and were held culpable and be punished for their willing involvement in illicit sexual acts and for this reason, Ottoman law did place emphasis on clarifying in case descriptions whether or not the woman willingly consented to the act.¹⁰⁸ Still, it is noteworthy that neither Islamic law nor Sanskritic textual codes had a separate legal term for rape. It is unclear, due to a lack of explicit reference to either Islamic or Brahmanic law codes in the petitions and judgments in the Rathor archive, whether Rathor legal reasoning and practice derived from either of these two legal traditions.

This does not mean that women did not experience sexual violence in eighteenth-century Marwar or that they did not forge consensual sexual relationships that defied norms. Indeed, modern-day historians may, where cases are detailed enough, be able to separate *chāmchorī* cases into the two different categories of rape and consensual sex, as they have done,¹⁰⁹ but what I am suggesting here is that eighteenth-century Rathor law, and that of some other eighteenth-century polities in South Asia, was not invested in this distinction. It is this lack of concern for consent in law that I seek to underscore and explore here.

What does this lack of a legal conception of rape in law, as practised in Marwar and perhaps even beyond, in the eighteenth century mean? I suggest that can be understood alongside the refusal to punish women for participating in illicit sex, as the above discussion shows. While both men and women were deemed guilty, it was largely men who were fined for the different kinds of illegal sexual relations, whether long-term, one-time, consensual, or non-consensual.¹¹⁰ That only men were held liable and punished for *chāmchorī* has also been noted in the case of eastern Rajasthan in the same centuries. In that sense, the

¹⁰⁷ Semerdjian, ‘*Off the Straight Path*’, pp. 145–156.

¹⁰⁸ *Ibid.*

¹⁰⁹ In addition to the studies on Rajasthan discussed above, studies of the Maratha Deccan also provide instances of cases of adultery and rape. See Wagle, ‘Women in the Kotval’s Papers’; N. K. Wagle, ‘The Government, the Jāti, and the Individual: Rights, Discipline, and Control in the Puṇe Kotwal Papers, 1766–94’, *Contributions to Indian Sociology* 34, 3 (2000), pp. 321–534; and Sumit Guha, ‘An Indian Penal Regime: Maharashtra in the Eighteenth Century’, *Past and Present* 147 (May) (1995), p. 117.

¹¹⁰ Singh, ‘Regulating the Domestic’, p. 75.

denial of sexual personhood in law to women in Marwar seems to align with practice in the wider region.

How do we make sense of the denial of sexual personhood to eighteenth-century Marwari women? Here the literature on slavery in pre-colonial South Asia is particularly insightful. Scholarship on slavery, households, and law in pre- and early colonial South Asia has noted the embeddedness of slaves in homes and in kinship and familial relations.¹¹¹ Noting a continuum from slavery to kinship, Indrani Chatterjee asks if the household in pre-colonial India was a

broad, porous unit, made up of a variety of kin some of whom were part of the real and realizable wealth of the household? ... Was kinship then a peculiarly fragile condition, without any correlation between affect and substance, where every elder kin-member could alienate weaker and younger kin, male and female alike?¹¹²

A wife or a daughter was a weaker and dependent member of a man's domestic establishment and, in matters pertaining to her own body, had no autonomous sexual personhood of her own. She could not then be liable for any illicit acts committed upon her body, as outlined above, and her willingness or unwillingness in participating in such acts was beside the point. In the eyes of Rathor law, then, the harm from such acts was done to the head of her household (*dhanī*) and responsibility for that could only be laid upon male participants and protectors. This is not to erase completely the difference between wife and slave. Still, even if wifehood was distinguished from concubinage and domestic slavery through ritual and status, it shared with them the quality of being a form of ownership. So it was that the Rathor crown commanded that Kumbhar (potter) Deva's wife be forcibly handed back to him by the pargana authorities in Phalodhi, even though she had left her marital home and was refusing to return to it due to what

¹¹¹ Indrani Chatterjee, *Gender, Slavery, and Law in Colonial India* (New York: Oxford University Press, 1999); Chatterjee, 'Alienation, Intimacy, and Gender'; Chatterjee, 'Introduction', in *Unfamiliar Relations*, pp. 9–14; I. Chatterjee, 'Renewed and Connected Histories: Slavery and the Historiography of South Asia', in *Slavery and South Asian History*, pp. 17–43; Sumit Guha, 'Slavery, Society, and the State in Western India, 1700–1800', in *Slavery and South Asian History*, pp. 162–186; Anjali Arondekar, 'What More Remains? Slavery, Sexuality, South Asia', *History of the Present* 6, 2 (2016), pp. 146–154.

¹¹² Chatterjee, *Gender, Slavery, and Law*, p. 27. Vis-à-vis eighteenth-century Marwar, Nandita Sahai too concludes that, on balance, the Rathor state was indifferent to the concerns of women, noting, for instance, the lack of consultation with women when it came to marriage and remarriage (Sahai, *Politics of Patronage*, p. 97).

to modern eyes was rape at the hands of her brother-in-law.¹¹³ In a rare follow-up order, we know that Deva's wife preferred to flee from the new home that she had set up with another potter than return to her marital home. Rathor authorities issued a command for her to be traced and returned to her husband. They also commanded that the fine that had earlier been levied upon her brother-in-law due to her allegation of sexual impropriety be returned to him.¹¹⁴

The proprietary controls that men exercised over their wives could, though very rarely, extend into the ability to sell them. Goldsmith Isariya of Merta sold his wife in 1785 to a caste fellow (*sunār siriye āp rī lugān sunār nānīyā nu bechī*).¹¹⁵ Three other goldsmiths authorized the document (*likhat*) finalizing the sale. The sale of wives clearly was not entirely acceptable for it excited some controversy and provincial authorities in Merta fined the three men a total of 16 rupees. The men seem to have decided to challenge the judgment and made their way to the capital, where Asopa Surajmal upheld and collected the fine and decreed the case closed.¹¹⁶ A fortnight later, perhaps due to continuing dissatisfaction among some *sunars* or powerful administrators in Marwar that the earlier punishment had been a mere slap on the wrist, Asopa Surajmal deemed the provincial judgment to be grossly insufficient. Now, the men responsible were to be held in the magistracy and fined 1,000 rupees in order to make sure that no one ever again participated in a sale such as this nor authorized it.¹¹⁷ A year-and-a-half later, Singhvi Motichand and Pancholi Fatehkaran reduced the fine to a total of 350 rupees, levying it only upon the two men involved in the transaction.¹¹⁸ In all the orders, it remains unclear what happened to the woman being sold. Was she restored to her husband? Or did she remain with the man who had bought her? Even as some members of the goldsmith caste group and Rathor administrators looked down upon the sale—their disapproval ranging from mild to extreme—it is noteworthy that the sale went ahead at all and that some caste fellows

¹¹³ But which in the command is described as '*chūkṇā*' or to have sex. JSPB 40, VS 1848/1791 CE, f 310a.

¹¹⁴ JSPB 40, VS 1848/1791 CE, f 311a–b.

¹¹⁵ JSPB 32, VS 1842/1785 CE, f 81b.

¹¹⁶ Ibid.

¹¹⁷ '*āgān su ṭṭ tarai kaī mol levai nahī nai likhat karai nahī*'. JSPB 32, VS 1842/1785 CE, f 81b (the same folio as the previous order on this same case).

¹¹⁸ JSPB 35, VS 1843/1786 CE, f 410b–411a. The buyer was fined 300 rupees and the seller, the man who sold his wife, was fined 50 rupees.

authorized it in writing. It took some effort before Rathor authorities recognized it as an ‘egregious’ violation.

In this milieu, illicit sex was coded as a type of proprietary crime, a violation of the control of the male guardian upon the wife or daughter’s body. Seen from the perspective of sexual economies of exchange, a woman who entered, willingly or not, into a sexual transaction outside of recognized kinship bonds diminished her value as a gift or a conduit of social relations.¹¹⁹ Eighteenth-century historical processes such as the rise of new social groups, greater commercialization and monetization of everyday life, and the formation of regional polities with a deepening hold over society permitted the channelling of the state’s coercive power into a regime that intensified and put into action a legal vision that saw wifehood and slavery as proximate—though not identical—states of being.

To posit the discursive and legal proximity between wifehood and slavery and to highlight the insignificance of consent in sexual relations is not to read into the pre-modern past the absence of a ‘free’ subject—a rights-bearing individual seeking to tear off the shackles of unfreedom—which is the product of a modern, liberal imagination.¹²⁰ Rather, it is an effort to excavate the particular forms of unfreedom at play in this historical setting, underscoring that efforts at defiance, transgression, and resistance need not be a quest for individualistic ‘freedom’. At the same time, in pointing to the construction of women as passive when it came to sexual acts and as akin to gifts in the sexual economy of the eighteenth century, I am not suggesting that they were completely stripped of all agency or personhood in every aspect of life and law.¹²¹ I am also not positing women in binary opposition to men, the latter imagined as entirely in proprietary control of their own selves. Instead, like women, men too were embedded in social relations and were not ‘free’ agents. Even as they exercised control over ‘their’ women, men, depending on caste, age, wealth, and other determinants, were also constrained and controlled by social and economic bonds. Finally, there were arenas of negotiation outside the ambit of state law, arenas in which other visions of women’s

¹¹⁹ Once more, I draw here on Rubin, ‘The Traffic in Women’.

¹²⁰ Gyan Prakash, *Bonded Histories: Genealogies of Labour Servitude in Colonial India* (Cambridge: Cambridge University Press, 1990).

¹²¹ As argued by Marilyn Strathern in her engagement with Gayle Rubin (*The Gender of the Gift* (Los Angeles and Berkeley: University of California Press, 1990), pp. 330–331) and by Lucinda Ramberg, ‘When the Devi is Your Husband: Sacred Marriage and Sexual Economy in South India’, *Feminist Studies* 37, 1 (2011), p. 49.

sexual agency jostled more forcefully against the strictures legible in legal orders.

Children thrown

A denial of legal culpability in the sexual domain did not permit eighteenth-century Marwari women, particularly those of the Mahajan and Brahman castes, who had sex outside of wedlock to fully escape the legal clutches of the state. A consequence of such ‘illicit’ sex, borne only by women, was unwanted pregnancy. A pregnancy (*ādhan rehna* or *āsā rehna*) that occurred out of wedlock was irrefutable evidence of ‘wrongdoing’ (*khoto karam*), as Mahajan Singhvi Tilokmal and Kayasth Pancholi Fatehkaran, who ruled on a case involving a Mahajan woman, described it¹²². To avoid the social censure that stemmed from unwanted pregnancies, women, with or without the support of the men who impregnated them, would seek out abortions (*adhūrā nākhnā*, *ādhan nākhnā*, or *ṭāb nākhnā*, literally, ‘to throw away when incomplete’, ‘to discard a pregnancy’, or ‘to throw a child away’, respectively). Midwives (*dās*) and Jain *yatis* (semi-ordained monks) performed abortions, inducing them by administering herbs (*aukhad*).¹²³ *Nai* women worked as midwives and could perform abortions.¹²⁴ Some women would commit infanticide.¹²⁵

¹²² JSPB 18, VS 1834/1777 CE, f 114b. The woman was the widow (*raṇḍol*) of Mahajan Ladha Sarupa of Didwana.

¹²³ An instance of the role of Jain semi-ordained monks of the Tapa Gachchh order of Shvetambar Jains, known as *yatis*, is in JSPB 11, VS 1828/1771 CE, f 137b. JSPB 37, VS 1844/1787 CE, f 231a mentions the role of a *pātnī*, a member of the Jain community, in executing multiple abortions in Pali. Among other pursuits, *yatis* immersed themselves in acquiring medical and ‘magical’ knowledge. In the mid-nineteenth century, reform efforts among the Shvetambar Jains saw the phasing out of the *yati* institution, indicating that *yatis* began to be seen as undesirable elements of the Jain community. This may have been because of their involvement in precisely the types of activities that I mention here. For the role of professional midwives, see JSPB 12, VS 1829/1772 CE, f 113b; JSPB 18, VS 1834/1777 CE, f 53a–b; and JSPB 30, VS 1841/1784 CE, f 55b. For references to the use of herbs to induce abortion, see JSPB 11, VS 1828/1771 CE, f 137b; JSPB 18, VS 1834/1777 CE, f 53a–b; and JSPB 30, VS 1841/1784 CE, f 55b.

¹²⁴ This is suggested by episodes such as that which appeared in JSPB 36, VS 1844/1787 CE, f 120a–b, in which Agarval Binodiya’s daughter-in-law called a *nāī* woman to examine her abdomen, paying her with bangles in exchange. Discretion was certainly an essential skill in their arsenal, since midwifery entailed the delivery of both wanted and unwanted children.

¹²⁵ JSPB 35, VS 1843/1786 CE, f 243b and 244b (the crown heard through its news reporters that a Brahman widow in Didwana killed her newborn son. It ordered that her marital family be fined.) There are occasional references in Rathor orders to female

In the latter half of the eighteenth century, under Vijai Singh's rule, abortion was illegal.¹²⁶ In 1784, the crown issued the following order to its officers leading Merta province, based on the reports that its news reporters¹²⁷ carried to it:

There is a well in front of Sojhatiya Gate in Merta. Children's bodies were thrown deep into the well and have now been extricated from it. Yet, it remains unknown who threw the bodies in. Keep an eye out for news about this.¹²⁸

The Rathor crown would investigate those reports of abortion that reached it and ensure, in most cases, that at least one of all the parties deemed complicit—the mother-to-be, the father of the unborn child, those who aided or enabled the feticide, and those who failed to report it—were punished.¹²⁹ If reports of a planned abortion or a pregnancy

infanticide among Rajputs, which too the state disapproved of, even as it did not launch the type of enforcement efforts that it did against abortion.

¹²⁶ There was no specification in Rathor orders, nor is it clear from particular cases, if the criminalization of abortion made exceptions in situations such the mother's life being at risk. It does appear to me that all abortion, even in the early stages of pregnancy, was against the law. Kumar ('Crime and Gender', pp. 47, 50–51); Fatima A. Imam ('Institutionalizing *Rajadhama*: Strategies of Sovereignty in the Eighteenth-Century Jaipur', PhD thesis, University of Toronto, 2008, pp. 243–244); and Imam ('Decoding the Rhetoric', p. 409) have also noted, albeit briefly, the illegality of abortion in eighteenth-century Jodhpur and Jaipur respectively. Wagle ('Women in the Kotwāl Papers', pp. 42–51) discusses evidence demonstrating the illegality of abortion (*pot pādne* or 'to knock down the stomach') in eighteenth-century Pune, in the western Deccan. Here again, the evidence from Rajput-led polities in Rajasthan aligns with that from the Peshwa-ruled Deccan. In dharmashastric codes as well abortion was illegal unless the mother's life was at risk or the king permitted it (Julius Lipner, 'The Classical Hindu View on Abortion and the Moral Status of the Unborn', in *Hindu Ethics: Purity, Abortion, and Euthanasia*, (ed.) Harold G. Coward (Delhi: Indian Book Center, 1989), pp. 41–69). As with its adjudication of illicit sex, the Rathor state does not explicitly draw upon Brahmanical codes.

¹²⁷ See, for instance, JSPB 12, VS 1829/1772 CE, f 114b; JSPB 28, VS 1839/1782 CE, f 321b; and JSPB 30, VS 1841/1784 CE, f 258a.

¹²⁸ JSPB 32, VS 1841/1784, f 79a. This document does not identify the issuing officer.

¹²⁹ The illegality of abortion in Marwar resonates with the treatment by church and secular authorities of abortion in early modern Europe, where increasingly invasive surveillance efforts were deployed to prevent and punish abortion (Wiesner-Hanks, *Christianity and Sexuality*). Qing China, on the other hand, did not have legal barriers to abortion but Mathew Sommers ('Abortion in Late Imperial China: Routine Birth Control or Crisis Intervention?', *Late Imperial China* 31, 2 (2010), pp. 119–190) suggests that it was not too common in early modern China since the procedure was expensive and difficult to access. While ethical and legal codes in early modern Japan and in Ottoman territories may have disapproved of abortion, it was common in practice. See Gulhan Balsoy, *The Politics of Reproduction in Ottoman Society, 1838–1900* (London: Pickering

out of wedlock reached the state, it would intervene to prevent the abortion.¹³⁰

As with many other crimes in eighteenth-century Marwar, the punishment for abortion varied from case to case, depending on the clout that the accused could marshal in his or her defence. In the majority of cases, provincial authorities fined those held guilty.¹³¹ These fines, when specified, ranged from 15 to 445 rupees, assessed on the basis of the perceived gravity of the crime and the payer's economic standing.¹³² Expulsion from government employment, where possible, was another means of punishing those deemed complicit in an abortion case.¹³³ In a few cases, punishments were more extreme, such as banishment from one's town or the imposition of a fine that was ruinously disproportionate to the payer's means.¹³⁴

It was much less common for men of the Brahman or Mahajan communities to be banished from their towns in connection with abortion and much more likely that they were let off after paying a fine. Once again, their command over wealth and their caste connections in the state bureaucracy allowed these groups to escape with what was, in effect, lighter punishment. It was only after persistent appeals before the crown by a Brahman woman's father that the Mahajan man who had impregnated her was fined and eventually expelled from the town, and only with the corresponding expulsion from the town of the Brahman woman as well.¹³⁵ For members of these upwardly mobile castes, banishment from a town was not always irreversible.¹³⁶

and Chatto, 2013), pp. 56–58 for Ottoman laws; and for Japan, Eiko Saeki, 'Abortion, Infanticide, and a Return to the Gods: Politics of Pregnancy in Early Modern Japan', in *Transcending Borders: Abortion in the Past and Present*, (eds) Shannon Stettner et al. (Cham: Palgrave Macmillan), pp. 19–33.

¹³⁰ JSPB 18, VS 1834/1777 CE, f 53a–b and JSPB 37, VS 1844/1787 CE, f 144a–b.

¹³¹ JSPB 11, VS 1828/1771 CE, f 137b; JSPB 15, VS 1832/1775 CE, f 309b; JSPB 18, VS 1834/1777 CE, f 114b; JSPB 28, VS 1839/1782 CE, f 76a, 78a, 80a–b and 103a; JSPB 30, VS 1841/1784 CE, f 55b; JSPB 32, VS 1842/1785 CE, 82a and 133b; JSPB 33, VS 1842/1785 CE, f 11a; JSPB 35, VS 1843/1786 CE, f 57b–58a, 177a, 218a, and 243b; JSPB 37, VS 1844/1787 CE, f 144a–b; JSPB 39, VS 1845/1788 CE, f 168b and 169a; JSPB 45, VS 1850/1793 CE, f 521a–b; JSPB 46, VS 1851/1794 CE, f 86b–87a; JSPB 49, VS 1854/1797 CE, f 98b–99a; and JSPB 55, VS 1858/1801 CE, f 101a.

¹³² JSPB 39, VS 1845/1788 CE, f 169a.

¹³³ JSPB 17, VS 1832/1775 CE, f 214b; JSPB 18, VS 1833/1776 CE, f 53a–b.

¹³⁴ JSPB 18, VS 1834/1777 CE, f 114b; JSPB 5, VS 1823/1766 CE, f 164a.

¹³⁵ JSPB 28, 1839/1782 CE, 76a, 78a, and 80a–b.

¹³⁶ For instance, in 1778, Kiki, a woman from the Brahman community of Nandwana Bohras, successfully petitioned the crown to permit her daughter, one of three women

In this way, local power relations—that is, the wealth and influence commanded by mercantile and Brahman men—mediated judicial responses to abortion, resulting in uneven punishments and unexplained exemptions.¹³⁷ In the resolution of abortion cases, men of the Mahajan and Brahman communities can be observed managing to sway local administrators in their favour, whether through bribes or by exerting their local social standing. It is possible to read in this the local effects of a global process—the birth of the capitalist order. Merchants in particular channelled the wealth and power over the state, whether as bureaucrats or men of local standing, that they had acquired as a direct consequence of their participation in long-distance webs of trade and finance across the South Asian sub-continent. Brahmans too had been beneficiaries of early modern transformations such as the elaboration of states and burgeoning commerce. The articulation of a higher social status within the caste order, however, entailed the restriction of merchant women's sexual activities within wedlock and the use of the state to enforce this sexual discipline. Even as merchants embraced in this way the sexual ethics of old order elites, the Rajputs, as a means of articulating higher caste status, they combined this with an emphasis on other somatic practices emphasizing sensory restraint such as vegetarianism and teetotalism.¹³⁸ In this way, the merchants and Brahmans of Marwar articulated their claims to inclusion among the region's most elite groups by remaking their bodily selves. Chastity and bodily purity unsullied by illicit sex was an essential element of this reconstitution and elevation of the newly elite body.

In this effort, the merchants did not hesitate to use state machinery to achieve conformity with this new code of sexual ethics. Out of the 33 orders pertaining to abortion that I found, 14 were issued by Mahajan officers and four by Brahmans,¹³⁹ and 11 of the orders did not record

expelled from Nagaur for abortion, to return to the town. She cited her blindness and ailing health (*'monū phodā padai chhai'*, or 'I get boils') and mentioned that one of the other exiled women had already made her way back to the town (JSPB 20, 1835/1778 CE, f 42b).

¹³⁷ While the most common punishment was a monetary fine, occasionally, the man or the woman involved in the abortion and the illicit sex preceding it were expelled from the town in which they lived. See, for instance, JSPB 5, VS 1823/1766 CE, f 164a (in which cloth printer Isakh and the unmarried woman he was accused of impregnating and who then aborted the foetus were both thrown out of Sojhat town).

¹³⁸ Cherian, 'Ordering Subjects', pp. 157–222.

¹³⁹ As discussed above, while some orders name the issuing officer, others list him by name which allowed me to identify the officer from Rathor officer lists.

who issued them.¹⁴⁰ Almost half of the commands about abortion, all of which unequivocally stood by its illegality, were issued by Mahajan men. If, based on the predominance of merchants and Brahmans in Rathor bureaucracy, we include the unattributed commands and add Brahman-issued ones to the tally, the total number of Mahajan- and Brahman-issued commands goes up to 29, that is, an overwhelming majority. Rather than see these men as mechanistically implementing the moral and legal imperatives of the king or some other superior, it is important to see these officers as agents rooted in their own caste cultures and the ethical and political drives of their caste fellows and families.

This is why perhaps they were more invested in policing their own women. Over half of the instances of abortion that I found involve women identifiable as belonging to mercantile or priestly families. Of the remaining cases, about half concern women from elite families whose exact caste affiliation is unclear.¹⁴¹ Only four cases involving women of artisanal communities and just one of an 'Untouchable' woman reached the crown for adjudication. The universal criminalization of abortion was, in effect, implemented more rigorously upon female members of Brahman and Mahajan communities.

Surveillance and reporting played a central role in the crown's punitive regime against abortion and, in effect, against non-marital sex. Many reports of abortion, or of provincial administrators' unsatisfactory handling of cases of abortion, reached the Rathor state through its network of newsgatherers. The Rathor crown encouraged the reporting of one's neighbours or acquaintances for abortion, punishing those who concealed such information and rewarding those who divulged it.¹⁴²

¹⁴⁰ One order was issued by a Pancholi and one by a Rajput. Still others bear names whose caste identity I could not identify, such as Firayat Manakchand.

¹⁴¹ The caste of some of these women is unclear from the available information. For instance, it remains unclear which caste the Majji or Daftari families belonged to. While the Majjis wielded enough influence to convince the local authorities of Didwana to drop the proceedings against them, the Daftari family's title indicates that they were associated with clerical practice and were thus at least of fair socio-economic standing. In addition, the Daftaris are a lineage among the Shvetambar Jains of Marwar so it is possible that this particular Daftari family was part of the largely mercantile community of Jains.

¹⁴² JSPB 15, VS 1832/1775 CE, f 309b; JSPB 28, VS 1839/1782 CE, f 76a; JSPB 49, VS 1854/1797 CE, f 98b–99a; JSPB 37, VS 1844/1787 CE, f 231a; and JSPB 39, VS 1845/1788 CE, f 22b.

Upon women, the toll that a pregnancy out of wedlock could extract was much higher. Unwanted pregnancies would, in many cases, force Mahajan and Brahman women to temporarily leave their homes in search of shelter and discreet abortions in far-flung places. Such journeys and abortions are likely to have been perilous and expensive undertakings.¹⁴³ A Mahajan widow, seven months pregnant, left Sanchor for Gujarat in 1775, unaccompanied as she embarked on this difficult journey.¹⁴⁴ In 1801, Mahajan Agarvala Ramsukh's wife left Didwana to have an abortion, news of which reached the crown.¹⁴⁵

The need for an abortion activated networks of solidarity and kinship for the women who needed them.¹⁴⁶ For many women burdened by unwanted pregnancies, their natal families emerged as a significant source of material, social, and legal support. In 1776, Mahajan Jivaniya Majiji accompanied his widowed mother when she left Didwana for the countryside, seeking a low-key abortion. He bribed the officers that the Didwana magistracy had sent after them, fending them off. They managed to terminate the mother's pregnancy while on the run and the family used its local influence to allow them re-entry into Didwana.¹⁴⁷ In 1784, merchant Asava¹⁴⁸ Bagsiram's wife and Jat Syama's daughter moved from their marital homes to their natal villages in order to end their unwanted pregnancies.¹⁴⁹ In 1787, Agarvala Sukha, of a Mahajan caste, came to the defence of his cousin four times removed, successfully appealing to the crown in Jodhpur to intervene in her favour when she was accused in Merta of having an abortion. He succeeded in winning a favourable ruling from the capital, from a Mahajan officer named Singhvi Motichand who ordered the Merta magistrate: 'Do not investigate where there isn't sufficient cause. He is a Mahajan. Do what their *nyāt* considers

¹⁴³ In colonial Bengal, women's pilgrimage to Banaras was considered a euphemism for going away to get an abortion (Supriya Guha, 'The Unwanted Pregnancy in Colonial Bengal', *Indian Economic and Social History Review* 33 (1996), pp. 425, 429). I thank the anonymous reviewer of this article who pointed me to this parallel.

¹⁴⁴ JSPB 17, VS 1833/1776 CE, f 214b.

¹⁴⁵ JSPB 55, VS 1958/1801 CE, f 101a.

¹⁴⁶ Ranajit Guha notes the role of networks of solidarity against patriarchal oppression among 'low'-caste Bagdi women in nineteenth-century Bengal (Ranjit Guha, 'Chandra's Death', in *Subaltern Studies Reader, 1986-1995* (Minneapolis: University of Minnesota Press), pp. 34-62).

¹⁴⁷ JSPB 17, VS 1833/1776 CE, f 126a-b.

¹⁴⁸ The Asavas are a subset of the Maheshwari community of merchants.

¹⁴⁹ JSPB 30, VS 1841/1784 CE, f 55b.

good.¹⁵⁰ This ruling then left open the possibility that if Agarvala Ramsukha was able to sway enough members of the local caste group to dismiss this abortion allegation against his cousin, the local state had permission to deem the woman innocent. The letting off of a woman was also a relief to her family who would otherwise suffer ostracization and judgement from their caste peers. A natal family's support to a woman pregnant out of wedlock was driven, in no small measure, by the fact that quite often it was the natal family that had to pay the social and legal costs of her illicit pregnancy.¹⁵¹

This heightened concern with policing the women of upwardly mobile merchant castes was even more intense when a Mahajan woman was found to have dallied with a lower-caste man. So it was for Mahajan Ladha Sarupa's unnamed widow (*raṇḍol*) who was impregnated by a Julava (weaver) man with whom she had supposedly been having an affair (*lagvād*).¹⁵² She had an abortion, news of which reached the local authorities in Didwana. The magistrate of Didwana, a Maheshwari Mahajan named Bhaiya Daulatram, fined the weaver, an unnamed son of Julava Usla, the steep sum of 145 rupees.¹⁵³ But Bhaiya Daulatram did not stop there. Instead, he used the infraction to introduce new hierarchies and rules in the interface between Mahajan and other women who spun yarn at home, on the one hand, and weavers, on the other. The Mahajan officer threatened to issue a written order (*likhat*) ruling that Julavas could no longer enter the homes of women cotton spinners (*katvārī*). This suggests that Ladha Sarupa's widow had spun yarn to earn an income and the Julava's ability to enter her home was seen as enabling the development of 'illicit' sexual relations between them. For the Julavas, the *kotwal*'s order meant a demotion in status, for they now had to buy yarn without being received inside spinners' homes but rather while standing at the door (*modai upar ubho sūt ro sodo kijā karaī*). This was a move to a less respectful reception, placing the Julavas on par with castes lower in the region's order who were not welcome inside others' homes.

¹⁵⁰ 'Binā mudai koi jāb nā karaī nai oh mahājan hai ṅā ro nyāt main āchho lagai jyūm kījō'. JSPB 36, VS 1844/1787 CE, f 123b.

¹⁵¹ As in the case of Mayaram Daftari who had to pay a fine for his daughter's abortion (JSPB 11, VS 1828/1771 CE, f 137b).

¹⁵² JSPB 18, VS 1834/1777 CE, f 114b.

¹⁵³ While the document does not name the occupant of the magistrate's office, I was able to look up this detail in Hukamsimh Bhati, *Marvad ke ohdedarom ka itihās mem yogdan* (Jodhpur: Maharaja Mansingh Pustak Prakash Shodh Kendra, 2013), p. 343.

Faced with this threat, all the Julava weavers of Didwana banded together and came to the crown in Jodhpur to have the Maheshwari *kotwal*'s ruling overruled. Alas, the crown in Jodhpur, its ruling issued by Mahajan Singhvi Tilokmal and Kayasth Pancholi Fatehkaran, decided against the Julavas. These two officers ordered the *kotwal* of Didwana to get the Julavas to agree to a written undertaking (*muchalkā*) stating that no Julava would enter a spinner's house and that Julavas would in future purchase thread while standing outside these women's houses. The officers in Jodhpur also instructed the magistrate in Didwana to tell cotton-spinning women to no longer go to the Julavas' homes to sell yarn, once again introducing a new hierarchy between women spinners and Julavas. As for Julava Usal's son who had impregnated a Mahajan woman, he was to pay the outstanding amount of his fine, 101 rupees. The crown order commanded that he was now also to pay the 20 rupees that his Mahajan paramour had earlier lent him into state coffers as part of the fine.

The two officers in Jodhpur also used this dispute to intervene in the interface between merchant-moneylenders, on the one hand, and weavers, on the other. They seamlessly wove into the order a reiteration of an earlier command pertaining to the Julavas of Didwana, in which they had instructed them to weave cloth pieces no smaller than 18 hands (*hāth*)¹⁵⁴ in length. They complained that despite this directive, some pieces did not meet this expectation. Singhvi Tilokmal and Pancholi Fatehkaran ordered the magistrate, Mahajan Bhaiya Daulatram, to fine any Julava who submitted a cloth piece smaller than 18 hands across. They also instructed the *kotwal* to tell the commissioning Mahajans to report such pieces of cloth, before washing (which would cause shrinkage), to the magistracy.¹⁵⁵

Here then a weaver's sexual relationship with a merchant-caste woman triggered a wider disciplinary as well as economic action against the entire caste of Julavas, one that diminished their social status in the local caste order. These proceedings against the Julavas also became a means of enforcing production standards upon them, standards arrived at and imposed by Mahajan state officers working in collaboration with Mahajan cloth merchants. Whereas in other cases, particularly involving men of more elite castes impregnating Mahajan or Brahman women, Rathor officers punished only the accused, here the actions of a single weaver—a 'low'-caste man's sexual relationship with a Mahajan

¹⁵⁴ I am unsure of what this measure would translate to in modern standardized units.

¹⁵⁵ JSPB 18, VS 1834/1777 CE, f 114b.

woman—were seen as sufficient cause for the punishment of his entire caste. One of the threads that connected Mahajans with weavers was that of economic exchange, with Mahajan men commissioning and purchasing woven cloth from weavers and weavers purchasing spun yarn from Mahajan women. In this exchange, the Mahajans had the advantages of controlling capital and political power and they successfully channelled this to create greater social distance from Julavas and to gain an upper hand in terms of exchange. Importantly too we see in this episode a glimpse of the ways in which the Rathor state could act as an instrument to further the interests of merchant capital.

While in this case, the woman's only punishment at the hands of the state was the loss of the 20 rupees she had lent to her lover, we know from other cases that Mahajan women could be, and were, punished by the state for abortion. At the same time, the woman, and all other women spinners, suffered through orders such as this one, with the more intangible punishment of the four walls of their homes becoming more sacrosanct and less accessible to yet another category of men. They experienced a disciplining of their social interactions and a proscription of their social worlds.

Status, as it was and continues to be in other historical contexts, was etched on the bodies of women. For merchant and Brahman women in eighteenth-century Marwar, their male counterparts' worldly success translated into a regime of sexual discipline enforced through the criminalization of abortion so that it was not just the disapproval of caste fellows but now fines, banishments, arrests, legal proceedings, and surveillance networks that they had to fear if they got pregnant out of wedlock. As the bearers of the fruits of illicit sexual relationships, the outlawing of abortion meant that merchant and Brahman women paid a greater price than their male counterparts if deviant sex resulted in a pregnancy: on the one hand, if the pregnancy progressed, they carried the evidence of their 'crime' visibly on their bodies and, on the other, if they terminated it, they faced the risk of social censure and criminal prosecution.

Conclusion

To summarize, the evidence from a post-Mughal but still pre-colonial polity in eighteenth-century South Asia reflects the enactment through the state of a legal imagination that posited women—whether as wives or daughters—as a type of property, one that was in a continuum with other kinds of property such as slaves, even as it was a degree removed from them. This in turn is significant for it demonstrates that the state's

growing intervention in subjects' lives and into the locality in some parts of eighteenth-century, pre-colonial South Asia resulted in stronger patriarchal proprietary controls over women's lives and bodies. This can be discerned in the treatment, across a range of 'illicit' sexual relations, of women as passive recipients of sexual acts, devoid of legal culpability for having sex that transgressed social norms. In the eyes of the state, consent was immaterial for the classification of a sexual act as illegal. While women could be held responsible and liable for their role in other criminal acts, from theft to murder, their involvement in sex that violated social and legal codes did not merit punishment from the state. This denial of women's sexual personhood in law did not mean that women suffered no consequences for sexual deviance—these punishments, whether humiliation, censure, or boycott, were likely to have been disbursed by kin and caste, not the state. Women, then, were in the curious position of being deemed in law as lacking legal culpability for unlawful sex, while also facing social punishment for it.

My findings here are that the efforts of the eighteenth-century Rathor state, along with those in Jaipur and the Peshwa state, suggest that elite women's participation in public and political life as patrons, potentates, and entrepreneurs¹⁵⁶ or as influential members of royal households could coexist with pressure to lead chaste lives as wives and to abstain from sex as widows. In addition, when seen alongside developments in these other polities, my findings suggest the rise of more interventionist polities in some parts of post-Mughal South Asia. Thirdly, I build on scholarship on women and the family in pre-modern South Asia which shows that there was no rigid boundary between public and private life at the time to argue that this very blurriness between public and private also allowed domestic life, sexuality, and the body to become sites of state and caste legislation.¹⁵⁷ Finally, these insights from the pre-colonial past help explain the trajectories that debates about the age of consent,

¹⁵⁶ See, for example, Molly Aitken, 'Pardah and Portrayal: Rajput Women as Subjects, Patrons, and Collectors', *Artibus Asiae* 62, 2 (2002), pp. 247–280; Stephen P. Blake, 'Contributors to the Urban Landscape: Women Builders in Safavid Isfahan and Mughal Shahjahanabad', in *Women in the Medieval Islamic World: Power, Patronage, and Piety*, (ed.) Gavin R. G. Hambly (New York: St Martin's Press, 1998), pp. 407–428; Ruby Lal, *Domesticity and Power in the Early Mughal World* (Cambridge: Cambridge University Press, 2005); and Samira Sheikh, 'Jijabhu's Rights to Ghee: Land Control and Vernacular Capitalism in Gujarat, circa 1803–10', *Modern Asian Studies* 51, 2 (2017), pp. 350–374.

¹⁵⁷ Chatterjee, *Unfamiliar Relations*, Introduction, pp. 1–45; Sumit Guha, 'Household Size and Household Structure in Western India, c. 1700–1950', *Indian Economic and Social History Review* 35, 1 (1998), pp. 23–33; Lal, *Domesticity and Power*.

the adjudication of rape, and the definition of marriage took in early colonial South Asia in which the woman's word had little bearing.¹⁵⁸

Driving this state-centred corralling of merchant and Brahman women's sexuality into the 'licit' was the rise to economic and political dominance since the sixteenth century of the men of these two caste groups. The rise of Marwari merchants was a direct result of their well-known commandeering of the new avenues of trade, banking, and fiscal accumulation that opened up in early modern South Asia during the eighteenth century. In other words, the global and inter-connected birth of early capitalism that scholars such as Perlin have traced benefited some groups more than others, leading to a realignment of localized caste and gender relations. Sub-continental processes such as the growing complexity and penetration of post-Mughal regional states also expanded the spaces of power into which merchants and Brahmans could grow. As they sought acceptance into the highest echelons of society, occupied exclusively until then by an aristocracy with lineage- and land-based claims to power, merchants and Brahmans expressed their claims to high social status through a politics centred on the body. Purity of blood, so central to caste, for these aspirant middle classes was grounded in a claim to vigour and virtue resting on bodily self-control, particularly of their women.

The state's efforts to govern the sexual activities of its subjects generated not only an archive of such material but also played its part in keeping capital on the move. The circulation of women through 'acceptable' means such as marriage, remarriage, and non-marital cohabitation moved money in the form of dowry, bridewealth, and cesses that were due to the state for official recognition. 'Illicit' sexual relations generated a steady supply of cash payments as fines. Control of women's bodies and sexual economies of exchange, then, were not peripheral to the movement of capital but rather took it right into the heart of everyday life. For this

¹⁵⁸ Tanika Sarkar, 'A Pre-History of Rights: The Age of Consent Debate in Colonial Bengal', *Feminist Studies* 26, 3 (2000), pp. 601–622; Elizabeth Kolsky, 'The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805–57', *Journal of Asian Studies* 69, 4 (2010), pp. 1093–1117; Sen, 'Offences Against Marriage'; Ishita Pande, *Sex, Law, and the Politics of Age: Child Marriage in India, 1891–1937* (New York: Cambridge University Press, 2020). For the colonial-era trajectory of the government regulation of abortion, see Guha, 'The Unwanted Pregnancy' (on the significance of whether the sex causing the aborted pregnancy was licit or not); Mitra, *Indian Sex Life*, pp. 99–132 (for the forced genital examination of women); and Mitra Sharafi, 'Abortion in South Asia, 1860–1947: A Medico-Legal History', *Modern Asian Studies* 55, 2 (2021), pp. 1–58 (for the continued stigmatization of 'illicit' sex).

reason, the intensification through a merchant-run state of the proprietary nature of patriarchal control of women's bodies was not only an effect but an important element of the wider set of economic changes at play.

The integration of South Asia into an increasingly interconnected global economy from roughly the fifteenth century onwards is a well-established idea among historians, as is the call to write histories that tie the locality or the region to trans-regional developments. In this article, I have suggested that local developments rendered on the bodies of seemingly unrelated women scattered across the towns and villages of an inland polity can be read as occurring in response not only to regional and sub-continental changes but also in connection with global shifts. Marwar, home to a set of trading castes that came to dominate sub-continental money flows and the regional state form in the course of the eighteenth century, is a promising site for exploring the inter-connected histories of sex, caste, and capital. A study of the merchant- and Brahman-authored, ledger-like documents of this pre-colonial polity demonstrates the impact on the ground of 'economic' processes such as money becoming a medium of social and sexual exchange, the proliferation of debt, the strengthening of proprietary controls, and shifts in the caste order due to the rise of mercantile castes. As South Asia stood on the cusp of colonial modernity, and in the thick of global webs of economic exchange, parts of it witnessed an unprecedented use of the state and its legal apparatus by new elites seeking to recast caste for a new age.