Modern Asian Studies **55,** 2 (2021) pp. 371–428.
doi:10.1017/S0026749X19000234 First published online 04 May 2020

*Abortion in South Asia, 1860–1947: A medico-legal history**

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Abstract

In the progression of stages toward unintended lives, the two stops on either side of abortion—contraception and infanticide—have been studied extensively by historians of South Asia. We know much less about abortion, particularly during

* Earlier versions of this article were presented at the Berkshire Conference on the History of Women, Hurst Summer Institute in Legal History, University of Hawaii-Manoa, Rutgers University, Stanford University, and the University of Wisconsin–Madison (2008–19). For comments and references, I thank Donald R. Davis, James Jaffe, Jack Jin Gary Lee, Alastair McClure, Projit B. Mukharji, Bhavani Raman, Benjamin Schonthal, Martha Selby, Gopika Solanki, Julia Stephens, Tara Suri, Yuhan Sohrab-Dinshaw Vevaina, Barbara Welke, #twitterstorians, and the two anonymous reviewers. Elizabeth Lhost translated the 1861 Urdu document described in note 87. Divya Cherian and Priyasha Saksena shared unpublished work with me. Alexandra Fleagle, Brian L. Kuhl, Amy McGann, and Lesley Skousen provided research assistance. I thank the UW Graduate School for funding and UW Law librarians for their professionalism. Shelfmarks beginning with IOR indicate sources from the India Office Records of the Asia, Pacific, and Africa Collections, British Library (BL). NAI indicates material from the National Archives of India. BHC refers to the Bombay High Court, *BMJ* to the *British Medical Journal*, ILR to the various regional series of the *Indian Law Reports*, *IMG* to the *Indian Medical Gazette*, IPC to the Indian Penal Code, and PCMC to the Parsi Chief Matrimonial Court of Bombay. POB stands for Proceedings of the Old Bailey, available at https://www.oldbaileyonline.org/ [accessed 25 May 2018], *TI* to the *Times of India*, and *TL* to the *Times of London*. The Hyderabad abortion case records are housed at the BL and NAI. *T. v. T.* case records are contained in PCMC notebooks (courtroom 21, BHC). I have not revealed the full names of the parties in *T. v. T.* for the sake of descendants. Although *abortion* and *miscarriage* were used synonymously *circa* 1900, *abortion* in this article refers to the deliberate termination (not the involuntary loss) of a pregnancy. In addition to Latin botanical names, I have included some transliterated Hindustani or Hindi plant names.

the colonial period. Drawing upon published judgments, unpublished case records, forensic toxicology reports, and treatises on Indian medical jurisprudence, this article suggests that anti-abortion law was generally enforced in colonial India only when women died as a result of illegal abortions. This approach was contrary to the Indian Penal Code (IPC), which criminalized most abortions even when the women survived. The pattern was a continuation of the pre-IPC approach in India. This article explores possible explanations for the lax enforcement of anti-abortion law in South Asia during the late nineteenth and early twentieth centuries, considering abortion as experienced by South Asian and British women alike. It proposes as contributing factors: challenges in detection, the social movement for the protection of Hindu widows, colonial anxieties about false allegations of abortion among South Asians, the common phenomenon of imperial (British) husbands and wives living apart, and physicians' desire to protect doctor–patient confidentiality. The article focuses on two key cases involving abortion: the Whittaker-Templeton case from Hyderabad (1896–1902) in which a British woman died following an abortion; and the Parsi matrimonial case of *T. v. T.* from Bombay (1927), in which a Zoroastrian woman alleged that her pharmacist husband had forced her to terminate three pregnancies by ingesting drugs.

Introduction

In 1884, an Assistant Surgeon of the Indian Medical Service named Dulip Singh learned that 15 illicit abortions had occurred in two Punjabi villages during the two months when he was on leave in the area. Most of the women were widows, and the person inducing the abortions was an older woman who was probably a midwife. Under the Indian Penal Code (IPC), these terminations were crimes. However, Singh observed in the *Indian Medical Gazette* that none of these cases was investigated by the police 'and no one was punished'.[1]

Singh's experience was common during the century between the mid-nineteenth and the mid-twentieth in India. The criminal justice system either took a relatively lenient approach toward abortion at the level of legal doctrine (pre-1862) or failed to enforce anti-abortion law when the rules became stricter (post-1862). Under the IPC of 1860 (which entered into force in 1862), abortion was a crime unless performed to save the life of the woman. As one observer noted, abortion in India was 'very frequent', but cases only came to court when a woman had died. Even in these cases, convictions were 'quite rare'.[2]

[1] Dulip Singh, 'Modes of Inducing Criminal Abortion in the Punjab', *IMG* (Jan. 1885), p. 9.

[2] L. A. Parry, *Criminal Abortion* (London: John Bale, Sons and Danielsson, 1932), p. 18.

https://doi.org/10.1017/S0026749X19000234 Published online by Cambridge University Press

Anti-abortion efforts in India were light in cases involving South Asian and British women alike. At a time when the interests of the fetus started to compete with the interests of the woman elsewhere in the Anglosphere, authorities in British India remained focused on the life of the woman—or rather, on her death. They continued their earlier practice of prosecution for abortion only when the woman had died. There were occasionally live cases: women who had survived illicit terminations were sometimes prosecuted for abortion under the IPC.[3] However, these instances were comparatively rare. The larger, longer, and more consistent approach of the state in Raj-era South Asia was to do nothing in cases of abortion if the woman survived.

The first half of this article describes common abortion practices, particularly the use of oral abortifacients and abortion sticks, and the development of anti-abortion law in British India during the last century of colonial rule. Hindu widows and British wives living apart from their husbands turned to abortion to hide illicit sex, while married women cohabiting with their husbands used abortion to control the size of their families. Indian criminal law adopted a stricter approach toward abortion with the passage of the IPC, making abortion a crime even if the woman survived. This new version of anti-abortion law was not generally put into practice. The second half of the article explores factors contributing to this phenomenon, beginning with challenges to detection. The IPC's provisions on abortion ran at cross-purposes with a colonial reform movement that took priority: the campaign for Hindu widow remarriage. Young Hindu widows (many of whom were traditionally prohibited from remarrying) were portrayed as the quintessential users of abortion in colonial India. If they entered into illicit sexual relationships and became pregnant, abortion enabled them to maintain their social status as chaste widows entitled to the continuing financial support of their dead husbands' families. Colonial officials regarded abortion as an unfortunate corrective to an oppressive norm. They also held deep-seated assumptions about 'native mendacity' and hesitated to pursue many reports of abortion for fear that false allegations might be made against Indian women and their families. Among Britons, long separations between imperial couples meant that extramarital relationships and pregnancies sometimes occurred. Abortion offered a way out. Equally, physicians were

[3] For examples, see untitled editorial, *TI* (17 May 1881), p. 2; 'Sessions Trial No.40 of 1871: Government v. Zuhoorun, Nurau and Moona, Accused of Causing Miscarriage', Central India Agency, Sessions Trials. Proc. No.40, 1871 (NAI); and *Queen-Empress v. Ademma* ILR Madras, vol. 9, 1886, pp. 369–71.

not quick to cooperate with the criminal justice system in reporting criminal abortions among British or Indian women alike, clinging to their professional code of confidentiality between doctor and patient.

The article explores these themes through two cases with particularly rich records: the criminal and civil trials involving Arthur Templeton following the death of Edith Whittaker after an illicit abortion in the princely state of Hyderabad (1896–1902) and the Parsi matrimonial case of *T. v. T.* in Bombay (1927). The Hyderabad Abortion case involved Patrick Hehir, the co-author of a leading treatise on medical jurisprudence who played a suspicious role in the death of Mrs Whittaker. Hehir became a celebrated figure in Indian forensic medicine—a pathway that was possible only because the Hyderabad case was buried in his later career trajectory. The case left a trace, though, in his textbook's treatment of doctor–patient confidentiality. Although the facts of the case took place outside of British India, the legal proceedings occurred in British courts because the case involved British subjects. *T. v. T.* was a case for judicial separation between Parsi spouses. It was filed by the wife of a pharmacist. Mrs T. claimed that her husband had forced her to abort three pregnancies through the ingestion of drugs. This trial featured a 'battle of the experts' over the alleged efficacy of various oral abortifacients, creating a portrait of illicit abortion practices in 1920s Bombay.

Scholars of reproduction-related crimes in South Asia have focused on abortion and infanticide targeting female fetuses and babies.[4] But there is also a broader history to be told. This article offers a prequel to the predominantly post-independence story of sex-selective abortion. It examines how South Asian and British women used abortion (even when the fetus was male) to control family size and mask illicit sex, noting that prosecution was unlikely when the women survived.

Finally, although scholars have examined many facets of abortion in South Asian history, none has focused on the relationship between law on the books and in action. This article pulls the law-and-society genre of gap studies into the colonial setting. In recent decades, studies of law in colonial societies have emphasized law's dual and ambivalent roles: it both acted as 'handmaiden for processes of domination' and provided tools and arenas for resistance.[5] This study points to a third possibility:

[4] See Appendix A.

[5] Sally Engle Merry, 'Colonial and Postcolonial Law', in *Blackwell Companion to Law and Society*, (ed.) Austin Sarat (Malden, MA: Blackwell, 2004), pp. 575–6. On gap studies, see Jon B. Gould and Scott Barclay, 'Mind the Gap: The Place of Gap Studies in Sociolegal Scholarship', *Annual Review of Law and Social Science*, vol. 8, 2012, pp. 323–35.

the ineffectiveness of a statutory provision that may have offered symbolic value vis-à-vis particular audiences (including missionary and metropolitan ones) but that was impracticable in the colonial setting.[6] After 1862, both Indian and English law made abortion a crime even when the woman survived. In both jurisdictions, though, the law was generally only put into motion when a woman died.[7] More broadly, harsh anti-abortion laws based on the English and Indian models rippled across the British empire during the nineteenth and early twentieth centuries.[8] A universal difficulty was detecting abortions carried out with the women's consent. And yet enforcement levels still varied, depending on the place. In Fiji, the colonial state made only half-hearted attempts to enforce the new law; abortion was a widely accepted practice among Fijians. In the British Caribbean, the situation was probably similar. In South Africa and Kenya, the enforcement of anti-abortion law was inseparable from racial politics and debates over female circumcision, respectively.[9] This article suggests that India's anti-abortion law remained under-enforced for reasons that were distinct to the colonial South Asian context, including abortion's connection to the Hindu widow-remarriage movement and to a particular strain of medical ethics.

The practice of abortion

From tea-plantation labourers to elite wives, women in diverse social roles and settings sought abortions in later nineteenth- and early twentieth-century South Asia.[10] Four groups of women (sometimes overlapping) were commonly identified as abortion users. British

[6] Relatedly, see Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill, NC: University of North Carolina Press, 2006), pp. 97–102. On missionaries and abortion, see Basil Thomson, *The Fijians: A Study of the Decay of Custom* (London: William Heinemann, 1908), pp. 221–2; and Philippa Levine, 'Sexuality, Gender, and Empire', in *Gender and Empire*, (ed.) Philippa Levine (Oxford: Oxford University Press, 2007), p. 147.

[7] On under-enforcement in England, see Barbara Brookes, *Abortion in England 1900–1967* (London: Croom Helm, 1988), pp. 22–50.

[8] Susanne Klausen, *Abortion under Apartheid: Nationalism, Sexuality and Women's Reproductive Rights in South Africa* (New York: Oxford University Press, 2015), p. 16; and Bernard M. Dickens and Rebecca J. Cook, 'Development of Commonwealth Abortion Laws', *International and Comparative Law Quarterly*, vol. 28, no. 3, 1979, pp. 425–8.

[9] Thomson, *The Fijians*, pp. 226–7. See Appendix B.

[10] On the use of abortion by tea-plantation workers, see Supriya Guha, 'The Unwanted Pregnancy in Colonial Bengal', *Indian Economic and Social History Review*, vol. 33, 1996,

imperial wives living temporarily apart from their husbands and young Hindu widows sought abortions; they are discussed in detail below. The third group was married women generally. South Asian and British wives in India used abortion as a form of family planning. In the 1927 Bombay case of *T. v. T.*, the court learned that oral abortifacients were colloquially called 'the wife's help', reflecting the idea that abortion was a routine part of married life. In 1929, treatise authors Hehir and Gribble suggested that married British women in India commonly used abortion to limit the size of their families.[11] Finally, women in the sex trade used abortion. High rates of venereal disease reduced fertility among prostitutes, but some had children. The daughters of prostitutes often entered the sex trade and supported their mothers in old age.[12] At the same time, pregnancy reduced a woman's ability to offer sexual services. If India was like Singapore, being 'heavy-footed' would have caused conflict between prostitutes and their bosses.[13] Abortions were frequently practised by prostitutes, sometimes with fatal results. Yet prostitutes received surprisingly little mention in the colonial medico-legal sources—an indication perhaps of their marginality or expendability. When Hindu widows worked in the sex trade, the sources focused more on their widowhood than their prostitution, reflecting the importance of the Hindu widow-remarriage movement explored below.[14]

pp. 423–4. Guha also describes abortion by slave women earlier in the nineteenth century (pp. 422–3).

[11] Patrick Hehir and J. D. B. Gribble, *Medical Jurisprudence for India* (Madras: Associated Publishers, 1929), p. 660. Marie Stopes and other British contraception advocates mistakenly believed that married women in India did not often use abortion. See Indira Chowdhury, 'Delivering the "Murdered Child": Infanticide, Abortion, and Contraception in Colonial India', in *Medical Encounters in British India*, (eds) D. Kumar and R. Sekhar (Delhi: Oxford University Press, 2013), pp. 287–8.

[12] Santosh Kumar Mukherji, *Prostitution in India* (Calcutta: Das Gupta, 1934), pp. 147, 165, 264–6. On Mukherji's prostitution-related writings, see Durba Mitra, 'Translation as *Techné:* Female Sexuality and the Science of Social Progress in Colonial India', *History and Technology*, vol. 31, no. 4, 2016, pp. 365–7.

[13] Being 'heavy-footed' was a euphemism for being pregnant in many South Asian languages. On Singapore, see James Francis Warren, Ah Ku, and Karayuki-san, *Prostitution in Singapore 1870–1940* (Singapore: National University of Singapore, 2003), pp. 353–8.

[14] Mukherji, *Prostitution in India*, pp. 161–4, 264. Elite courtesans 'took great care of their health' and may have had reasonable access to healthcare, unlike 'brothel women' (Mukherji, *Prostitution in India*, p. 266). On Hindu widows in the sex trade, see Sumanta

Religious traditions in South Asia took a variety of doctrinal positions on abortion, but generally disapproved of it. Hindu texts prohibited deliberate abortion (as opposed to involuntary miscarriage), except to save the life of the woman (and with the permission of the king).[15] From the nineteenth century, Catholic and Protestant churches condemned abortion from conception onward in stricter terms than they had done in the century before.[16] Zoroastrian scripture also prohibited abortion.[17] Islamic law took the most liberal view, permitting it under certain circumstances before 120 days (the point of ensoulment) and prohibiting abortion afterwards, except to save the woman's life.[18]

And yet the religious prohibitions on abortion did not stop some women from trying to terminate their pregnancies. Ironically, 'going to Kashi' was a well-known euphemism for Hindu widows undergoing abortions, giving their temporary absence the cover of religious pilgrimage to Benares.[19] Other kinds of cosmological beliefs may have propelled some women toward abortion, too. Even before the development of sex-determining technologies in the mid-twentieth century, sex-selective abortion did exist, for instance. Astrologers made predictions on the sex of the fetus,

Banerjee, *Under the Raj: Prostitution in Colonial Bengal* (New York: Monthly Review Press, 1998), pp. 78–81, 88, 112.

[15] Abbé Dubois, *Hindu Manners, Customs and Ceremonies* (Oxford: Clarendon, 1906), p. 197; and Shyámácharan Vidyá-Bhúshan, *Vyavastha-Darpana: A Digest of Hindu Law as Current in Bengal* (Calcutta: Dinanath Sarkar, 1883), p. 208. See generally Julius J. 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: Sri Satguru Publications, Indian Book Centre, 1989), pp. 41–69. See also Dagmar Wujastyk, *Well-Mannered Medicine: Medical Ethics and Etiquette in Classical Ayurveda* (New York: Oxford University Press, 2012), pp. 143–5.

[16] Parry, *Criminal Abortion*, pp. 14–17. See generally James B. Nelson, 'Protestant Attitudes toward Abortion', in *Abortion: A Reader*, (ed.) Lloyd H. Steffen (Eugene, OR: Wipf and Stock Publishers, 1996), pp. 138–40 and note 89.

[17] James Darmesteter (trans.), *The Zend-Avesta: Part 1. The Vendîdâd* (Oxford: Clarendon, 1880), pp. 174–5 [Fargard XV, II (9-14)]; Prods Oktor Skjærvø, *The Spirit of Zoroastrianism* (New Haven: Yale University Press, 2011), pp. 253–5; and S. K. Mendoza Forrest with Prods Oktor Skjærvø, *Witches, Whores, and Sorcerers: The Concept of Evil in Early Iran* (Austin, TX: University of Texas Press, 2011), pp. 80–2.

[18] See Guha, 'Unwanted Pregnancy', p. 411; and Marion Holmes Katz, 'The Problem of Abortion in Classical Sunni *fiqh*', in *Islamic Ethics of Life: Abortion, War, and Euthanasia*, (ed.) Jonathan E. Brockopp (Columbia, SC: University of South Carolina Press, 2003), pp. 30–1 (noting differences of opinion within Shafei and Hanafi schools).

[19] See Guha, 'Unwanted Pregnancy', pp. 425, 429; and J. P. Modi, *A Textbook of Medical Jurisprudence and Toxicology* (Calcutta: Butterworth, 1929), p. 295.

leading in some cases to termination.[20] In other cases, women (or couples) sought abortions because they believed the pregnancy was generally inauspicious. By one account, a popular belief that every third pregnancy was bad luck led to abortions in Punjab.[21]

Abortions were performed either by women on themselves (by taking drugs) or by others upon them (by combined local chemical and mechanical means). Western-trained physicians carried out legal abortions to save women's lives, but the medico-legal archive contains very few specific cases of allopathic physicians carrying out illegal abortions in India.[22] When the doctor was British, such cases may have caused embarrassment to the European establishment, as did vagrant and violent working-class whites in India.[23] Inverting the racial dynamics and location, the opposite did exist. In Britain, a line of criminal trials implicated Western-trained South Asian doctors who performed illegal abortions on British women, typically in London's impoverished East End.[24]

While the British allopathic abortionist in India was elusive in the records, another figure was the subject of frequent comment by the authors of medico-legal treatises. These writers unleashed their venom upon the quintessential abortionist in India: the older Indian midwife or *dāī*.[25] In the words of Norman Chevers:

[20] See W. J. Wilkins, *Modern Hinduism* (Calcutta: Thacker, Spink, 1900), p. 168. Against this—and sustaining some pregnancies—was the popular belief that certain medicines and charms could change the sex of the fetus *in utero*. See Harikishan Kaul, *Census of India, 1911. Vol. XIV: Punjab. Part 1. Report* (Lahore: Civil and Military Gazette Press, 1912), p. 234.

[21] H. A. Rose, *A Glossary of the Tribes and Castes of the Punjab and North-West Frontier Province* (Lahore: Government Printing, Punjab, 1911), p. 743.

[22] See L. A. Waddell, *Lyon's Medical Jurisprudence for India, with Illustrative Cases* (Calcutta: Thacker, Spink, 1921), p. 315; and William Nunan, *Lectures in Medical Jurisprudence* (Bombay: Taraporevala, 1925), p. 105. For a rare case of an Indian physician on trial for performing abortions in India, see in *TI*: 'Dr. De Silva Committed' (24 Jan. 1921), p. 6; and 'A Doctor on Trial' (10 Feb. 1921), p. 12.

[23] See Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2010).

[24] See Brookes, *Abortion in England*, p. 35; and in the *TL*: 'Murder Verdict against a Doctor' (27 Feb. 1920), p. 11; 'Doctor Charged with Murders' (15 April 1920), p. 5; and 'Doctor Sentenced for Manslaughter' (17 April 1920), p. 5. See also 'Rejection of a Candidate under Rule 5. Case of M. B. Patel Who Was Charged with Procuring Abortion, and Released, the Grand Jury at the Central Criminal Court Ignoring the Bill' (IOR/L/MIL/7/14142. File 321, no. 43).

[25] See generally Geraldine Forbes, 'Managing Midwifery in India', in *Contesting Colonial Hegemony: State and Society in Africa and India*, (eds) Dagmar Engels and Shula Marks (London:

There is, in nearly every village throughout the country, a hag of low caste and evil repute, half *dai* half *dain,* suspected as a witch, professedly a midwife; equally ready, at all times, to practice as a doctoress, a sorceress, or a bawd; and carrying on a systematic trade in the procuration of abortion by the use of the most deadly poisons.[26]

Such descriptions fit squarely into professionalization patterns identified by sociologists of the professions: Western, male models of a given profession (here, allopathic medicine) marginalized and discredited less elite, female and indigenous players in an effort to maximize the former's status and monopoly over the market in question. A handful of criminal cases targeting these professional abortionists did exist.[27] However, treatise authors Hehir and Gribble claimed that most village abortionists were skilful enough to perform abortions without leaving a trace.[28] As such, these figures routinely eluded the grasp of the criminal justice system.

There were two common methods of abortion in colonial India, in addition to kneading the abdomen and injecting liquid.[29] The first, used earlier in a pregnancy, was the chemical or 'general' method, also known as abortion 'by mouth'. Women tried to induce abortions by ingesting a wide variety of substances. Treatise authors divided these substances, many of which were powerful botanical and mineral poisons, into five categories. Ecbolics stimulated the contraction of the muscular fibres of the uterus. The only known substance in this category was ergot, a popular choice among Britons in India.[30]

Academic Press, 1994), pp. 152–72; and Sean Lang, 'Drop the Demon *Dai*: Maternal Mortality and the State in Colonial Madras, 1840–1875', *Social History of Medicine*, vol. 18, no. 3, 2005, pp. 363–9.

[26] Norman Chevers, *A Manual of Medical Jurisprudence for Bengal and the North-Western Provinces* (Calcutta: F. Carbery, Bengal Military Orphan Press, 1856), p. 92. *Ḍāyan* ('dain') meant 'witch' in Hindustani. For a similar account, see 'Nagpore', *The Pioneer* (23 Jan. 1867), p. 5.

[27] See Chevers, *Manual*, pp. 501–3; and 'Law and Police: Fifth Criminal Sessions', *TI* (21 Nov. 1879), p. 3.

[28] Hehir and Gribble, *Medical Jurisprudence* (1929), pp. 655–6.

[29] See generally T. E. B. Brown, *Punjab Poisons, Being a Description of the Poisons Principally Used in the Punjab* (Lahore: Civil and Military Gazette Press, 1883), pp. 203–7; Waddell, *Lyon's Medical Jurisprudence*, pp. 323–5; Nunan, *Lectures*, pp. 104–8; and J. B. Gibbons, *A Manual of Medical Jurisprudence* (Calcutta: G. W. Allen, 1904), pp. 351–8. On kneading, see Hehir and Gribble, *Medical Jurisprudence* (1929), p. 649; Chowdhury, 'Delivering the "Murdered Child"', p. 280; and Guha, 'Unwanted Pregnancy', p. 411.

[30] See Hehir and Gribble, *Medical Jurisprudence* (1929), p. 649.

Emmenagogues were substances that promoted menstrual flow. The most commonly used substance of this type was a botanical one called savin (*Juniperus sobina*), typically in the form of powdered leaves or oil. Oleander, papaya seeds, and carrot seeds were other emmenagogues used in India. Purgatives caused straining in the gastrointestinal tract. Some believed this could cause the uterus to expel its contents.[31] Various tubers in India were of this kind. In the fourth category, irritants, 'the uterus participat[es] in the irritant action set up in the system'.[32] Quinine, the anti-malarial that enabled colonial rule in many parts of Asia and Africa, was of this type, as were *Plumbago rosea* (*lāl citra*), black pepper, unripe pineapple, the bark of the horseradish tree, dried blister fly, and copper. Mineral irritants like arsenic, iron, and mercury appeared occasionally in Indian cases.[33] Finally, a random miscellaneous category of other substances included the juice of bamboo leaves and the tropical fruit known as *Randia dumetorum* (*mainphal*). This fruit was an 'emetic' (a substance that induced vomiting) recommended as a substitute for ipecacuanha in the treatment of dysentery.

Whether these substances were effective was by no means clear. 'Effective' in this context meant that they would terminate the pregnancy without killing the woman. John M. Riddle has suggested that many traditional abortifacients often achieved this aim.[34] By contrast, Matthew Sommer emphasizes that the poisonous properties of many herbal abortifacients often killed the women who ingested them.[35] The efficacy of oral abortifacients was a key issue of dispute in the case of *T. v. T.* (1927) before Bombay's Parsi Chief Matrimonial Court—a court that heard cases between spouses from the Zoroastrian community. Mrs T. claimed that her pharmacist husband had forced her to ingest round, white powdery balls that he had brought home

[31] 'Empress v. Templeton. Medical Report with an Analysis of the Post Mortem Report and Review of the Medical Evidence', pp. 11–14, in 'Hyderabad Abortion Case. Empress v. Templeton' (IOR/R/1/1/1273), hereafter Hyderabad Abortion case papers.

[32] Waddell, *Lyon's Medical Jurisprudence*, p. 324.

[33] Arsenic was sometimes ingested or inserted directly into the vaginal canal. For two fatal cases, see Appendix I in *Report of the Chemical Examiner to Government, Punjab*, for 1924, p. iii; and, for 1925, p. i (IOR/V/24/419).

[34] John M. Riddle, *Eve's Herbs: A History of Contraception and Abortion in the West* (Cambridge, MA: Harvard University Press, 1997), pp. 46, 58–9, 124, 254–5.

[35] For instance, see Matthew H. Sommer, 'Abortion in Late Imperial China: Routine Birth Control or Crisis Intervention?', *Late Imperial China*, vol. 31, no. 2, 2010, pp. 128–9, 145–9.

from his 'chemist's shop'. She claimed that she had lost three separate pregnancies as a result. Her husband denied that he had given his wife any abortifacients; he had only given her 'permanganate of potash' pills to regulate irregular menstruation.[36] Although 'unblocking the menses' may have seemed like a euphemism of the day, Leslie Reagan is probably right to insist that we take seriously the distinction made during this era between regularizing menstruation and inducing abortion: the former preceded quickening, while the latter followed it.[37] Neither party explicitly stated whether Mrs T.'s pregnancies had reached the point of quickening, but the husband's claims implied that they had not, while the wife's suggested that they had. In any case, Mrs T. denied that her husband ever gave her potassium permanganate pills for the purpose of regulating menstruation.[38]

Each spouse relied on a number of medical experts. All agreed that a large number of alleged abortifacients were easily obtainable on the black market. There were 'patent pills', usually imported from Britain. The most common of these were 'Ergot-Apiol' pills (a fungus mixed with a parsley extract) and penny royal pills (made from an herb growing in Europe and western Asia). Other substances were myrrh-, aloe-, lead-, and gin-based or were glandular products extracted from goat and cat kidneys.[39]

Where the experts disagreed was on the question of efficacy. All were prominent Parsi physicians in Bombay. Mr T. argued that the medical impossibility of his wife's allegations made them unlikely. By his account, the inefficacy of oral abortifacients showed that he would not have given any to his wife—because none worked. The husband's first expert witness, a physician of 35 years' experience in private practice named Dr Dara M. Dastur, told the court that none of these substances administered at home could induce abortion unless the womb was

[36] Testimony of Mr T. (14 March 1929) in PCMC Suit No.3 of 1927 (*T. v. T.*), 'The Parsee Chief Matrimonial Court. Judge's Notebook from 31 Jan. 1928 to 8 April 1929', part 2, p. 157 (BHC). Potassium permanganate was the key ingredient in a well-known disinfectant solution patented as Condy's Fluid. See Modi, *Textbook of Medical Jurisprudence*, pp. 450–1.

[37] See Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973* (Berkeley: University of California Press, 1997), p. 9.

[38] Testimony of Mrs T. (7 March 1929) in Suit No.3 of 1927, part 2, p. 95.

[39] In PCMC Suit No.3 of 1927 (part 2), see testimony of Dr Dara M. Dastur, p. 179, Lieut.-Col. Sorab Vajifdar, p. 181, and Major Shavax Byramji Mehta, p. 182 (all of 15 March 1929). See also testimony of Dr Minocher T. Anklesaria (18 March 1920), pp. 185–6, 191.

diseased. There was no sign that Mrs T.'s uterus was unhealthy. Many of the patented products only produced irritation, not miscarriage, by Dastur's account. The second witness for the defence, Lieutenant Colonel Sorab Vajifdar, was part of the Indian Medical Service (IMS), as well as a professor of medical therapeutics at Grant Medical College in Bombay. His view was that these chemicals were either mere irritants or poisons that could kill the woman—and even then would not produce an abortion in one to three days, as Mrs T. claimed had happened. The husband's third witness was Major Shiavax Byramji Mehta, another member of the IMS and associate professor of midwifery at the Jamsetjee Jeejeebhoy Hospital in Bombay. In his professional opinion, no irritant poison taken internally could cause abortion without also killing the woman.[40]

Against them was Mrs T.'s first medical witness, Minocher T. Anklesaria, house surgeon in Dr Temulji's hospital and former associated professor of midwifery at Bombay's Grant Medical College. 'There are drugs which will cause abortion, every time successfully and without danger to life,' he told the court. He had seen many such cases in his career of 23 years, over the course of which he had performed over 1,000 surgical abortions and attended to complications from many illicit abortions induced by women chemically. Mrs T.'s second witness, Dr Nowroji J. Vajifdar, was a professor of toxicology and assistant chemical analyser to the Government of Bombay. He told the court that, while no abortifacient was 100 per cent effective, many worked often.[41]

Mrs T. won her case—a civil suit for judicial separation. This court, the Parsi Chief Matrimonial Court of Bombay, was unusual in British India because it operated through a jury system of 11 delegates, all from the Parsi community. No other population (Britons included) was entitled to a jury in matrimonial disputes. The delegates voted by nine to two in favour of the cruelty allegation, but Mrs T. had argued that there was physical violence in addition to the coerced abortions. Because the delegates did not give reasons, it was impossible to know whether they accepted her abortion claims specifically—and whose expert witnesses they found more credible. The 'battle of the experts' in this case

[40] Testimony of Dastur, p. 178, S. Vajifdar, p. 181, and Mehta, p. 182, all in Suit No.3 of 1927 (part 2). See also reference to Mehta's claims in testimony of Anklesaria, p. 188.

[41] Testimony of Anklesaria, pp. 185–91 and Nowroji J. Vajifdar (18 March 1929) in Suit No.3 of 1927 (part 2), pp. 191–2, both in Suit No.3 of 1927 (part 2).

reflected the unsettled state of professional opinion, as was common in the adversarial courtroom.[42]

The second popular method of abortion acted locally. British and mixed-race Eurasian women further along in their pregnancies often inserted sharp objects up the vaginal canal and into the mouth of the uterus. They used hair pins, knitting needles, pencils, uterine sounds, and catheters. Indian women were more likely to combine mechanical and chemical action through the use of the abortion stick, administered by an Indian midwife or *dāī*. An abortion stick (called a 'candle' or *battī*) consisted of a stick of wood five to seven inches long, typically from particular types of trees growing in India like *Plumbago rosea* (*lāl citra*) or *Nerium odorum* (white oleander). Tied around one end of the stick was a cloth smeared with an irritant like the Indian cooking spice asafoetida (*hīṅg*), white arsenic, croton, *Semecarpus anacardium* (marking nut or *bhela*), jequerty, or *Calotropis gigantea* (*madar*) juice. A variation was the use of three sticks, each one inserted and left for 15 minutes before the next was added.[43]

Insertion of the stick into the uterus was dangerous for several reasons. It could be sucked completely into the uterus, causing fatal inflammation. It could break, leaving a piece inside the woman and leading to gangrene, also potentially deadly. It could pierce the wall of the uterus, causing internal bleeding and damage to other organs.[44] The telltale sign of abortion during a post-mortem examination was the discovery of splintered pieces of abortion stick or fibres from its cloth head inside the dead woman's uterus or vaginal canal.

Birth-control advocates (including nationalists) in the early twentieth century tried to avoid referring to the unspeakable 'others' of contraception: abortion and infanticide. In a quest to make contraception a respectable part of conjugal life, they worked to

[42] See generally Christopher Hamlin, 'Scientific Method and Expert Witnessing: Victorian Perspectives on a Modern Problem', *Social Studies of Science*, vol. 16, no. 3, 1986, pp. 485–513; and Tal Golan, 'The History of Scientific Expert Testimony in the English Courtroom', *Science in Context*, vol. 12, no. 1, 1999, pp. 7–32.

[43] Hehir and Gribble, *Medical Jurisprudence* (1929), p. 650. On the three-stick method, see Singh, 'Modes of Inducing Criminal Abortion', p. 9. On *lāl citra*, see William Dymock, C. J. H. Warden, and David Hooper, *Pharmacographia Indica: A History of the Principal Drugs of Vegetable Origin, Met with in British India* (Calcutta: Thacker, Spink, 1891), vol. 2, pp. 329–40; and Guha, 'Unwanted Pregnancy', p. 409.

[44] See Chevers, *Manual*, pp. 500–2; Waddell, *Lyon's Medical Jurisprudence*, p. 320; and the 1854 Sylhet case of *Government v. Omoo Chung*, Reports of Cases determined in the Court of Nizamut Adawlut for 1854 (Bengal), vol. 4, part 2, pp. 792–3.

distance birth control from more extreme forms of fertility control. India's birth-control movement thus had little to say about abortion, except to offer an easier alternative.[45] By contrast, the medico-legal archive revealed much about how women terminated pregnancies. This archive was equally rich in insights on the law of abortion and its enforcement —themes to which we now turn.

The law of abortion

Until the early nineteenth century, the concept of 'quickening' distinguished legal from illegal terminations in the common-law world. A woman was 'quick with child' from the moment at which she first felt the fetus move. Termination of pregnancy was legal until this point and seemed unproblematic for many women ethically and religiously. In law, until the early nineteenth century, the restoration of menstruation was considered something very different from a criminal abortion after quickening. By popular customary norms, too, 'unblocking the menses', making a woman 'regular', and 'bringing down her courses' were everyday undertakings. Quickening could occur any time between the fourth and the sixth month of pregnancy. It was a subjective standard and therefore an impractical one according to Hehir and Gribble:

> for these movements may not be perceived at all, or they may be confounded with the motions of flatus, changes in the position of the viscera, or sudden contractions of the muscles. It is manifest that, in criminal cases, it can ordinarily only be ascertained from the statement of the woman herself whether she was quick or not.[46]

During the nineteenth century, conception replaced quickening as the moment at which vitality appeared and common-law jurisdictions introduced newly restrictive abortion laws. This shift criminalized all abortions, except to save the life of the woman. What accounted for the change? The burgeoning of embryological research from the late eighteenth century played an important part, as did the professionalization project of allopathic physicians, who strove to discredit midwives and the quickening standard they retained. Hehir

[45] Sarah Hodges, *Contraception, Colonialism and Commerce: Birth Control in South India, 1920–1940* (Aldershot: Ashgate, 2008), p. 134. See also Appendix A.

[46] Hehir and Gribble, *Medical Jurisprudence* (1929), p. 647.

https://doi.org/10.1017/S0026749X19000234 Published online by Cambridge University Press

and Gribble were men of their time and profession in rejecting the quickening standard that had previously distinguished the quotidian from the criminal in medical, legal, social, and even religious realms.[47]

Before the IPC came into force in 1862, abortion was a crime in British India punishable by seven to nine years' imprisonment.[48] Writing in 1856, though, Chevers suggested that the law would only be enforced in abortion cases when the woman had died. Otherwise put, even an abortion on a woman who was 'quick with child' would not be pursued by authorities pre-IPC if the woman survived. Chevers referred to a circular order of 1824 instructing the lower courts that 'in regard to Abortion, or procuring it, the Court does not consider these offences to be of a heinous description *unless death ensue*'. A set of regulations from 1816–24 warned that '[p]olice officers inquiring into any charges of Abortion unattended by death, unless expressly ordered to do so by the Magistrates, shall be liable to fine and dismissal'.[49] And, in Bengal, an 1816 regulation that remained in force in 1853 ordered chowkidars (police watchmen) not to interfere or report to police any cases of 'petty assault, abuse, adultery, or abortion' unlike cases of 'murder, robbery, house-breaking or theft'.[50]

[47] See Parry, *Criminal Abortion*, pp. 134–5; John Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982* (Cambridge: Cambridge University Press, 1988), pp. 22–24, 39–48; and Angus McLaren, *Reproductive Rituals: The Perception of Fertility in England from the Sixteenth Century to the Nineteenth Century* (London: Methuen, 1984), pp. 117–19, 129–44. See also Renato G. Mazzolini, 'Embryology', in *The Oxford Companion to the History of Modern Science*, (ed.) J. L. Heilbron (Oxford: Oxford University Press, 2003), n.p.; 'Development', in *Dictionary of the History of Science*, (eds) W. F. Bynum, E. J. Browne, and Roy Porter (Princeton: Princeton University Press, 1981), pp. 96–8; and Ronan O'Rahilly, 'One Hundred Years of Human Embryology', *Issues and Reviews in Teratology*, vol. 4, 1988, pp. 83–9. Only in 1869 did Pope Pius IX declare that ensoulment occurred at conception, rather than at quickening, and that all abortion was murder in the eyes of the Catholic Church. See 'Abortion', in *Encyclopedia of Birth Control*, (ed.) Vern L. Bullough (Santa Barbara, CA: ABC-CLIO, 2001), p. 2.

[48] Because abortion was a crime even before the IPC, it is inaccurate to say that the IPC criminalized abortion. There is some confusion in the scholarship on this point (for example, see Chowdhury, 'Delivering the "Murdered Child"', pp. 279–80).

[49] Circular Order No.303 (31 Dec. 1824, probably in force in the North West Provinces) and Regulation XXII of 1816, s. 22, Regulation XXII of 1817, ss. 12–13; cited in Chevers, *Manual*, pp. 491, 507, emphasis in original.

[50] Regulation XXII of 1816, 'A Regulation for Re-Enacting and Reducing into One Regulation, with Amendments and Further Provisions, the Rules in Force for the Appointment and Maintenance of Chokeedars of Police', s. 22, in Richard Clarke, *The Regulations of the Government of Fort William in Bengal, in Force at the End of 1853…Vol. II: Regulation from 1806 to 1834* (London: J. and H. Cox, 1854), p. 398.

The IPC introduced a broader range of abortion-related offences and (at their upper end) harsher sentences than what had come before. Causing abortion for reasons other than saving a woman's life could result in a three-year prison sentence (s. 312). If the woman was quick with child, the sentence could increase to seven years. A person who induced abortion in a woman without her consent could be transported for life or imprisoned for up to ten years (s. 313). If the woman died (s. 314), the penalty was imprisonment for up to ten years (if the deceased had consented to the abortion) or transportation for life (if she had not). For inducing abortion chemically, the IPC's provision on noxious substances imposed a prison sentence of up to ten years (s. 328).[51]

There were signs that the IPC's new rules on abortion were occasionally enforced. In *Queen-Empress v. Ademma* (1886), a lower court acquitted a woman of self-inducing an abortion because she was not yet 'quick with child'. This judge seemed to cling to the older, more liberal approach toward abortion. On appeal, the decision was reversed: under the IPC, abortion was a crime even before quickening.[52] The Madras High Court might have added that it was also a crime even if the woman lived. There was also increased police surveillance of women deemed 'at risk' of committing abortion, as Durba Mitra has shown. The IPC and new Indian Police Act of 1861 contributed to heightened police interference with living women. The monitoring and forced genital examination of women occurred in Bengal during the 1860s to 1880s to police potentially mendacious or deviant women in cases involving rape, abortion, and infanticide.[53]

And yet other, later episodes suggested that the older standard of non-interference lived on. In 1884, both the Secretary of State for India and the Lieutenant Governor of the North-West Provinces refused to restrict the publication or circulation of a book 'in the simple vernacular of the country' that told women how to induce abortion.[54]

[51] See Appendix D. The IPC's anti-abortion provisions were less punitive than what would become law in England one year later.

[52] *Queen-Empress* ILR Madras, vol. 9, 1886, pp. 369–71.

[53] Durba Mitra, 'Sociological Description and the Forensics of Sexuality', in *Locating the Medical: Explorations in South Asian History*, (eds) Rohan Deb Roy and Guy N. A. Attewell (Delhi: Oxford University Press, 2018), pp. 35–9. There are signs that this approach began even before the IPC and Indian Police Act. See the 1856 case against Kanak bin Hurnak and others, Morris' Cases disposed of by the Sudder Foujdaree Adawlut of Bombay (hereafter Morris' SFA Reports), vol. 4, p. 788.

[54] 'Letter from Frederic Pincott Complaining of a Book Entitled *Amrita Sagara* which Contains a Paragraph on Inducing Abortion', 22 March 1884 (IOR/L/PJ/6/120, file

The 1927 Bombay case of the pharmacist and his wife (*T. v. T.*) was also revealing on this point. First, the testimony of the wife's physician experts suggested that medical professionals did not actively cooperate in enforcing anti-abortion law. Dr Minocher T. Anklesaria told the court that, whenever women who had aborted criminally 'by mouth' at home came to see him with uncontrolled bleeding, he required that they tell him what substance they had taken. But he would not pass this information on to the police: 'In these cases, it is not part of my duty to inform the police. I don't know whether the law enjoins us to inform the police. I have never informed the police about these cases. In the hospital we don't report cases of abortion to the police.'[55]

These women were all guilty of the crime of abortion under IPC s. 312, and yet none was pursued by the criminal justice system because the doctors who helped them did not report them to the police. If Bombay was a jurisdiction where criminal abortion was aggressively prosecuted, such medical practice—and admission of the practice in court—could have exposed the speaker and his institution to criminal sanctions. The phenomenon reflected physicians' vision of doctor–patient confidentiality, explored shortly.

Mrs T.'s decision to make the abortion accusation at all was also revealing. Mrs T. was a working-class Parsi woman in Bombay who petitioned the Parsi Chief Matrimonial Court for a judicial separation on the basis of her husband's cruelty. Under Parsi personal law, judicial separation entailed a legal separation and permanent alimony for the wife. Neither party had the right to remarry. It was easier for a wife to prove judicial separation than divorce, as she only had to prove cruelty. To get a divorce, she had to prove both that her husband had been adulterous and that there had been another factor like cruelty.[56] Mrs T. and her witnesses alleged that her husband had physically abused her and that, on two occasions, he had pointed a revolver at her or their

565) and 'Suppression of a Book on Domestic Medicine Named *Amrita Sagara* because it States the Various Ways in which Abortion or Miscarriage May Be Induced', 22 March to 7 April 1884 (IOR/L/PJ/6/122, file 691).

[55] Testimony of Dr Minocher T. Anklesaria in Suit No.3 of 1927, part 2, p. 190. See similarly Waddell, *Lyon's Medical Jurisprudence*, pp. 436–7.

[56] Parsi Marriage and Divorce Act (IV of 1865), ss. 31–35. See also Framjee A. Rana, *Parsi Law Embodying the Law of Marriage and Divorce and Inheritance and Succession Applicable to Parsis in British India* (Bombay: A. B. Dubash at Jam-e-Jamshed Printing Works, 1934), pp. 60–82. On Parsi matrimonial law and the PCMC, see Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947* (New York: Cambridge University Press, 2014), pp. 165–236.

children. She told the court that he had often deprived her and her children of food, money, and furnishings; that he had routinely dismissed the servants to punish her; and that he had forced the family to help run an illicit bookmaking (or bet-taking) 'bucket-shop' business out of their home. Mrs T. also claimed that her husband had forced her to induce abortions on three occasions—in 1921, 1923, and 1925. Before Mr T. started running his gambling operation based on the Bombay horse races and American 'futures', he had been a chemist or pharmacist. It was during that time that he had allegedly brought home pills, ordering his wife to take them. According to Mrs T., her husband threatened to disown the resulting children if she did not swallow the pills. She claimed to have taken the pills and to have aborted alone at home each time. Her testimony documented in striking detail the extreme pain, sickness, and bleeding she experienced for days after ingesting the pills: 'I took the pills under pressure and suffered agony untold for 3 days' that was 'more severe and cruel than labour pains'. She described pulling out clots 'like shreds' from her vaginal canal. She did not see a doctor after any of these episodes.[57]

Mrs T. had three living children, but she had also had two natural miscarriages. Her husband's lawyer suggested that she had concocted the abortion allegations on the basis of these past experiences. Mr T.'s lawyers put on the stand three medical experts. All testified that Mrs T.'s story was a lie because it was impossible. The public believed that abortifacients were obtainable on the black market and that they worked. But the public was mistaken at least on efficacy, according to the defence.

The debate over efficacy has already been explored above. What was intriguing was Mrs T.'s decision to allege abortion at all—even if she was claiming it was coerced. Lower criminal court records have yet to be unearthed (if they exist at all), making it impossible to confirm that an IPC prosecution for abortion did not flow from the *T. v. T.* civil suit. Nonetheless, the openness with which Mrs T. and her lawyers described the abortions in court implied that they feared no such thing. If the parties had been operating in a context in which criminal abortion was aggressively policed and prosecuted, Mrs T.'s lawyers would never have allowed her to bring up the abortions. In such a scenario, Mr T. could have been convicted under the IPC's anti-abortion and poisoning provisions, but Mrs T. also would have been at risk. She would have

[57] Testimony of Mrs T., Suit No.3 of 1927, part 2, pp. 69, 103. See also Appendix E.

argued that she had acted under compulsion, but it was not clear that the type of pressure applied would have satisfied the criminal test. Although Mr T. was allegedly violent toward his wife at other times, he threatened her with economic and social sanctions (disowning the child and forcing her out of the marital home) if she refused to take the pills. The IPC required that the threats reasonably caused the apprehension of 'instant death' (s. 94). If Bombay had been a jurisdiction where the state pursued abortion cases in a determined way, Mrs T. could have been risking a three-year prison term herself by making the abortion argument in the matrimonial suit. As the IPC stated: '[a] woman who causes herself to miscarry is within the meaning of this section' (s. 312). Mrs T. also had sufficiently strong evidence of other kinds of abuse not to need the abortion claims to win her case. We can only conclude that this court, which had plenty of other interactions with the lower criminal courts (known as the 'police courts'), did not refer abortion cases to the police courts when the woman survived. It seemed that the old rule lived on and that the IPC's stricter rules on abortion remained regularly unenforced.

Challenges of detection

Why was the approach toward abortion so permissive, given the law laid out by the Penal Code? A number of factors were germane, including practical impediments to detection, the Hindu widow-remarriage movement, the colonial state's concern with false charges, imperial separations among British couples, and physicians' reluctance to cooperate with the criminal justice system.

Detection was difficult when women survived abortions. As already noted, treatise authors claimed that Indian village abortionists could terminate pregnancies without a trace. In 1917, W. D. Sutherland warned students at the new Detective Training School in Bengal that

> You will find that your cases will break down because unless the woman is examined by a competent medical man, within 24 hours of the birth of the foetus none can tell for certain that the woman has had an abortion. And, unless the medical expert is really competent in this department, he may not be able to give you any information, even if he examines the woman within a few hours after the abortion.[58]

[58] 'No.2. Notes of a Lecture Delivered by Colonel W. D. Sutherland M.D., I.M.S. Imperial Serologist, at the Detective Training School, Howrah, on the 6th of December

https://doi.org/10.1017/S0026749X19000234 Published online by Cambridge University Press

Even when women died of abortion-related complications, though, there were other special barriers to detection. These factors were distinct to South Asia and the colonial context. In 1895–96, Charles H. Bedford presented a paper to the Edinburgh Obstetrical Society on the abortion-related cases he had observed, almost entirely involving women's corpses, while he was chemical examiner for Punjab in 1893–94. He highlighted the many ways in which an abortion-related death could be masked in India. Postpueral fever looked very much like malaria, for instance. A 25-year-old Muslim woman had died of 'fever' (implicitly malarial) and was buried and then exhumed four days later for examination. An inch-long fragment of wood was found lodged in her cervix and the chemical examiner realized that she had died of an abortion attempt. Relatives of another woman claimed that she too had died of fever. However, the chemical examiner found a cotton wool pledget coated in saffron (an abortifacient by some accounts) in the deceased's vaginal canal.[59]

Purity laws, caste restrictions, and mistrust of Britons and the colonial state prevented colonial authorities from obtaining bodies for post-mortem examination in many cases in which an Indian woman had died. Post-mortems would normally be carried out by the local civil surgeon or (in larger centres) by the coroner's surgeon. However, if this official wanted to have certain body parts or substances tested chemically, he would send samples to the chemical examiners at their regional labs. For the testing of blood samples, particularly for precipitin testing to establish the species of origin, material had to be transported even farther—to an official in Calcutta called the imperial serologist. In abortion cases, civil surgeons often sent the contents of the stomach (looking for oral abortifacients) along with the uterus and upper vaginal canal (looking for local irritants and physical signs of abortion sticks). Substances found in the woman's possession, home, or clothing might also be submitted for testing, in case these were abortifacients. The vast distances between many provincial outposts and regional capitals where the chemical examiners had their labs made it

1917', p. 1 (unpaginated) in Papers of Ormandy Ballantine Fane Sewell, 1902–23 (IOR/MSS Eur F419/8).

[59] Charles H. Bedford, 'Criminal Abortion in the Punjab', *Transactions of the Edinburgh Obstetrical Society*, vol. 21, 1895–96, pp. 218–19. On the popular attribution of abortion-related fever and deaths to malaria, see W. J. Buchanan, 'A Chapter on Medical Jurisprudence in India', in *The Principles and Practice of Medical Jurisprudence*, (eds) A. S. Taylor and Fred J. Smith (London: J. and A. Churchill, 1905), vol. 2, p. 861.

challenging to transport body parts quickly enough to avoid decomposition, especially during the 'hot weather'.[60]

There was also cremation. Decomposing corpses became bloated with gases. In hot climates, bodies could burst unless cremated or buried relatively soon after death.[61] Hindu communities practised rapid cremation, typically within 24 hours of death.[62] Only mineral poisons (not plant-based ones) preserved in the spongy tissue of bone fragments might be detectable after the average cremation. If a family was affluent and could afford more wood, the cremation would be more complete. If the family was poorer, the body would only partly be burnt and the remains dispersed in a river. Bedford noted that, unless a complaint was filed immediately with the police (which was rare), the crucial body parts would be 'in ashes, or miles down the river, or undergoing the process of digestion in the alimentary canals of sundry fish or alligators'.[63]

An ongoing debate in the late nineteenth century pitted burial against cremation. In 'the battle between the Torch and the Spade', cremation gained credence and fashionability even among Britons from the 1870s onward.[64] Cremation did not require valuable real estate, unlike burial. Nor did it infect the water supply or create a terrible, rotting smell reported near overcrowded 'stacked' British gravesites. Easier

[60] Buchanan, 'A Chapter', p. 852. On civil surgeons, see Kolsky, *Colonial Justice*, pp. 134–5. On coroners' inquests, see Appendix F. On chemical examiners, see *Report of the Chemical Examiner to Government, Punjab, for the Year 1879* (IOR/V/24/418); and David Arnold, *Toxic Histories: Poison and Pollution in Modern India* (Cambridge: Cambridge University Press, 2016), pp. 111–17. On the imperial serologist, see Mitra Sharafi, 'The Imperial Serologist and Punitive Self-Harm: Bloodstains and Legal Pluralism in British India', in *Global Forensic Cultures: Making Fact and Justice in the Modern Era*, (eds) Ian Burney and Chris Hamlin (Baltimore: Johns Hopkins University Press, 2019), pp. 60–85.

[61] For an abortion-related example, see Waddell, *Lyon's Medical Jurisprudence*, p. 327.

[62] *Report of the Chemical Examiner to Government, Punjab, for the Year 1931*, p. 11 (IOR/V/24/420); and Arnold, *Toxic Histories*, pp. 109–10.

[63] Bedford, 'Criminal Abortion', p. 205. For an example of a mineral poison detected in cremains, see *Report of the Chemical Examiner to Government, Punjab, for the Year 1925*, p. iii (IOR/V/24/419).

[64] In *The Indian Lancet*, see untitled, vol. 8, no. 1, 1 July 1896, p. 47; and 'Progress of Cremation', vol. 9, no. 1, 1 January 1897, p. 39. See also John Glaister, Jr, 'A Short History of Cremation', pp. 5–11 (GUA FM/6/1/24), University of Glasgow Archives (Glasgow); and Thomas W. Laqueur, *The Work of the Dead: A Cultural History of Mortal Remains* (Princeton: Princeton University Press, 2015), pp. 489–548. Burial remained the most common practice among Britons who died in India (Theon Wilkinson, *Two Monsoons: The Life and Death of Europeans in India* (London: Duckworth, 1987), pp. 18–98, 214–19).

preservation and the transportability of ashes may equally have held special appeal for imperial subjects moving along global transit ways. Diseases like cholera, dysentery, and the plague were rumoured to have returned to human populations after afflicted bodies buried centuries before were disturbed.[65] And yet, despite all of its benefits, cremation posed a constant threat to the state's crime-detection efforts in India. As the Punjab chemical examiner D. R. Thomas observed in his annual report for 1931, rapid cremation was 'a most dangerous loop-hole' from a forensic perspective.[66]

Before the IPC, criminal sanctions against abortion were generally only imposed when a woman had died. Even after the tighter restrictions of the IPC were introduced on paper, though, this earlier approach persisted in practice. And, even when women died from abortions gone wrong, the physical, cultural, and religious landscape of South Asia denied the colonial state's experts access to many women's bodies. The Hyderabad case, discussed shortly, became a major investigation in part because the woman who died was not from a community that practised cremation. The body of Mrs Whittaker could be exhumed and re-examined, and it was.[67]

Abortion and Hindu widows

The contours of gender-related reform campaigns also contributed to the lukewarm nature of anti-abortion efforts. From the early nineteenth century, a series of social movements about women emerged across colonial South Asia.[68] One such movement was the campaign to permit and destigmatize the remarriage of Hindu widows. Traditionally, Hindu women in many upper-caste communities did not remarry after the death of their husbands. They lived under ritually and materially

[65] On diseased cemeteries, see P. R. Hay Jagannadhan, 'Cremation and Burial', *Indian Medico-Chirurgical Review*, vol. 3, no. 7, 1895, pp. 410–12; and *Histories of Post-Mortem Contagion: Infectious Corpses and Contested Burials*, (eds) Christos Lynteris and Nicholas H. A. Evans (Cham: Palgrave Macmilla, 2018). On stacked gravesites, see 'Our Cemeteries', *Rangoon Gazette Weekly Budget* (8 Nov. 1889), p. 9; and Glaister, 'A Short History', p. 5.

[66] *Report of the Chemical Examiner Punjab for 1931*, p. 12.

[67] Similarly, see 'Ahmedabad Doctor on Trial. Serious Charges. Woman's Mysterious Death', *TI* (13 July 1931), p. 5.

[68] See Geraldine Forbes, *Women in Modern India: The New Cambridge History of India IV.2* (Cambridge: Cambridge University Press, 1996); and Sharafi, *Law and Identity*, pp. 167–8.

restricted conditions in the homes of their dead husbands' families.[69] The Hindu remarriage movement focused on the plight of young widows, including virgin widows whose husbands had died before adolescent cohabitation began.[70] Unable to remarry, some widows of childbearing age had extramarital relationships and became pregnant. They turned to abortion to avoid social and economic ruin.[71] Financial support from their dead husbands' families was contingent upon the widows' continuing celibacy, although occasionally the courts tried to soften this position.[72]

As early as the 1830s, colonial administrators linked abortion to the prohibition on Hindu widow remarriage. Commenting on the draft text of IPC s. 312 (on abortion), one member of the Indian Law Commission expressed scepticism about trying to crack down on abortion while young widows were prohibited from remarrying: 'I much doubt the policy of providing heavy penalties for the repression of the offence of causing miscarriage by the woman herself whilst the barbarous institutions of the country create the offence.'[73] The widow-remarriage movement portrayed widows as hapless victims of inhumane norms. One 1856 petition signed by '312 native subjects of India' argued that the Shasters in fact did permit Hindu women to remarry in five situations: if their husbands died, were long absent, or

[69] See Editorial, *TI* (21 Aug. 1884), p. 4; and Lucy Carroll, 'Law, Custom, and Statutory Social Reform: The Hindu Widows' Remarriage Act of 1856', in *Women in Colonial India: Essays on Survival, Work and the State*, (ed.) J. Krishnamurty (Delhi: Oxford University Press, 1989), p. 2. See also 'Suicide of a Hindoo Widow at Calcutta', *TI* (26 Oct. 1875), p. 3.

[70] On child marriage, see Ishita Pande, 'Coming of Age: Law, Sex and Childhood in Late Colonial India', *Gender and History*, vol. 24, no. 1, 2012, pp. 205–30; and 'Phulmoni's Body: The Autopsy, the Inquest and the Humanitarian Narrative on Child Rape in India', *South Asian History and Culture*, vol. 4, no. 1, 2012, pp. 9–30.

[71] Similarly, abortion was associated with Brahmin Kulinism. See William Ward, *A View of the History, Literature, and Mythology of the Hindoos, including a Minute Description of Their Manners and Customs, and Translations from Their Principal Works* (London: Black, Kingsbury, Parbury, and Allen, 1820), vol. 3, p. 82 at note x; and Malavika Karlekar, 'Kulin Widowhood in Nineteenth-Century Bengal: The Life and Times of Nistarini Debi', in *Engendering Law: Essays in Honour of Lotika Sarkar*, (eds) Amita Dhanda and Archana Parashar (Lucknow: Eastern Book Company, 1999), pp. 257–74.

[72] See Appendix C. On associations between abortion and Hindu widows, see Buchanan, 'A Chapter', p. 861; and Mitra, 'Sociological Description'. *Dalit* and lower-caste communities neither practised child marriage nor condemned widow remarriage (Carroll, 'Law', p. 2).

[73] 'Mr. Thomas', in William Robarts Hamilton, *The Indian Penal Code with Commentary* (Calcutta: Thacker, Spink, 1895), p. 356.

became ascetic, impotent, or apostates. Because these texts had been ignored in favour of a blanket ban on widow remarriage, the petitioners argued that abortion had become a common practice among young Hindu widows.[74]

The Hindu remarriage campaign culminated in the passage of the (Hindu) Widow Remarriage Act of 1856, which affirmed the validity of widows' remarriage contracts under Indian law. A continuing campaign to change social attitudes followed, but the stigma remained. The Hindu widow remained the quintessential figure associated with criminal abortion from the 1860s until the end of British rule in 1947. An 1885 editorial in the *Times of India* insisted that infanticide and abortion were 'the inevitable result of a custom that condemns twenty-one million women to perpetual widowhood'.[75] According to one letter to the editor in the same year, widow remarriage was still deemed a 'more heinous crime' worthy of exclusion 'from caste and society' than abortion, child desertion, or a criminal conviction.[76] Hehir and Gribble made the following observations in 1892:

> In this country it is, no doubt, true that there are a very large number of criminal or violent abortions, and that an unfortunate widow who has yielded to temptation has every reason, through fear of exposure, loss of caste, etc., to resort to such means in order to save her reputation. At the same time, it must be remembered that everything and everybody are against her. There are probably suspicions of her immorality; and in a small village community, where nearly everything that goes on is known, people are on the look-out, and even if she should miscarry naturally, she is sure to be suspected of having used criminal means to produce abortion.[77]

Three decades later, Waddell noted that the majority of known abortion cases in 1920s India still involved Hindu widows.[78] As long as the taboo on remarriage continued, so would the association of widows and abortion.

[74] 'Petition of 312 Natives Subjects of India', in 'Further Papers (No. 20) Relative to the Bill to Remove All Legal Obstacles to the Marriage of Hindoo Widows', all within 'Report of the Select Committee on the Bill (and Other Documents)', 'To Remove All Legal Obstacles to the Marriage of Hindoo Widows', Proceedings of the Legislative Council, 31 May 1856, Board's Collections' (IOR/F/4/2691, no. 189069).

[75] Untitled editorial, *TI* (19 Sept. 1885), p. 4.

[76] M. R. Nilkanth, 'Infant Marriage and Enforced Widowhood', *TI* (14 Jan. 1885), p. 3.

[77] Patrick Hehir and J. D. B. Gribble, *Outlines of Medical Jurisprudence for India* (Madras: Higginbotham, 1892), pp. 268–9.

[78] Waddell, *Lyon's Medical Jurisprudence*, p. 317; see also p. 276. Relatedly, see Hehir and Gribble, *Medical Jurisprudence* (1929), p. 648.

Between the mid-nineteenth and mid-twentieth centuries, coroners in Bombay Presidency carried out inquests on young Hindu widows who had died following attempted abortions. The coroner led the process whereby a coroner's jury decided whether an unusual death was a suicide, homicide, or accident—or had occurred 'suddenly by means unknown'.[79] He delegated the post-mortem examination to the coroner's surgeon. If the coroner's jury found that the death was a murder, a criminal trial would follow the inquest (provided there was a suspect). This trial would establish whether a particular person had committed the murder. If the coroner's jurors found that the death was a suicide, accident, or the result of 'means unknown', the case ended there.[80]

In some inquests, Hindu widows died by poisoning themselves after attempting to abort 'by mouth'. One young widow in Ahmedabad died after taking drugs given to her by her paramour in 1849.[81] More, though, involved later-term abortion attempts by 'local' means. An 1872 inquest considered the death of Abbai, a 30-year-old widow who lived with her sister and stonemason brother-in-law. The coroner's surgeon, Sidney Smith, concluded from the post-mortem that she had died of peritonitis followed perforation of the intestines during an abortion. Five years later, a 25-year-old widow named Heerabai was also found to have died of peritonitis following an abortion. She had been a widow since the age of 11.[82]

Inquest cases were by definition fatal ones. For women who survived, the colonial state would only have added to these women's suffering by prosecuting them for abortion. Such action would also undermine the portrayal of Hindu widows as victims—a characterization essential for the remarriage movement. In other words, a light touch on abortion when the women were still alive was the compromise needed to prioritize another social-reform campaign.

[79] Coroner's Act (IV of 1871), s. 8. See Waddell, *Lyon's Medical Jurisprudence*, p. 6.

[80] See Appendix F. On the coroner's surgeon, see 'Death from Abortion', *TI* (18 Feb. 1877), p. 3; and *TI*, 'The Suspicious Death of a Hindoo Widow' (15 Aug. 1892), p. 3.

[81] Untitled article, *Bombay Times and Journal of Commerce* (7 July 1849), p. 456. Although this case occurred before the passage of the 1871 Coroner's Act, it involved an inquest. See Appendix F.

[82] In *TI*, see 'Death Suspected to be Caused by Abortion' (8 April 1872), p. 3 on Abbai's case; and 'Death from Abortion' (19 Feb. 1877), p. 3 on Heerabai's case.

False accusations

Another explanation for the state's half-hearted enforcement of anti-abortion law was a heightened concern with false accusations among South Asians. This anxiety permeated the criminal justice system and reflected a deep-seated British belief in 'native mendacity'—the idea that colonized subjects dissimulated chronically. Most British lawyers and judges believed that Indian witnesses lied much of the time and that perjury and forgery were rife.[83] The IPC included extensive provisions on false evidence and 'offences against public justice' (IPC, ss. 191–261), including false charges (s. 211). In rape trials, these assumptions operated against Indian women who were alleging rape, making rape convictions particularly rare.[84] Commentators worried about native mendacity, too, in creating the abortion provisions of the IPC. Here, though, the concern was not that women would lie in order to frame innocent men. Rather, the drafters of the Penal Code expressed the concern that innocent women (and their families) could be victimized by their enemies, who might falsely allege that these women had undergone abortions. In the words of one Indian Law Commissioner during the 1830s:

> I have known groundless and false charges of this nature and the parties exposed to the pain of a criminal investigation when there was no evidence whatever as the existence of the foetus, and it was not established therefore that the woman was with child or that there had been an abortion.[85]

The Law Commission's chairman and future prime architect of the IPC, Thomas Babington Macaulay, elaborated:

> We entertain strong apprehensions that this section may be abused to the vilest purposes. The charge of abortion is one which, even where it is not

[83] See Kolsky, *Colonial Justice*, pp. 108–19, 217–18; Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India* (Chicago: University of Chicago Press, 2012), pp. 137–60; and Wendie Ellen Schneider, *Engines of Truth: Producing Veracity in the Victorian Courtroom* (New Haven, CT: Yale University Press, 2015), pp. 103–42.

[84] Elizabeth Kolsky, '"The Body Evidencing the Crime": Rape on Trial in Colonial India, 1860–1947', *Gender and History*, vol. 22, no. 1, 2010, pp. 109–30; Durba Mitra and Mrinal Satish, 'Testing Chastity, Evidencing Rape: Impact of Medical Jurisprudence on Rape Adjudication in India', *Economic and Political Weekly*, vol. 49, no. 41 (11 Oct. 2014), pp. 51–8; and Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Delhi: Oxford University Press, 2014), pp. 61–116.

[85] 'Mr. Thomas' in Hamilton, *IPC*, p. 356. Similarly, see Chevers, *Manual*, pp. 491–2.

substantiated, often leaves a stain on the honor of families. The power of bringing a false accusation of this description is therefore a formidable engine in the hands of unprincipled men. This part of the law will, unless great care be taken, produce few convictions but much misery and terror to respectable families and a large harvest of profit to the vilest parts of society. We trust that it may be in our power in the Code of Procedure to lay down rules which may prevent such an abuse. Should we not be able to do so we are inclined to think that it would be our duty to advise his Lordship in Council rather to suffer abortion, where the mother is a party to the offence, to remain wholly unpunished than to repress it by provisions which would occasion more suffering to the innocent than to the guilty.[86]

In a case from 1861, a Brahmin widow and her paramour were held in police custody on suspicion of committing abortion. Colonial authorities seemed unlikely to prosecute. 'You will doubtless be on your guard', wrote one British official to another, that the complaint could be forged 'from feelings of enmity toward the woman'.[87] Colonial anxieties over 'native mendacity' operated against individual women in rape cases. On abortion, though, they could work in women's favour.

As a safeguard against false allegations, the drafters of the IPC made abortion a 'non-cognizable offence'. In Indian law, criminal offences were either cognizable or non-cognizable. The former were generally more serious crimes, for which police officers could arrest without a warrant. As a non-cognizable offence, abortion was more like a misdemeanour than a felony elsewhere in the common-law world. This status made the pursuit of abortion cases slower and more laborious for the police. By putting abortion into the category of less serious offences, colonial legislators made anti-abortion law harder to enforce.[88]

Fear of the false was strong among colonial officials and the case law confirmed the existence of some false allegations of abortion. We can

[86] Macaulay in Hamilton, *IPC*, pp. 356–7. Similarly, see F. L. Beaufort, *A Digest of the Criminal Law of the Presidency of Fort William … Part 1* (Calcutta: Thacker, Spink, 1857), p. 415.

[87] Letter No.612 (4 April 1861) to J. P. Stratton, from [R. C. Shakespear, Agent Governor-General for Central India] and translation by Elizabeth Lhost of 1861 Urdu petition to the Political Assistant Agent for the Bundelkhand State; both in 'Paldeo: Case of Reported Criminal Miscarriage at Paldeo', Central India Agency, Baghelkhand 1861, Proc. No.884 (NAI). Although this case came from a princely state, the British Political Agent there had 'the right to reserve for trial by himself all serious cases and such other cases as he may consider it advisable to deal with personally' (*Imperial Gazetteer of India. Vol. IX: Bomjur to Central India* (Oxford: Clarendon, 1908), p. 76).

[88] See 'No. 2. Notes of a lecture … at the Detective Training School, Howrah', p. 1; and Code of Criminal Procedure, s. 4, in H. T. Prinsep, *The Code of Criminal Procedure (Act X of 1882)* (Calcutta: Brown, 1882), pp. 42–3.

accept that fabrications may have existed without endorsing the culturally denigrating and racist explanations for them in the colonial sources. Sometimes, a village chowkidar threatened to accuse a pregnant widow of planning an abortion—unless she paid him a bribe.[89] Another body of cases took the form of prosecutions for criminal defamation (IPC, ss. 499–502). The Bombay criminal courts encountered such cases, as in 1869 when a man named Roopa Ragoo was convicted and given a six-month prison sentence for falsely accusing a widow named Yenkee of being pregnant and taking an oral abortifacient.[90] A more elaborate ruse was revealed in the 1882 case of Bhimjee Khairaz and Pandoorun Hurrychund, who were each sentenced to a year's rigorous imprisonment. These men had gone to the house of a Hindu widow named Lukhmibai. One falsely accused her of having an abortion. The other, disguised as a police officer, threatened to ruin the reputation of the woman and her family unless they paid Rs 200. When Lukhmibai and her family refused to pay, the two men went to the Byculla police office and lodged a report, claiming that the abortion had been committed with the help of two midwives and that they (the two men) had been offered Rs 50 as 'hush money'. Going to the police station was the pair's mistake. They were soon in police custody. The widow, on the other hand, was examined by the police surgeon, who declared her to be 'totally free from the slightest suspicion of the offence she was charged with'. Khairaz was convicted of giving false information to the police with intent to 'annoy' Lukhmibai. Hurruchand was convicted of impersonating a police officer.[91]

After Lukhmibai's case, the courts changed their approach to the medical examination of women in such cases. They probably realized that a forced exam itself could be the aim of the original accuser and that the courts could not allow legal process to be used punitively.[92] By 1889, the courts ruled (again in Bombay) that a court in a pregnancy defamation case could not order a woman to undergo a medical

[89] See Guha, 'Unwanted Pregnancy', p. 418.

[90] 'The Fourth Criminal Sessions', *TI* (21 Sept. 1869), p. 4.

[91] 'The Police Court: A Disgraceful Case of Slander', *TI* (16 June 1882), p. 3. On the law of defamation (criminal and civil) in British India, see Sharafi, *Law and Identity*, pp. 276–8.

[92] Durba Mitra reports that some police in late nineteenth-century Bengal conducted genital examinations themselves at the local station, rather than delegating the task to a state-designated surgeon, as required by police procedure (Mitra, 'Sociological Description', p. 37). Undoubtedly, this practice was intended to be humiliating and punitive.

examination. In *Queen-Empress v. Pudmon*, the accused was found guilty of criminal defamation after he publically and falsely accused a woman 'before a number of her caste people' of being pregnant by adultery. The court could not order a medical examination of the woman.[93]

Pudmon was relied upon in the abortion defamation case of *Nathu Mal v. Abdul Haq*, decided on appeal by the Lahore High Court in 1929. *Nathu Mal* was a complicated case involving not just criminal defamation, but also corruption (IPC, s. 218) and extortion (IPC, s. 384). The central culprit was a sub-inspector of police named Abdul Haq in the Punjabi town of Asandh. Haq had clashed with one Nathu Mal over a proposed lease of a property. Haq threatened Mal with 'serious consequences' and then concocted a plan to harass Nathu Mal and his family. Haq was having an affair with a married nurse named Yuhanna Khan and convinced her to create a forged document (signed by a fictitious person) alleging that Nathu Mal was having an illicit sexual relationship with his own widowed daughter-in-law. The memo claimed that the daughter-in-law was pregnant and that she and Nathu Mal were trying to terminate the pregnancy by obtaining drugs from local doctors and nurses. The memo recommended that the local police take the daughter-in-law into custody to safeguard the pregnancy and her life: she was a suicide risk. Abdul Haq incorporated this false document into a report to his superiors. He claimed to have made inquiries himself and that the allegations were true. To Nathu Mal, Abdul Haq offered to drop the matter if paid a bribe of Rs 3,000, but Nathu Mal refused. As a result, the police took Nathu Mal's daughter-in-law into custody. She gave a statement denying that she was pregnant. The police were about to force her to undergo a medical examination when a criminal case was initiated against Abdul Haq.[94]

The lower court acquitted Abdul Haq. On appeal, though, the Lahore High Court set this decision aside, declaring it 'a gross miscarriage of justice'. The High Court sent the case back to the lower court for retrial, clarifying (citing *Pudmon*) that the daughter-in-law could not be compelled to undergo a medical examination. Furthermore, her refusal could not be used as evidence against her.[95] Here, the trail ran out. It was not clear what eventually happened to the crooked police inspector

[93] *Queen-Empress v. Pudmon* (1889) Unreported Criminal Cases of the High Court of Bombay, 1862–98, pp. 474–5.

[94] *Nathu Mal v. Abdul Haq* All India Reporter 1930 Lahore, pp. 161–2.

[95] Ibid., p. 163.

and the victims of his elaborate scheme. However, the case did illustrate the type of scenario that colonial officials envisioned when they constructed the IPC provisions on abortion. Here was another reason for the state to avoid aggressive enforcement of anti-abortion law: accusations of inducing miscarriage could produce miscarriages of justice.

Imperial separations

There were clear reasons for the colonial state's hands-off approach to abortion among South Asian women, namely special challenges to detection, the Hindu widow-remarriage movement, and fear of false accusations. But why were colonial administrators also less willing to enforce the Penal Code's stricter approach in cases of British women who had undergone criminal abortions? (The personal law system governed family law, but criminal law applied to everyone in British India, regardless of religious affiliation.)

On the one hand, forensic evidence was often easier to procure in fatal cases when the women were British because most of these women were buried, not cremated. On the other hand, the colonial sources were generally less direct when discussing abortion cases involving British women. This obliqueness may have reflected an unwillingness to openly discuss a private, sexual topic pertaining to white women on the colonial stage. Treatise authors did write in general terms, though, observing that certain methods of abortion were more commonly used by British and Eurasian women—like the ingestion of ergot and quinine and the insertion of sharp objects like knitting needles.[96]

In addition to using abortion as a form of family planning, some British women in India turned to abortion for another purpose. This scenario was particular to the imperial setting, although not explicitly acknowledged by British authorities. The exigencies of empire forced many British couples to spend long periods of time apart. While their husbands were on the other side of the world sometimes for years at a time, some women developed relationships with other men, became pregnant, and sought abortions.[97] This scenario provided the basic facts for one of the most

[96] See Hehir and Gribble, *Medical Jurisprudence* (1929), pp. 649–50.

[97] For possible veiled references, see Waddell, *Lyon's Medical Jurisprudence*, p. 315; and Hehir and Gribble, *Medical Jurisprudence* (1929), p. 645. Husbands also had extramarital relationships while their wives were away. Men who had contracted venereal disease during such separations sometimes committed suicide when their wives were due back

publicized abortion-related cases of the late-colonial period: the case of Edith Whittaker and Arthur Templeton from Hyderabad (1896–1902). Newly married, Mrs Whittaker moved to India expecting her husband to join her there in due course. He was a mining engineer working in West Africa and Brazil. In India, Edith Whittaker stayed at the home of the Templetons—a married couple with a large family. Arthur Templeton (the husband) and Edith Whittaker allegedly had an affair. When Mrs Whittaker became pregnant, she had an abortion. She died of complications. A similar imperial separation also set the background for a highly publicized case in Britain on doctor–patient confidentiality: the case of *Kitson v. Playfair* (1895–96). In this case (discussed below), Mrs Kitson was living in England while her husband was away in Australia for 15 months. She experienced health problems and consulted Dr Playfair, who happened to be married to her husband's sister. The doctor concluded that his sister-in-law had terminated an extramarital pregnancy.

Within India, a scaled-down version of such separations was common. 'Hot weather' separations occurred regularly during the summer. Many colonial officials stayed in the lowlands to continue the work of colonial administration while their wives escaped to higher altitudes.[98] Hill stations dotted British India, from the Himalayan band that stretched across its north to the Western Ghats down the west coast and the Eastern Ghats along its east. These towns became famous in colonial popular culture as sites where attractive married women were trailed by younger male admirers, including unattached military men. Indrani Sen has called this pattern 'a curious colonial reinvention of the medieval "courtly love" tradition'—the unconsummated love between the hill-station 'flirt' and her young admirer.[99] Sometimes, though, consummation did occur. In popular lore, one Himalayan hotel was

(Waddell, *Lyon's Medical Jurisprudence*, p. 148). On imperial separations, see Elizabeth Buettner, *Empire Families: Britons and Late Imperial India* (Oxford: Oxford University Press, 2004), pp. 114–16. In addition to peacetime imperial separations, there were wartime ones. For example, see the 1920 case of *Mabel Flora Murphy v. James Lloyd Murphy* Bombay Law Reporter, vol. 22, pp. 1077–8.

[98] A different pattern existed for 'official' hill stations, the summer working location for colonial administrators who shifted to specific hill stations like Simla or Darjeeling during the summer.

[99] Indrani Sen, *Woman and Empire: Representations in the Writing of British India, 1858–1900* (Delhi: Orient Longman, 2002). See also Indrani Sen, 'Gendering (Anglo) India: Rudyard Kipling and the Construction of Women', *Social Scientist*, vol. 28, no. 9/10, 2000, pp. 15–17.

famous for ringing a bell early in the morning so that guests could return to their own beds before emerging from their rooms officially for the day.[100]

The British husbands who ran the colonial state may have seen themselves as vulnerable to their wives' adultery and been motivated to take a hard anti-abortion stance. On the other hand, they might have wanted to keep such happenings private, particularly in the colonial setting where humiliation and vulnerability (through cuckoldry) could undermine the authority of white ruling males. That said, it may have been that affairs were so common during imperial separations that extramarital relations (by wives) were surprisingly mundane. Even if so, these husbands may still have wanted any extramarital pregnancies terminated to avoid the lasting legal and financial consequences of children deemed theirs by law if not by biology.[101] More broadly, British men may have seen abortion as a necessary mechanism for controlling the size of their own families, whether there were extramarital relationships or not. In other words, colonial administrators may have had reasons for wanting to keep abortion discreetly available to British women, including their own wives. The same convenience would have been equally useful to husbands who impregnated other women.

Physicians and medical ethics

For South Asian and British women alike, most abortions remained invisible to the state when the women survived. When a woman died, though, abortion was harder to hide. Focusing on cases in which the woman had died enabled the state to sidestep the difficult 'live' cases. In fatal cases, authorities could pursue the abettors and avoid the

[100] For popular historical accounts, see Margaret Macmillan, *Women of the Raj: The Mothers, Wives, and Daughters of the British Empire* (New York: Random House, 2007), p. 145; and Barbara Crossette, *The Great Hill Stations of Asia* (New York: Basic Books, 1999), p. 59.

[101] As in English law, there was a presumption in Indian law that a child born to a married woman was 'legitimate' and the legal offspring of her husband (Indian Evidence Act 1872, s. 112). See Henry Raymond Fink, *The Indian Evidence Act (No. I of 1872)* (Calcutta: Wyman, 1872), pp. 80–1; and H. A. B. Rattigan, *The Law of Divorce Applicable to Christians in India (The Indian Divorce Act 1869)* (London: Wildy and Sons, 1897), pp. 334–5.

ethically complicated position of the women, often regarded as victims of desperate and unfortunate circumstances. Even in some fatal cases, though, there was resistance from physicians. In England, the medical profession (or a well-organized part of it) lobbied successfully for the passage of stricter anti-abortion laws from the late eighteenth century onward.[102] In India, a contrary strain of medical culture asserted itself. Here, key physicians resented the criminal law's intrusion into their relationships with patients. What would be known in a later period as doctor–patient confidentiality became a key issue in the Hyderabad abortion case through the enigmatic figure of the Irish military physician and treatise author, Patrick Hehir.

The events of the case occurred in late 1896 in Hyderabad, the vast territory in South India ruled by the Nizam. Hyderabad was the wealthiest and most independent of the princely states. Despite this princely state's relative autonomy, the British Indian state asserted its influence through the presence of a politico-diplomatic figure called the British 'Resident'. A community of Britons also lived in Hyderabad. Among them was Arthur Templeton, a 37-year-old Briton described as warm-hearted, generous, and impulsive. He ran the *Hyderabad Chronicle*, a small English-language publication. Marion Edith Whittaker was a vivacious 23-year-old newly-wed who came to stay with the Templetons while her husband was away.[103]

Edith Whittaker and Arthur Templeton had an affair and she became pregnant. She had a termination, whether by ingesting quinine or by abortion stick with quinine grains stuck to its head. (Preserved in spirits

[102] See Keown, *Abortion, Doctors and the Law*; and Brookes, *Abortion in England*. Some physicians in Britain favoured making abortion more easily available during the late nineteenth and early twentieth centuries (Keown, *Abortion, Doctors and the Law*, pp. 49–83).

[103] On Arthur Templeton, see No. 72-C: From David Barr, Resident at Hyderabad, to Sec. to Government of India, Foreign Dept (30 Oct. 1903), in 'Expulsion of Messrs. A. N. Templeton and E. Newton from the Hyderabad State', Proceedings of the Foreign Dept, Nov. 1904 (IOR/R/1/1/307) and Examination of Eardley Norton (9 March 1897), in 'Empress v. Templeton. Notes of the Hon. Sir Charles Farran, Kt., Chief Justice of Bombay', p. 8, in Hyderabad Abortion case papers. On Marion Whittaker, see A. Templeton, 'Hyderabad Abortion Case. Empress v. Templeton. Memorial to His Excellency the Viceroy and Governor General of India' (18 Dec. 1897), p. 2, in Hyderabad Abortion case papers and 'The Templeton Case', *TI* (18 Jan. 1897), p. 3. On Hyderabad, see Eric Beverley, *Hyderabad, British India, and the World: Muslim Networks and Minor Sovereignty* (Cambridge: Cambridge University Press, 2015); and Taylor Sherman, *Muslim Belonging in Secular India: Negotiating Citizenship in Postcolonial Hyderabad* (Cambridge: Cambridge University Press, 2015).

and with the placenta attached, Mrs Whittaker's uterus would become an exhibit in the criminal proceedings that followed.[104]) Quinine was a popular abortifacient among Britons and Eurasians, and it seemed to end Edith Whittaker's pregnancy.[105] However, she developed complications a few days later. The Templeton family doctor and Residency Surgeon was Edward Lawrie (or Laurie), but Mrs Whittaker claimed that he had made unwanted sexual advances.[106] Instead, she turned to Patrick Hehir, the other British physician in Hyderabad. He tried to treat her, but her situation worsened. Tended by Hehir and the Templetons in their home, Edith Whittaker died ten days after the abortion, on 16 December 1896. Her body was hastily buried, exhumed, and then buried again.

The post-mortem examination of Edith Whittaker's body was carried out by two junior doctors, although both Lawrie and Hehir attended. The report concluded that she had died of septicaemia resulting from an abortion. Arthur Templeton was charged with causing the death of a woman with intent to cause miscarriage (IPC, s. 314), abetting this crime (s. 109), and giving false evidence (s. 193).[107] The case began at the British Resident's Court of Inquest in Hyderabad, which found that

[104] 'Before A. Williams, Esq., Justice of the Peace and Magistrate, 1st Class, within His Highness the Nizam's Territories. Proceedings in Criminal Case No.1 of 1896. The Crown versus Arthur Napoleon Templeton', p. 95, and Examination of Edward Lawrie (8 March 1897), in 'Empress v. Templeton. Notes of Farran', p. 3, both in Hyderabad Abortion case papers. The proposal to send Mrs Whittaker's uterus to the chemical analyser in Bombay was rejected due to chain-of-custody concerns. Instead, Lawrie took the organ with him to the United States of America for analysis. This examination confirmed that an abortion had taken place ('Examination of Accused, Crown vs. Templeton' (12 or 22 Jan. 1897), in Proceedings in Criminal Case No.1 of 1896, p. 90, and Templeton, 'Memorial', p. 41, both in Hyderabad Abortion case papers).

[105] On quinine, compare Nunan, *Lectures*, p. 107, and Gibbons, *Manual*, p. 357. Edith Whittaker may also have taken ergot and patent pills like Carter's Liver Pills, Cockles' and Beecham's pills (Examination of Patrick Hehir (19 Dec. 1896), in 'Exhibit A: Inquest Proceedings held before Rao Bahadur B. K. Joshi, Superintendent of the Residency Bazars, Hyderabad', p. 7 and Examination of Patrick Hehir (9 March 1897), in 'Empress v. Templeton. Notes of Farran', p. 10, both in Hyderabad Abortion case papers).

[106] 'Before A. Williams … Proceedings in Crim. Case No.1 of 1896', p. 95, and Templeton, 'Memorial', pp. 2–3, both in Hyderabad Abortion case papers.

[107] Foreign Dept note (undated) signed [S. J. B.], p. 13 (handwritten pagination) and 'Charge by A. Williams, J.P. and Magistrate, Residency Hyderabad' (26 Jan. 1897), pp. 465–8 (handwritten pagination), both in Hyderabad Abortion case papers.

Mrs Whittaker had not died of natural causes.[108] Templeton's case then went through preliminary criminal proceedings in the Residency Magistrate's Court in Hyderabad.[109] The case was sent on to the Bombay High Court for a full criminal trial and a special jury acquitted Templeton.[110] Although the events of the case occurred in a princely state, the case began and ended in British Indian courts, not those of the Nizam. From the early 1870s, the Government of India had asserted an aggressive view of extraterritoriality over the trials of British subjects who were accused of crimes in princely states.[111]

The medical evidence in the criminal case was problematic. There were inexplicable inconsistencies between the post-mortem report and the testimony of physicians Lawrie and Hehir, and even between different parts of Hehir's own testimony.[112] Hehir claimed that Edith Whittaker had come to him asking for an abortion, but that he had declined. Later, Hehir treated her complications by 'plugging' the uterus to stem the bleeding. As Mrs Whittaker's state worsened, Hehir brought in Lawrie for consultation. Hehir realized that there had been an abortion, but he did

[108] Inquest proceedings were held before B. K. Joshi, Superintendent of the Residency Bazars, Hyderabad. Joshi was one of three South Asian adjudicators involved in the case. The others were Justice Badruddin Tyabji of the Bombay High Court and M. R. Dastur, Assistant Cantonment Magistrate in the District Court of Secunderabad. See *Templeton v. Laurie and others* ILR Bombay vol. 25, 1901, pp. 240–2; 'The Templeton Case', *TI* (20 Feb. 1901), p. 5; and 'The Templeton Case: Full Text of the Judgment', *TI* (16 April 1901), p. 6.

[109] The magistrate did not rule on Templeton's guilt. Rather, he refused to dismiss the complaint (under the Code of Criminal Procedure, s. 203), finding that there were sufficient grounds for proceeding to a full trial.

[110] Templeton's jury consisted of eight Britons and two South Asians (one Parsi and one Baghdadi Jewish juror) ('Law and Police. First Criminal Sessions—Monday', *TI* (9 March 1897), p. 3; and 'Law and Police: First Criminal Sessions—Tuesday', *TI* (10 March 1897), p. 3). On the special jury, see Sharafi, *Law and Identity*, p. 199. Although the Madras High Court would have been geographically closer, Templeton's criminal case went to the Bombay High Court at his own request (Templeton, 'Memorial', p. 2, in Hyderabad Abortion case papers; see also 'The Templeton Case: Full Text of the Judgment').

[111] See 'Government of India: Legislative Dept. The Foreign Jurisdiction and Extradition Act 1879 and the Extradition (India) Act 1895' (Calcutta: Office of the Superintendent of Government Printing, 1897), pp. 23–25, 51; Hamilton, *IPC*, p. 9; and Priyasha Saksena, 'Jousting over Jurisdiction: Sovereignty and International Law in Late Nineteenth-Century South Asia', *Law and History Review*, 2019, pp. 1–49. On extraterritoriality elsewhere in Asia, see Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (New York: Columbia University Press, 2016).

[112] On inconsistencies in Hehir's testimony, see Templeton, 'Memorial', pp. 15–16, in Hyderabad Abortion case papers.

not tell Lawrie. This omission was striking for many reasons, one being that the two doctors knew each other well. They had written a book together and Hehir dedicated his co-authored medico-legal treatise to Lawrie.[113] Only after Mrs Whittaker's death did Hehir tell Lawrie that there had been an abortion. For this, both Hehir and Lawrie were severely criticized by British officials, as was Lawrie for writing a positive annual IMS report about Hehir even after learning of the omission.[114] Had they been in British India, Hehir might have been tried in a military court for unprofessional conduct because he misled Lawrie. Instead, his contract with the Foreign Service was not renewed and he returned to British India.[115]

Other aspects of Hehir's actions were suspicious. He created confusion by oscillating in his medical testimony between using the terms *tetanus* and *septicaemia* in their older and newer senses (pre- and post-bacteriology).[116] He claimed to keep poor or no notes on many of his cases or to have lost them.[117] His case books that were presented in court contained inaccurate dates and other details and were 'deliberately cooked for the occasion', claimed Templeton.[118] Hehir, Lawrie, or both were accused of giving a misleading demonstration and lecture on abortion—over Edith Whittaker's dead body—to a group of medical students. The two junior

[113] Edward Lawrie and Patrick Hehir, *Medicine and Surgery for India* (Calcutta: Thacker, Spink, 1891); and D. B. Gribble and Patrick Hehir, *Outlines of Medical Jurisprudence for India* (Madras: Higginbotham, 1893), dedication page.

[114] Note by [J. C.] (8 June 1897), Adjutant General's Department, pp. 11–13, Note by [J. P. H.] (29 June 1897) and by James Cleghorn, Director-General, IMS (5 Aug. 1897), Home Department, pp. 15–16, 19–22, all in 'Conduct of Surgeon Captain P. Hehir' (IOR/R/1/1/1266).

[115] 'Conduct of Surg. Capt. Hehir in Connection with the Templeton Case at Hyderabad', unofficial reference, Home Dept (3 April 1897), p. 4, in 'Conduct of Surgeon Captain P. Hehir' (IOR/R/1/1/1266). On Hehir's return to India, see untitled, *Indian Lancet*, vol. 10, no. 4 (16 Aug. 1897), pp. 196, and no. 5 (1 Sept. 1897), p. 249, as well as J. D. B. Gribble and Patrick Hehir, *Outlines of Medical Jurisprudence for India* (Madras: Higginbotham, 1898), preface to 4th edition.

[116] See examination of Edward Lawrie (undated), pp. 486–7 (handwritten pagination) in Hyderabad Abortion case papers; Pratik Chakrabarti, *Bacteriology in British India: Laboratory Medicine and the Tropics* (Rochester, NY: University of Rochester, 2012); and Arnold, *Toxic Histories*, pp. 168–70.

[117] 'The Templeton Case', *TI* (11 Jan. 1897), p. 5. See also 'Witness No.2 for Prosecution: Patrick Hehir' (8 Jan. 1897), in 'Before A. Williams … Proceedings in Criminal Case No.1 of 1896', pp. 26–8, Examination of Patrick Hehir (9 March 1897), in 'Empress v. Templeton. Notes of Farran', pp. 12–13, and Examination of Patrick Hehir (undated), pp. 496–9 (handwritten pagination), all in Hyderabad Abortion case papers.

[118] Templeton, 'Memorial', p. 27, in Hyderabad Abortion case papers.

physicians about to do the post-mortem on Mrs Whittaker had attended.[119] Hehir and Lawrie were also present at the post-mortem. They 'helped' by examining Mrs Whittaker's blood for the presence of microbes under a microscope.[120] Hehir signed the death certificate, which was oddly issued after the post-mortem. The standard practice was to issue it before. He worded the certificate's text carefully, stating that Mrs Whittaker had died of tetanus 'following' an abortion, not that her death was 'caused by' one.[121] He experienced a strange episode combining nervous breakdown and paranoia. By Templeton's account, Hehir requested armed guards for protection one night, claiming that people were trying to break into his house. When 'two Africans' were sent to him, he 'abused them and threatened to shoot them', making them think he was mad. This episode could have been orchestrated, as Templeton suggested when he said that Hehir was either 'off his head' or pretending to be so. Creating a history of personal instability and memory lapses could make Hehir's erratic record-keeping and inconsistent testimony look less suspicious.[122] The doctor also hired a top Madras barrister to 'observe' the criminal proceedings on his behalf—an unusual move that raised suspicions about Hehir's own role in Mrs Whittaker's death.[123]

[119] 'In the High Court of Judicature at Bombay. Ordinary Original Civil Jurisdiction. Suit No.390 of 1896' (*Templeton v. Laurie, Hehir, and d'Costa*), pp. 460–1 (handwritten pagination), in Hyderabad Abortion case papers, *Templeton v. Laurie*, p. 234, and 'In the District Court of Secunderabad. Civil Suit No.171 of 1900' (*Templeton v. Lawrie, Hehir, and D'Costa*), p. 2, in 'Advance of Rs. 25,000 Made by the Hyderabad State to Lt. Col. Lawrie, Residency Surgeon, for the Defense of the Suit Brought against Him by Mr. Templeton. Acceptance by the Nizam's Government of the Liability to Bear the Costs' (IOR/R/1/1/1276).

[120] Examination of William Owen Wolseley (9 March 1897), in 'Empress v. Templeton. Notes of Farran', p. 6, in Hyderabad Abortion case papers.

[121] Templeton, 'Memorial', p. 10, in Hyderabad Abortion case papers.

[122] Templeton, 'Memorial', p. 15, in Hyderabad Abortion case papers. See generally Kenneth X. Robbins and John McLeod, *African Elites in India: Habshi Amarat* (Ahmedabad: Mapin, 2006); and *India in Africa, Africa in India: Indian Ocean Cosmopolitanisms*, (ed.) John C. Hawley (Bloomington: Indiana University Press, 2008).

[123] 'The Mysterious Case at Hyderabad', *TI* (14 Jan. 1897), p. 6; and Templeton, 'Memorial', p. 18, in Hyderabad Abortion case papers. The daily fee of the barrister, Eardley Norton (Rs 800) was 80 per cent of Hehir's monthly salary of Rs 1,000 (Examination of Patrick Hehir (10 March 1897), p. 506 (handwritten pagination), in Hyderabad Abortion case papers). Incidentally, the deceased had worked for the Norton family, first as a maid and then as a lady's companion, shorthand writer, and typist at the age of 19–20 (Examination of A. Templeton (20 Dec. 1896), in 'Exhibit A', p. 12, in Hyderabad Abortion case papers; and 'Law and Police. First Criminal Sessions —Tuesday', p. 3). Templeton covered the cost of Edith Whittaker's cemetery plot, but

In fact, it was remarkable that Hehir was not on trial himself. It was not impossible that he had carried out the abortion. Templeton's lawyer repeatedly suggested in court that Hehir, not Templeton, was the rightful defendant in the case.[124] Equally though, Hehir may have committed 'malpraxis' (a civil wrong) by plugging the uterus to stop the bleeding. Other medical experts told the court that this was not a usual or justifiable action. One might plug the uterus in a case of excessive menstruation, but never after an abortion. If part of the detached placenta remained in the uterus, it would decay and cause blood poisoning. In other words, the septicaemia that killed Edith Whittaker may have resulted from Hehir's plug and not from an abortion.[125]

There was also the relationship between Hehir and Templeton. They were good friends once. Both were Freemasons, as was Lawrie (and Hehir's co-author, J. D. B. Gribble). The case was therefore not just among Britons in a princely state, but within the even more exclusive and secretive Masonic fraternity.[126] Hehir had been the Templetons' family doctor and Templeton had helped Hehir to prepare for publication part of his co-authored treatise, *Outlines of Medical Jurisprudence for India* (Madras: Associated Publishers, 1929). The treatise included a section on abortion.[127] They had fallen out after Templeton complained about Hehir's medical treatment of a Templeton child, but the men had made up by the time of the abortion. During the trial,

Eardley Norton paid for her tombstone ('Appendix No. II. Statement of G. H. Taylor, Sexton of St. George's Cemetery', in 'Appendix Containing Enclosures I to XIII', p. 2, in Hyderabad Abortion case papers).

[124] Templeton, 'Memorial', p. 19, in Hyderabad Abortion case papers.

[125] See examination of William Owen Wolesley (8 Jan. 1897), 'Before A. Williams … Proceedings in Crim. Case No.1 of 1896', p. 21, 'Empress v. Templeton. Medical Report', pp. 9–10, and Templeton, 'Memorial', p. 44, all in Hyderabad Abortion case papers. On malpraxis, see Hehir and Gribble, *Medical Jurisprudence* (1929), pp. 339–41, 357–9; Waddell, *Lyon's Medical Jurisprudence*, pp. 437–9; Modi, *Textbook of Medical Jurisprudence*, pp. 387–8; *(Lieut.-Col.) V. N. Whitamore v. R. N. Rao* All India Reporter 1935 Lahore, pp. 247–50; and Homi Shapurji Mehta, *Medical Law and Ethics in India* (London: Macmillan, 1963), p. 177 (on the unreported 1946 Bombay High Court case of *Amelia Flounders v. Dr. Clement Pereira*). For potentially applicable criminal law, see IPC, ss. 52, 80–81, 88, 90–91, 92, 304A.

[126] Masonic lodges had their own arbitration committees for disputes between members. Templeton in fact served on his lodge's version in 1903 (J. D. B. Gribble, *History of Freemasonry in Hyderabad (Deccan)* (Madras: Higginbotham, 1910), p. 224)).

[127] 'Memorandum' (undated), p. 36, in 'Conduct of Hehir', 'Before A. Williams … Proc. in Crim. Case No.1 of 1896', p. 94, in Hyderabad Abortion case papers. Hehir's chapter on abortion did not discuss quinine.

though, Hehir gave damning evidence against Templeton. He claimed that Templeton had acquired a knowledge of abortion through work on Hehir's treatise. Templeton responded that he was being framed and that Hehir was backed by Templeton's enemies at the Nizam's court.[128]

There were many rounds of proceedings and copious amounts of medical evidence. The Bombay High Court found the scientific evidence so thin that it wanted to have Mrs Whittaker's body exhumed again for a second post-mortem. However, the cemetery was in fact in princely territory. As a result, the court could do nothing but acquit Templeton. (There was equally a question of whether the first disinterment had been legal. St. George's Church was in British territory, as it lay in the British military cantonment, but its cemetery was not.[129])

Templeton went on to launch a civil suit in Bombay against Hehir and Lawrie, as well as a female doctor named Ada DaCosta (or D'Costa), alleging personal loss to his business, reputation, and social position. The harm was caused by the three doctors' conspiracy to secure Templeton's conviction by giving false evidence in the Bombay criminal trial. Templeton had previously suggested that Lawrie was being blackmailed by Hehir, who had discovered that Lawrie himself was having an affair. And Templeton claimed that DaCosta had assisted Hehir and helped cover up his role because she herself was having an affair with Hehir. Hehir was married. Like many imperial couples, though, he and his wife lived apart.[130]

Templeton lost his civil suit on appeal in the Bombay High Court. If the three physicians had conspired to secure his conviction and give false evidence in the Bombay Sessions Court, the proper course of action would have been criminal prosecution (including for perjury), not a civil suit for damages. There were also jurisdictional problems. Not only did Templeton fail to win damages in the end; he also had to pay

[128] Examination of Patrick Hehir (undated), p. 488 (handwritten pagination), and Templeton, 'Memorial', pp. 1–2, 8, 18, 36, both in Hyderabad Abortion case papers.

[129] Templeton, 'Memorial', p. 7, Witness No.17 for the Prosecution: Samuel Henry Johnston, Chaplain, St. George's Church, p. 70 and 'Order by A. Williams', pp. 76–7, both in 'Before A. Williams … Proceedings in Crim. Case No.1 of 1896', Appendices No. I–III in 'Appendix Containing Enclosures I to XIII', pp. 1–7, all in Hyderabad Abortion case papers.

[130] See *Templeton v. Laurie*, p. 232; 'The Mysterious Occurrence in Secunderabad', *TI* (12 Jan. 1897), p. 5; 'The Mysterious Case at Hyderabad', *TI* (12 Jan. 1897), p. 3; and examination of Patrick Hehir (10 March 1897), 'Empress v. Templeton. Notes of Farran', p. 16, in Hyderabad Abortion case papers.

everyone's legal costs.[131] He filed a similar suit in the district court of Secunderabad, but lost there, too.[132] Hehir, on the other hand, emerged unsullied.

Noting that he had just 11 years of service in the Indian Medical Service at the time of Mrs Whittaker's death, colonial officials predicted in 1897 that Hehir's actions in the Hyderabad case would destroy his career. The 'shifty nature of the evidence he gave' raised 'grave doubts as to his fitness to return to the military medical service or to hold any position of trust or responsibility' there.[133] In fact, Hehir advanced through the military medical ranks, with notable moments of high adventure and glory. At the Siege of Kut in the First World War, he used the opportunity of being blockaded with his Indian troops to collect data for an article on chronic starvation. He participated in high-level discussions on military medicine and public health—from chloroform commissions in the princely states to international commissions on military health.[134] By writing during his 'scanty leisure hours', he produced a breathtaking corpus of leading titles on malaria, alcohol, sanitation, disease in Indian-frontier warfare, medical aspects of the military march, and the medical profession in India, adding to his earlier works on medical jurisprudence and opium.[135] Through

[131] *Templeton v. Laurie*, p. 236; and 'The Templeton Case Sequel: Decision of the High Court', *TI* (23 Jan. 1900), p. 3. British Indian courts had no *civil* jurisdiction over a case involving British European subjects in a princely state. See Saksena, 'Jousting over Jurisdiction'.

[132] This British Indian court was in the Secunderabad Cantonment and was not part of the Nizam's legal system. On this case, see 'The Templeton Case' (20 Feb. 1901), 'The Templeton Case. Full Text of Judgment', 'Rejection of an Application from Lieut. Col. E. Lawrie' (IOR/R/1/1/1274), and 'Advance of Rs 25,000 Made by the Hyderabad State to Lt. Col. Lawrie, Residency Surgeon for the Defence of the Suit Brought against Him by Mr. Templeton. Acceptance by the Nizam's Government of the Liability to Bear the Cost' (1901–02) (IOR/R/1/1/1276).

[133] G.M. (1 June 1897), 'Precis, Notes and Orders' from Army Headquarters, India (Medical Division), in 'Conduct of Surgeon Captain P. Hehir', p. 8 (IOR/R/1/1/1266).

[134] See 'The Chloroform Commission', *TI* (10 Jan. 1890), p. 5; and 'Nomination of Col. P. Hehir, Indian Medical Service, to Represent Government of India at International Commission for Securing Uniformity in Military Health Statistics and Colours of Tallies to Be Attached to Men Wounded in Action', 1912–13 (IOR/L/MIL/7/12355).

[135] Letter from Hyderabad official (name illegible) to T. Chichele-Plowden, Resident at Hyderabad (Hyderabad, 12 March 1892), p. 8, in 'Retention by Hyderabad State of the Service for Surgeon Capt. P. Hehir MD for the Further Period of Five Years', Foreign: General, June 1892, Part B, Proceedings No. 290-2, Aug. 1892 (NAI).

promotions, he leapfrogged over men senior to him—an upward trajectory defended by his superiors on the basis of merit.[136] He acquired a large collection of medals and military honours and was knighted in 1920. Hehir's obituaries described an illustrious career and made no reference to the abortion case that might have ruined him.[137]

Arthur Templeton experienced less success in the wake of his entanglements with the law. In addition to running his newspaper, he had been working as an agent for Messrs Henry S. King and Co. of London and was fired as a result of the publicity, despite his acquittal. Several years later in 1904, colonial officials complained to each other that Templeton was a troublesome character. Since losing his agency job, he had been supporting himself by blackmailing other Britons, threatening to publish their secrets in his newspaper if they did not pay him off. When the Nizam's government expelled Templeton and his lawyer from the territory, British authorities were relieved. As Viceroy of India, Lord Curzon, commented: 'Here are two admitted scoundrels—one superior and notorious, the other inferior and less known to fame—but both of them a scourge to the Native State in which they have taken up their residence, and a disgrace to the name of Englishman.'[138] It was not clear what became of Templeton after his expulsion, nor of his marriage after the case.

Secrets had an outsized presence in the Hyderabad abortion case. Templeton accused Hehir of protecting himself by threatening to disclose the secret of Lawrie's affair. In the wake of the case, Templeton himself developed a reputation as a notorious blackmailer who monetized other people's secrets. And at the heart of the case lay the question of the degree to which a physician had to keep his patient's secrets. In the late 1890s, Patrick Hehir explained his actions with reference to this old and central pillar of the physician's code: he did not tell Lawrie about Mrs Whittaker's abortion—at a time when her life could perhaps have been saved—because he felt obliged to keep her secret. Colonial officials were not swayed by this argument. Three

[136] 'Enquiry by the Secretary of State for India, in Connection with the Promotion of Lieut.-Col. P. Hehir, IMS, to the Rank of Colonel which Led to the Supercession of Certain Officers', Home: Medical, Proceedings No.116, July 1913 (NAI).

[137] 'Promotion of Brigadier-General Patrick Hehir to K.C.S.I. on 1 Jan. 1920', Foreign and Political: Internal, Proceedings No.310, Dec. 1920 (NAI). See also Appendix G.

[138] Note by Lord Curzon (23 Dec. 1903), p. 3, in 'Expulsion of Templeton and Newton'.

decades later, though, Hehir would have the final say. In the late 1920s, as he packed up his life in India to retire in Britain, Hehir added a new chapter to the sixth edition of his then-classic treatise, *Medical Jurisprudence for India*. Chapter 13, 'The Law in Relation to Medical Men', covered a range of legal matters, including the regulation of the profession (by legislation in Britain and in India), the obligation of medical men to exercise reasonable skill and care (the rising field of medical 'malpraxis' law), and the need for patients' consent to be examined medically. The final subsections of his new chapter covered the 'obligation of professional secrecy' and the duties of medical men in criminal abortion cases. Here, in veiled terms, was Hehir's final word on the Hyderabad case.[139]

'In the medical profession,' wrote Hehir, 'the ethical law of professional secrecy and honour continues to be much the same today as it was in the fifth century BC in the time of Hippocrates.' The famous oath included these lines:

> whatever house I am called upon to attend, I will aim at making the patients' good my chief aim, avoiding all injury, corruption and unchastity; and *whatever I hear in the course of my practice relating to the affairs of life of my patients that ought to remain secret, nobody shall every know of me.*[140]

The patient had come to regard the doctor 'as a sort of father confessor with whom all professional secrets remain buried'.[141] The law required physicians to occasionally divulge their patients' secrets, but Hehir construed this legal obligation as tightly as possible. A doctor should speak honestly if compelled to in the witness box but, short of those circumstances, he should preserve his patients' secrets. This was especially true where a woman's honour was at stake. If a physician came to learn that a crime had been committed, he should not volunteer information to the police on the matter: 'He is not a detective and is not compelled to obey notices sent by the police.' If a murder had been committed, that was one thing. But 'that a certain person was recently delivered of a child or a foetus is different; to justify making this known requires very potent reasons for breaking the rule of

[139] Similarly, see Ian Burney, 'A Poisoning of No Substance: The Trials of Medico-Legal Proof in Mid-Victorian England', *Journal of British Studies*, vol. 38, no. 1, 1999, pp. 86–92.

[140] Hippocratic oath in Hehir and Gribble, *Medical Jurisprudence* (1929), p. 347, emphasis in original.

[141] Hehir and Gribble, *Medical Jurisprudence* (1929), p. 347.

professional secrecy'.[142] Hehir failed to mention that the Hippocratic oath also included an anti-abortion provision.[143]

In both the 1890s and the 1920s, Hehir relied heavily on the case of *Kitson v. Playfair* (1896). Although the case was English, it had Indian dimensions: the physician involved was born into a Scottish medical family based in Bengal and had spent the first few years of his career in the Indian Medical Service, including as an assistant surgeon in Oudh during the rebellion of 1857.[144] As noted earlier, Mrs Laura Kitson was living in London with her children while her husband was away in Australia for an extended period. She came to her brother-in-law physician, William Smoult Playfair, for a medical examination. Playfair concluded that Kitson had aborted a fetus that could not have been her husband's. The doctor told his wife, feeling that it was necessary in order to justify cutting off social relations with their sister-in-law. He also told his wife's brother, who was also the brother of Mrs Kitson's husband and who had been supporting Mrs Kitson financially. Mrs Kitson lost her monthly stipend and suffered damage to her reputation. She sued Playfair for libel and slander, and was awarded a colossal sum of £12,000 in damages by a special jury. The case stressed the sanctity of the physician's duty of secrecy. In the words of a *British Medical Journal* editorial, 'this memorable and most painful trial strengthens and fortifies the great doctrine which has long made the medical profession one that is everywhere trusted and respected as the keepers and the confessors of family confidence'.[145]

Hehir defended his actions in Hyderabad on the basis of *Playfair* and the larger principle it stood for. Lawrie gave Hehir a positive annual review in part because of Hehir's framing of the issue thus. Defending his own

[142] Ibid., pp. 353–4; see also pp. 349–51; and Waddell, *Lyon's Medical Jurisprudence*, pp. 16–17, 434–7.

[143] 'I shall never recommend means to procure abortion, but will live and practice chastely and religiously' (Waddell, *Lyon's Medical Jurisprudence*, p. 434). For a narrower translation, see W. H. S. Jones, *The Doctor's Oath: An Essay in the History of Medicine* (Cambridge: Cambridge University Press, 1924), p. 31 ('Nor will I contemplate administering any pessary which may cause abortion').

[144] H. D. Rolleston, 'William Smoult Playfair', in *Dictionary of National Biography*, (ed.) Sidney Lee (London: Smith, Elder, 1912), vol. 3, p. 120. Playfair's father was George Playfair, Inspector-General of Hospitals in Bengal and translator of *The Taleef Shereef, or Indian Materia Medica, Translated from the Original* (Calcutta: Medical and Physical Society of Calcutta, 1833).

[145] 'The Obligation of Professional Secrecy', *BMJ*, no. 1840 (4 April 1896), p. 861. The *BMJ* editors felt that Playfair had been harshly treated (p. 862). See further Appendix H.

actions in the case, Lawrie explained to the British Resident in Hyderabad that

> In the Whittaker case it is an open question whether he did or did not do his duty in not divulging his patient's secret even to a brother medical man whom he had called in without her knowledge or consent. I did not consider that I personally had the right to decide this question against him, seeing that his view was in some measure supported by the finding in the Playfair case, and that it was on this that Dr. Hehir relied …. The awkward position Dr. Hehir felt himself in was that he was in possession of a secret regarding Mrs. Whittaker which in the first place he considered was hers alone, and in the second place he believed that Mrs. Templeton knew nothing of her husband's guilty relations with Mrs. Whittaker. He thought that if this came out, no matter what, Mrs. Templeton would obtain a divorce from her husband and that she and all her large family of children would be absolutely ruined.[146]

Colonial authorities in the 1890s, though, thought the two cases were very different. In *Playfair*, a physician told his relatives about a patient's abortion. In the Templeton case, Hehir failed to tell another physician brought in on the case about a patient's abortion. However, in subsequent decades, Hehir broadened and reframed the matter around patient–doctor confidentiality more generally. His treatise emphasized the importance of a physician's silence where an illicit abortion had occurred.[147]

Hehir was jumping into a debate between the medical and legal professions that had been churning in the imperial metropole since the late eighteenth century.[148] From the 1890s until 1915, illicit abortion was the key area in which physicians tried to assert a strong form of privilege over the doctor–patient relationship in England. Privilege meant that a physician could refuse to speak in court about interactions with a patient (the debate shifted to venereal disease in matrimonial cases after the First World War).[149] The medical lobby claimed that not

[146] Letter from E. Lawrie, Residency Surgeon, Hyderabad, to the First Assistant Resident, Hyderabad (10 Jan. 1898), pp. 9–11, in 'Request of Surg. Lt. Col. E. Lawrie that the Views of the Government of India on His Confidential Report on Surg. Capt. P. Hehir May Be Reconsidered' (IOR/R/1/1/1267).

[147] Contrast with the 1918 edition of Lyon's medico-legal treatise (edited by Waddell), cited in Hehir and Gribble, *Medical Jurisprudence* (1929), p. 349.

[148] See Holger Maehle, *Contesting Medical Confidentiality: Origins of the Debate in the United States, Britain, and Germany* (Chicago: University of Chicago Press, 2016), pp. 8–11; and Angus H. Ferguson, *Should A Doctor Tell? The Evolution of Medical Confidentiality in Britain* (Farnham, Surrey: Ashgate, 2013).

[149] Ferguson, *Should A Doctor Tell?*, p. 4; and, on the debate in the VD context, see ibid., pp. 53–153; and Mehta, *Medical Law and Ethics*, pp. 81–2.

only should physicians not report such cases, but also that they could not be forced to testify about them in court. However, the English courts generally maintained the position established since the Duchess of Kingston's case in 1776: a physician would be required to violate doctor–patient confidentiality if questioned on the stand.[150] Although British Indian law mirrored English law on this point, Hehir overemphasized the strength of physicians' privilege, downplaying the significance of the fact that a physician had to talk in court.

Hehir and Gribble's treatise had influence upon state actors. By its second edition (1891), it had been adopted by the Madras government as a leading authority on medical jurisprudence. The courts of Punjab recognized the book as an authoritative work on Indian medical jurisprudence. And, in Hyderabad (of all places), the Nizam's government used Hehir and Gribble in state examinations for police officers, pleaders, and others.[151] While Hehir's subsequent career seemed to have eclipsed his involvement in the Hyderabad abortion case, he also massaged an elevated justification for his suspicious behaviour into the textbook consulted by 'police officers, uncovenanted civil servants, sub-magistrates, vakils, assistant surgeons and sub-assistant surgeons' across South Asia.[152] What could have ended in a conviction for causing death by abortion or liability for 'malpraxis' instead evolved into an authoritative chapter urging physicians in India to guard their patients' secrets, not divulging knowledge of criminal abortions except on the stand.

Conclusions

In 1933, legislator B. V. Jadhav proposed a bill to decriminalize abortion in India. The bill would allow any woman seeking an abortion for 'physical, social or economic reasons' to have one. Jadhav wanted to prevent women from dying at the hands of illicit abortionists or through suicide. But his bill failed. One opponent argued that women in 1933 had less need for abortion because contraception was becoming widely

[150] See Angus H. Ferguson, 'Speaking Out about Staying Silent: An Historical Examination of Medico-Legal Debates over the Boundaries of Medical Confidentiality', in *Lawyers' Medicine: The Legislature, the Courts and Medical Practice, 1760–2000*, (eds) Imogen Goold and Catherine Kelly (Oxford: Hart Publishing, 2009), pp. 99–124.

[151] See Patrick Hehir and J. D. B. Gribble, *Outlines of Medical Jurisprudence for India* (Madras: Higginbotham, 1908), p. xii.

[152] Hehir and Gribble, *Medical Jurisprudence* (1929), pp. vi–vii.

available. Others discredited Jadhav's bill (to their minds) by likening it to law in the Union of Soviet Socialist Republics, where legal abortions were readily available. Still others declared that all 'civilized' countries criminalized abortion because life began at conception.[153] If the commission of abortion was rarely prosecuted (as this article suggests), why were women still dying through illicit abortions or suicide? Abortion remained secretive and often dangerous not so much because it was a criminal offence as because of the stigma of illicit sex.[154] Abortions under (allopathic) medical supervision were also unavailable or inaccessible in many parts of India.[155] The continuing risk surrounding abortion until at least 1971, when abortion was legalized, was thus not centrally about law.[156] Women may have enjoyed some greater degree of bodily autonomy because the colonial state looked the other way (at least in 'live' cases), but this did not mean that having an abortion was safe or easy.

The global history of reproductive governance includes many examples of restrictive anti-abortion laws being introduced but not enforced.[157] This phenomenon may point to law's symbolic value vis-à-vis particular audiences. In India, the IPC's anti-abortion provisions were probably meant to send certain signals to an imperial public, including anti-abortion constituencies in the metropole. India's 1994 and 2002 legislation prohibiting fetal sex determination may be about signalling and audience, too. Like the colonial abortion law at the heart of this article, these statutes have been largely ineffective in their

[153] 'Mr. B. V. Jadhav's Bill to Amend Section 312 of the Indian Penal Code to Provide that Miscarriage Caused by a Medical Practitioner Is Not Punishable in Certain Circumstances', Home Dept: Judicial Branch, 1933, Proceedings no. 603 (NAI). On abortion in the Union of Soviet Socialist Republics, see Parry, *Criminal Abortion*, pp. 19–21; and Brookes, *Abortion in England*, pp. 58–9.

[154] For a similar suggestion, see Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi: Oxford University Press), pp. 57–8. Many abortion-related cases in S. Guha's study involved sex with relatives, especially in-laws (Guha, 'Unwanted Pregnancy', p. 432). Similarly, see Sommer, 'Abortion in Late Imperial China', p. 126.

[155] Interwar Calcutta was a hub for physician-supervised abortions, although the cost was prohibitive for many women (Guha, 'Unwanted Pregnancy', pp. 434–5).

[156] Under the Medical Termination of Pregnancy Act of 1971 (s. 3), abortion is legal if a physician determines that a pregnancy would cause 'grave injury' to a woman's 'physical or mental health' or if the resulting child would be 'seriously handicapped'.

[157] For examples, see Michelle Oberman, *Her Body, Our Laws: On the Front Lines of the Abortion War from El Salvador to Oklahoma* (Boston: Beacon Press); Thomson, *The Fijians*, pp. 222–7; and P. K. Menon, 'The Law of Abortion with Special Reference to the Commonwealth Caribbean', *Anglo-American Law Review*, vol. 5, 1976, pp. 343–4.

implementation.[158] There is therefore a long history of lax enforcement of abortion-related legislation in India. During the late-colonial period, this pattern reflected the complex interplay between abortion and the Hindu widow-remarriage movement, a particular construal of medical ethics, and the assumptions and arrangements of colonial rule.

Appendix A: Contraception, abortion, and infanticide in South Asia

For scholarship on the history of contraception in nineteenth- and twentieth-century India, see Sanjam Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877–1947* (Ranikhet: Permanent Black, 2008); Sarah Hodges, *Contraception, Colonialism and Commerce: Birth Control in South India, 1920–1940* (Burlington, VT: Ashgate, 2008); S. Anandhi, 'Reproductive Bodies and Regulated Sexuality: Birth Control Debates in Early 20th-Century Tamilnadu', in *A Question of Silence?: The Sexual Economies of Modern India* (eds) Mary E. John and Janaki Nair (Delhi: Kali for Women, 1998), pp. 139–66; Barbara Ramusack, 'Embattled Advocates: The Debate over Birth Control in India, 1920–1940', *Journal of Women's History*, vol. 1, no. 2, 1989, pp. 34–62; and Johanna Schoen, *Choice and Coercion: Birth Control, Sterilization, and Abortion in Public Health and Welfare* (Chapel Hill: University of North Carolina Press, 2005), pp. 216–35.

On abortion in South Asia between the eighteenth and mid-twentieth centuries, see Ranajit Guha, 'Chandra's Death', in *A Subaltern Studies Reader, 1986–1995* (ed.) Ranajit Guha (Minneapolis: University of Minnesota Press, 1997), pp. 34–62; Supriya Guha, 'The Unwanted Pregnancy in Colonial Bengal', *Indian Economic and Social History Review*, vol. 33, 1996, pp. 403–35; Ahluwalia, *Reproductive Restraints*; Indira Chowdhury, 'Delivering the "Murdered Child": Infanticide, Abortion, and Contraception in Colonial India', in *Medical Encounters in British India* (eds) D. Kumar and R. Sekhar (Delhi: Oxford University Press, 2013), pp. 275–98; David Arnold, *Toxic Histories: Poison and Pollution in Modern India* (Cambridge: Cambridge University Press, 2016), pp. 32–4; Durba Mitra, 'Sociological Description and the Forensics of Sexuality', in *Locating the Medical: Explorations in South Asian History* (eds) Rohan Deb Roy and Guy N. A. Attewell (Delhi: Oxford University Press, 2018),

[158] Sital Kalantry, *Women's Human Rights and Migration: Sex-Selective Abortion Laws in the United States and India* (Philadelphia: University of Pennsylvania, 2017), pp. 140–6.

pp. 23–46 or *Indian Sex Life: Sexuality and the Colonial Origins of Modern Social Thought* (Princeton: Princeton University Press, 2020), 99–132; and Divya Cherian, 'Walking Off the Path: Sex, "Rape", and Law in Eighteenth-Century Rajasthan', forthcoming.

In postcolonial India, the determination of a fetus' sex *in utero* has been illegal in India since 1994 because it enables sex-selective abortion. See India's Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994. On sex-selective abortion in India today, see Sanjam Ahluwalia, 'Abortion and Gay Marriage: Sexual Modernity and Its Dissonance in [the] Contemporary World', *Economic and Political Weekly* (12 Dec. 2015); S. Cromwell Crawford, *Dilemmas of Life and Death: Hindu Ethics in North American Context* (Albany: State University of New York Press, 1995), pp. 33–5; Sital Kalantry, *Women's Human Rights and Migration: Sex-Selective Abortion Laws in the United States and India* (Philadelphia: University of Pennsylvania, 2017); Nivedita Menon, 'Abortion as a Feminist Issue: Who Decides and What?', *First Post* (14 May 2012); Nivedita Menon, *Recovering Subversion: Feminist Politics beyond the Law* (Urbana, IL: University of Illinois Press, 2004), pp. 66–105; and Andrea Whittaker, 'Abortion in Asia: An Overview', in *Abortion in Asia: Local Dilemmas, Global Politics* (ed.) A. Whittaker (New York: Bergahn Books, 2010), pp. 19–21. It is worth noting that sex-selective abortion existed before the development of sex-detection technologies like ultrasound and amniocentesis. See 'The practice of abortion', above.

On the history of infanticide (particularly of female babies), see the work of Daniel J. R. Grey and Malavika Kasturi. By Grey, see 'Creating the "Problem Hindu": *Sati*, Thuggee and Female Infanticide in India, 1800–60', *Gender and History*, vol. 25, 2013, pp. 498–510; 'Gender, Religion, and Infanticide in Colonial India, 1870–1906', *Victorian Review*, vol. 37, no. 2, 2012, pp. 107–20; and '"Who's Really Wicked and Immoral, Women or Men?" Uneasy Classifications, Hindu Gender Roles and Infanticide in Late Nineteenth-Century India', in *Transnational Penal Cultures: New Perspectives on Discipline, Punishment, and Desistance* (eds) Vivien Miller and James Campbell (New York: Routledge, 2014), pp. 36–50. By Kasturi, see 'Female Infanticide: Selections from the Records of the Government of the North-Western Provinces, Second Series, Volume VIII, Allahabad, 1871', *Indian Journal of Gender Studies*, vol. 7, no.1, 2000, pp. 125–33; 'Law and Crime in India: British Policy and the Female Infanticide Act of 1870', *Indian Journal of Gender Studies*, vol. 1, no. 2, 1994, pp. 169–93; and 'Taming the "Dangerous" Rajput: Family, Marriage and Female Infanticide in

19th-Century Colonial North India', in *Colonialism as Civilizing Mission: Cultural Ideology in British India* (eds) Harald Fischer-Tiné and Michael Mann (London: Anthem Press, 2004), pp. 117–40. See also Padma Anagol, 'The Emergence of the Female Criminal in India: Infanticide and Survival under the Raj', *History Workshop Journal*, vol. 53, 2002, pp. 73–93; Arnold, *Toxic Histories*, pp. 28–9; Chowdhury, 'Delivering the "Murdered Child"'; Lalita Panigrahi, *British Social Policy and Female Infanticide in India* (Delhi: Munshiram Manoharlal, 1972); R. K. Saxena, *Social Reforms: Infanticide and Sati* (Delhi: Trimurti, 1975); Satadru Sen, 'The Savage Family: Colonialism and Female Infanticide in Nineteenth-Century India', *Journal of Women's History*, vol. 14, no. 3, 2002, pp. 53–81; Rajeswari Sunder Rajan, *The Scandal of the State: Women, Law, and Citizenship in Postcolonial India* (Durham, NC: Duke University Press, 2003), pp. 177–211; and Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime* (New York: Oxford University Press, 2002).

Appendix B: Abortion in the Anglosphere beyond South Asia

On abortion across the British empire or worldwide between the mid-nineteenth and mid-twentieth centuries, see Philippa Levine, 'Sexuality, Gender, and Empire', in *Gender and Empire* (ed.) Philippa Levine (Oxford: Oxford University Press, 2007), pp. 147–50; and Daniel J. R. Grey, 'Crimes Related to Sexuality and Reproduction', in *The Oxford Handbook of Gender, Sex, and Crime* (eds) Rosemary Gartner and Bill McCarthy (Oxford: Oxford University Press, 2014), pp. 233–4. On abortion in England and Northern Ireland, see L. A. Parry, *Criminal Abortion* (London: John Bale, Sons and Danielsson, 1932); Barbara Brookes, *Abortion in England 1900–1967* (London: Croom Helm, 1988); John Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982* (Cambridge: Cambridge University Press, 1988); and Leanne McCormick, '"No Sense of Wrongdoing": Abortion in Belfast 1917–1967', *Journal of Social History*, vol. 49, no. 1, 2015, pp. 125–48. On Wales, see Kate Fisher, '"Didn't Stop to Think, I Just Didn't Want Another One": The Culture of Abortion in Interwar South Wales', in *Sexual Cultures in Europe: Themes in Sexuality* (eds) Franz X. Eder, Lesley A. Hall, and Gert Hekma (Manchester: Manchester University Press, 1999), pp. 213–32. On the Caribbean, see Nicole C. Bourbonnais, *Birth Control in the Decolonizing Caribbean: Reproductive Politics and Practice on Four Islands, 1930–1970* (New

York: Cambridge University Press, 2016), pp. 138–41, 182, 222–3; and P. K. Menon, 'The Law of Abortion with Special Reference to the Commonwealth Caribbean', *Anglo-American Law Review*, vol. 5, 1976, pp. 311–45. On South and East Africa, see Susanne Klausen, *Abortion under Apartheid: Nationalism, Sexuality and Women's Reproductive Rights in South Africa* (New York: Oxford University Press, 2015); and Lynn M. Thomas, *Politics of the Womb: Women, Reproduction and the State in Kenya* (Berkeley: University of California Press, 2003), pp. 21–51. On Fiji, see Basil Thomson, *The Fijians: A Study of the Decay of Custom* (London: William Heinemann, 1908), pp. 222–7. On Australia, see Barbara Baird, *'I Had One Too…': An Oral History of Abortion in South Australia before 1970* (Bedford Park, Australia: Women's Studies Unit, Flinders University of South Australia, 1990). On Canada, see Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), pp. 140–166; and Susanne Klausen, 'Doctors and Dying Declarations: The Role of the State in Abortion Regulation in British Columbia, 1917–37', *Canadian Bulletin of Medical History*, vol. 13, no. 1, 1996, pp. 53–81. On the United States of America, see James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy, 1800–1900* (New York: Oxford University Press, 1978); Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973* (Berkeley: University of California Press, 1997); and Linda Gordon, *Woman's Body, Woman's Right: Birth Control in America* (New York: Penguin, 1990), pp. 51–60.

Appendix C: Hindu widows

For scholarship on Hindu widows in colonial India, see generally Mytheli Sreenivas, *Wives, Widows, and Concubines: The Conjugal Family Ideal in Colonial India* (Bloomington: Indiana University Press, 2008); Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights* (Cambridge: Cambridge University Press, 2012); Lucy Carroll, 'Law, Custom, and Statutory Social Reform: The Hindu Widows' Remarriage Act of 1856', in *Women in Colonial India: Essays on Survival, Work and the State* (ed.) J. Krishnamurty (Delhi: Oxford University Press, 1989), pp. 1–26; Padma Anagol, 'The Emergence of the Female Criminal in India: Infanticide and Survival under the Raj', *History Workshop Journal*, vol. 53, 2002, pp. 73–93; Dagmar Engels, 'Wives, Widows and Workers: Women and the Law in Colonial India', in *European Expansion and Law: The Encounter of European and Indigenous Law in*

19th- and 20th-Century Africa and Asia (eds) W. J. Mommsen and J. A. De Moore (Oxford: Berg, 1992), pp. 164–8; Donald R. Davis, Jr and Timothy Lubin, 'Hinduism and Colonial Law', in *Hinduism in the Modern World* (ed.) Brian A. Hatcher (New York: Routledge, 2006), p. 100; and Tanika Sarkar, 'Wicked Widows: Law and Faith in Nineteenth-Century Public Sphere Debates', in *Behind the Veil: Resistance, Women and the Everyday in Colonial South Asia* (ed.) Anindita Ghosh (Houndmills, Basingstoke: Palgrave Macmillan, 2008), pp. 83–115.

For an overview of the debates that contributed to the Hindu Widow Remarriage Act 1856 (XV of 1856), see Law Commission of India, 'Eighty-First Report: Hindu Widow Re-Marriage Act, 1856' (Delhi: Government of India Ministry of Law, 1979), pp. 15–20. The preamble and s. 1 of the statute are reproduced in Carroll, 'Law', pp. 3–4. A continuing campaign to change social attitudes continued after the Act. See untitled editorial, *TI* (17 May 1881), p. 2; Carroll, 'Law'; and Sturman, *Government*, pp. 187–94.

On the case law surrounding Hindu widows' chastity and financial support from their dead husbands' families, see Sturman, *Government*, pp. 136–9; and Mitra Sharafi, 'A New History of Colonial Lawyering: Likhovski and Legal Identities in the British Empire', *Law and Social Inquiry*, vol. 32, no. 4, 2007, pp. 1071–2. On widows' chastity in the context of inheritance disputes, see Sreenivas, *Wives*, pp. 62–4; Durba Mitra, 'Sociological Description and the Forensics of Sexuality', in *Locating the Medical: Explorations in South Asian History* (eds) Rohan Deb Roy and Guy N. A. Attewell (Delhi: Oxford University Press, 2018), p. 38; and Dolores Chew, 'The Case of the "Unchaste" Widow: Constructing Gender in 19th-Century Bengal (Kery Kolitany v. Moniram Kolita case)', *Resources for Feminist Research* (Toronto), vol. 22, no. 3/4, 1992–93, pp. 31–40.

For studies of Hindu widow-litigants, see Rochisha Narayan, 'Widows, Family, Community, and the Formation of Anglo-Hindu Law in Eighteenth-Century India', *Modern Asian Studies*, vol. 50, no. 3, 2016, pp. 866–97; and Nita Verma Prasad, 'Remaking Her Family for the Judges: Hindu Widows and Property Rights in the Colonial Courts of North India, 1875–1911', *Journal of Colonialism and Colonial History*, vol. 14, no. 3, 2013, n.p.; and 'The Litigious Widow: Inheritance Disputes in Colonial North India, 1875–1911', in *Behind the Veil* (ed.) Ghosh, pp. 161–90.

Appendix D: Anti-abortion law in India and England

Indian Law

Before the Indian Penal Code

Between 1803 and 1861, causing abortion was punishable under an 1803 regulation by seven to nine years in prison with either hard labour or a fine (Norman Chevers, *A Manual of Medical Jurisprudence for Bengal and the North-Western Provinces* (Calcutta: F. Carbery, Bengal Military Orphan Press, 1856), p. 507). Harsher anti-abortions measures were introduced in 1827–38. These included an 1827 Bombay regulation that made a woman who terminated her own pregnancy punishable with imprisonment for up to ten years, a fine, or both (s. 28, Bombay Regulation XIV of 1827 (Crimes and Offences) in Richard Clarke, *The Regulations of the Government of Bombay in Force at the End of 1850* (London: J. and H. Coz, 1851), p. 182). An 1828 statute made causing abortion after quickening punishable by death (s. 61, 'An Act for Improving the Administration of Criminal Justice in the East Indies', 9 Geo. IV. Cap. 74 in *The Law Relating to India and the East India Company* (London: William H. Allen, 1842), pp. 326–7). And an 1838 statute made the use of poison or an instrument with intent to cause abortion a felony punishable by transportation for up to life or imprisonment for up to four years (s. 7, Act No. 31 of 1838 in *The Law Relating to India and the East India Company* (London: William H. Allen, 1841), p. 637).

These provisions of 1827–38 seem to have gone largely unenforced. When describing applicable law in 1856, Chevers referred only to the 1803 regulation. I have been able to identify only one conviction under s. 28 of the 1827 Bombay regulation in the reported case law for 1827–61, namely *Roodrawa's case* (1855), Morris' Cases Disposed of by the Sudder Foujdaree Adawlut of Bombay, vol. III, pp. 58–60. Beyond Bombay, I have identified only one other pre-IPC conviction of a living woman involving abortion (consistent with the 1828 statute). In this case, though, the conviction was for the lesser offence of an abortion attempt: *Government Pleader v. Musst. Parbuttea and another* (1853), Reports of Cases determined in the Court of Nizamut Adawlut (Bengal), vol. 3, part 2, pp. 702–3.

Under the Indian Penal Code

According to IPC, s. 312, causing an abortion for reasons other than saving a woman's life was punishable by imprisonment (simple or

rigorous) for up to three years, a fine, or both. If the woman was quick with child, the maximum prison term increased to seven years. (Unlike their counterparts in England, lawyers and judges in Indian abortion cases had to continue to entertain the question of whether quickening had occurred.) Section 312 applied to a woman who caused herself to miscarry.

Section 313 made a person who committed an offence under s. 312 without the consent of the woman (whether she was quick with child or not) punishable by transportation for life or imprisonment (simple or rigorous) for up to ten years. It also imposed a fine.

Under s. 314, any person who intended to commit abortion and who caused the death of a woman was punishable with imprisonment (simple or rigorous) for up to ten years, along with a fine. If the woman had not consented to the abortion, the person could be punished with transportation for life. The offender did not need to know that his or her act was likely to cause death.

Section 315 referred to any person who committed an act with the intention of preventing a child from being born or causing it to die after birth. If such an act prevented the child from being born (or staying alive after birth), it was punishable by imprisonment (simple or rigorous) for up to ten years, a fine, or both. The act could not have been committed in good faith to save the woman's life. Section 316 established that, if a person committed any act that would constitute culpable homicide (if it caused death) and thereby caused the death of a 'quick unborn child', he or she was punishable by imprisonment (simple or rigorous) for up to ten years, along with a fine.

Under IPC, s. 328, any person who caused another person to take poison or 'any stupefying, intoxicating or unwholesome drug, or other thing' with the intention of causing hurt or a crime was punishable with imprisonment (simple or rigorous) for up to ten years, along with a fine.

For the full text of these provisions, see Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *The Indian Penal Code* (Bombay: Bombay Law Reporter Office, 1926), pp. 278–80, 287–8.

Reported cases falling under these IPC provisions were few in number and short in length. I have identified the following five: *Queen v. Kalachand Gope* 10 Sutherland's Weekly Reporter (1868), pp. 59–60; *Queen v. Kabul Puttur and Jhumpa* 15 Sutherland's Weekly Reporter (1871), p. 4; *Queen v. Arunja Bewa* 19 Sutherland's Weekly Reporter (1873), p. 32; *Queen-Empress v. Ademma* ILR Madras, vol. 9 (1886), pp. 369–71; and *Emperor v. Mt. Mullia* 1919 All India Reporter (Allahabad), p. 376.

English law

Abortion was first prohibited by statute in England under Lord Ellenborough's Act of 1803 (43 Geo. III c. 58). Between 1803 and 1837, penalties for abortion were lighter before quickening than after. The Offences against the Person Act (OAPA) of 1837 eliminated this distinction, applying the harsher penalties for post-quickening cases to pre-quickening cases, although it also made the maximum sentence transportation instead of death. The OAPA of 1861 made abortion punishable by a maximum sentence of life imprisonment (s. 58). If a woman died because of an illicit abortion, those involved would be tried for murder—a capital offence (s. 1). A woman could now be convicted of attempting abortion on herself and the 1861 anti-abortion law also introduced a new provision for those who supplied the means for committing abortion with knowledge of the intended purpose (s. 59).

The 1861 anti-abortion law was enforced against abortionists, suppliers of chemical abortifacients, and women's sexual partners. For an abortion prosecution targeting a supplier of alleged abortifacients, see *R. v. Louisa Isaacs* (1862) Leigh and Cave's Crown Cases Reserved, pp. 220–4. For cases involving professional abortionists, see *R. v. Caleb Charles Whitefoord* (1907) (POB ref. no. t19070318-16); *R. v. William Arthur Jones, William John Lidstone and Caroline Farmer* (1909) (POB ref. no. t19090622-16); *King v. Lovegrove* (1920) Law Reports 3 King's Bench Division (LR KB), pp. 643–7; *King v. Starkie* (1922) LR 2 KB, pp. 275–81; 'Charge against a Doctor', *TL* (5 June 1923), p. 11; and *R. v. Annie Houghton* (Liverpool Assizes, 1918) in L. A. Parry, *Criminal Abortion* (London: John Bale, Sons and Danielsson, 1932), pp. 136–43. For cases against the woman's partner, see the unfortunately named *R. v. Cramp* (1880) Law Reports 5 Queen's Bench Division, pp. 307–10; and *R. v. Joseph Tockert* (1907) (POB ref. no. t19071021-28). The 1861 Act was applied in cases in which women died, but also when women survived, as in *King v. Starkie* and *R. v. Monks* (1908) (POB ref. no. t19080303-45). However, the prosecution of women who had survived abortions was rare in England under the 1861 OAPA. See Barbara Brookes, *Abortion in England 1900–1967* (London: Croom Helm, 1988), p. 26.

Appendix E: Abortions in *T. v. T.*

Testimony of Mrs T., plaintiff in T. v. T. (Suit No.3 of 1927), Parsi Chief Matrimonial Court, Bombay (6–8 March 1929) (PCMC Judgment Notebook 1928–9, part 2, pp. 61–71, 99–107, 117 (BHC))

In Feb. 1921, I was again pregnant. I told my husband about it. He said he did not want any more children. I was then advanced in pregnancy 6 weeks. He suggested I should somehow abort the child and refused to pay for the confinement. He brought some pills to me for the purpose and he compelled me to take medicine and I was compelled to take the pills. These were some patent pills. He would not let me see the bottle. He gave me two pills at a time—3 times a day. They were round pills white in colour like [chalk]. It had no marking on it. Pills had bitter taste. I had severe pain in the stomach. I became [queasy]. I had convulsions. On the occasion I took six pills, and on the next day there was abortion. For three days thereafter pain continued. Ten days after that I became normal. Menstrual discharge followed for 8 or 9 days thereafter. Besides the pain, I felt weak….[My husband] threatened to disown the child if I did not bring about an abortion….In 1921, my husband had a chemists' shop at [S.] Road, known as [T.] and Co….In July 1923, I was pregnant again. He again asked me to abort the child anyhow…Then [my husband] forced me to take the pills again, threatened me that he would disown the child and turn me out. I took the pills under pressure and suffered agony untold for 3 days. The pains set up for 3 days were more severe and cruel than labour pains. For 2½ days he doubled the dose and I aborted after 2½ days. The pills were the same pills. When the foetus came out I became very ill…In Feb. 1925, I was again pregnant. He again forced me to take pills to cause an abortion. I took the pills for 2 days and abortion was caused. My aunt…came to see me. I was in severe pains. I complained to my aunt because my aunt feared I had taken poison. I told her I had taken pills. Abortion followed later. To Court: My husband was a [chemist]…The first abortion was in 1921. Ex[hibit] 5—Chit accompanying pills. I recovered generally from pains in 8 days and I felt well after a month. Bleeding stopped after 8 or 10 days. When the foetus was thrown out, I would be in bed. I would throw the blood-stained rags in the WC. Blood would collect in the rags in fairly large quantities. I used to spread other cloth on the bed. My first abortion was at 4 pm. I informed my husband on the same day, when he returned home. I was cured without treatment [until] the next pregnancy came on…Pills sent to me were sent in a red cardboard box. The chit No.5 came with the box. I started taking them at 11 o'clock. There was some powder round the pills. Pills were hard. They looked like patent pills. I did not crush them. Taste was bitter, but not so bitter as quinine. I swallowed them with water. Bleeding started same day after sunset, after I had taken six pills. I took no more pills. Next day the foetus was thrown out about noon. My pregnancy was advanced about six weeks…I started pills at about 8 or

9am. I took two pills. I next took two at noon and two more at 6pm. Next day I took 4 [more]—2 at noon and 2 in the morning—in all about 10 pills. I was given 6 pills by defendant on 1st day and 6 more the next day. Pain started next day at 2pm after the second dose. On the third day the foetus was thrown out before noon. Bleeding commenced on second day after 4 pills. Pain continued for three or four days after the foetus was out. Pain was severe when foetus was about to come out. Pain continued for 3 or 4 days. Bleeding stops after 8 days. Foetus were pieces—not one whole. I can't say how many pieces. They were distinct from blood. The pieces were dark red, like clots of blood. To Court: I had put my fingers up twice or thrice as soon as blood began to flow, and every time I did that I pulled out pieces of clotted blood. I did not try to break up a formed body (foetus) with my fingers. The clots were like shreds. It was stringy. There was no smell accompanying…the clots were about half the size of my index finger and equally thick. There was no burning sensation when these clots came. Only three or four [clots] came. They showed no form and [no] shape resembling living parts of human body….To Counsel: Pieces came out at intervals of 5 to 7 hours. On the 4th day I took out one or two pieces. On 5th day I took out one more piece. On the 6th day, intense bleeding would follow and it continued till about 10 days. Then it lessened and finally stopped 8 days after the last clot came out. At the time of the first abortion, I had used my finger. I did that because I felt that something was coming out. On 3rd day when clots or shreds began to come out, I had to be in bed for 5 or 6 pieces. Every time pieces came out, I got up, and went to the privy and threw them away. I started cooking 8 or 9 days after I started taking the pills. I did as little work as possible. Third abortion was in Feb. 1925. I took pills, 2 at 9 am, 2 at noon, and 2 at 4 pm. Pills had [powder] on it—white powder. He took the pills out of the cupboard. I took them in water. The taste was the same. The pills give to me were double the size of pills (Ex[hibit] 4) and round like a ball. I took 6 more pills the next day, and I took no more. Bleeding started late at night on second day. Pain commenced next day at night, an hour before bleeding commenced. As on previous occasion, pieces came out by themselves and some I took out with my fingers. In all about 4 or 5 pieces came in the course of 3 or 4 days. One or two pieces fell on 3rd day, between 5 and 6 hours. Pieces came out for a period spread over to four or five days, after bleeding commenced. Pain stops after the last piece has come out. Very little pain follows after the pieces are [out]. Every time the pieces came out, I went to the WC …. All the abortions were after [J.'s] birth. I complained to my sister-in-law about abortions. I took pills as a matter of compulsion. I took no preventatives.

Appendix F: Coroners' inquests

On coroners and their inquests in British India, see William Nunan, *Lectures in Medical Jurisprudence* (Bombay: Taraporevala, 1925), pp. 1–3;

https://doi.org/10.1017/S0026749X19000234 Published online by Cambridge University Press

L. A. Waddell, *Lyon's Medical Jurisprudence for India, with Illustrative Cases* (Calcutta: Thacker, Spink, 1921), pp. 5–6; Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2010), pp. 120–4; Durba Mitra, 'Sociological Description and the Forensics of Sexuality', in *Locating the Medical: Explorations in South Asian History* (eds) Rohan Deb Roy and Guy N. A. Attewell (Delhi: Oxford University Press, 2018), pp. 23–4; and Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947* (New York: Cambridge University Press, 2014), pp. 51–2. On the pre-1862 history of 'inquest panchayats' in Bombay Presidency, see James Jaffe, 'The Indian Panchayat, Access to Knowledge and Criminal Prosecutions in Colonial Bombay, 1827–61', *Law and History Review*, vol. 38, no. 1, 2020, pp. 48–74. On coroners' inquests in other common-law contexts, see Ian Burney, *Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830–1926* (Baltimore: Johns Hopkins University Press, 2000); Katherine D. Watson, *Forensic Medicine in Western Society: A History* (London: Routledge, 2011); and Jeffrey Jentzen, *Death Investigation in America: Coroners, Medical Examiners, and the Pursuit of Medical Certainty* (Cambridge, MA: Harvard University Press, 2009).

Appendix G: Patrick Hehir

For biographical dictionary entries on Patrick Hehir (1859–1937), see *Roll of the Indian Medical Service, 1615–1930* (ed.) D. G. Crawford (London: Thacker, 1930), pp. 208–9 (1886: entry 2206); and *Who Was Who: A Companion to Who's Who, Containing the Biographies of Those Who Died during the Period 1929–1940* (London: Black, 1967), vol. 3, p. 619. For obituaries, see 'Maj.-Gen. Sir P. Hehir. Medicine in the Field', *TL* (3 May 1937), p. 16; and 'Sir Patrick Hehir', *Proceedings of the Royal Society of Edinburgh* 57 (1938), p. 416. For a brief autobiographical note, see P. Hehir, *The Medical Profession in India* (London: Frowde, Hodder and Stoughton, [1923]), p. 2. On Hehir's training and early professional experience, see his personal military file: 'P. Hehir 16.1.86' (IOR/L/MIL/9/414/223).

In addition to co-authoring *Medical Jurisprudence for India* (Madras: Associated Publishers, 1929) (or *Outlines of Medical Jurisprudence for India*) with Gribble and *Medicine and Surgery for India* (Calcutta: Thacker, Spink, [1891]) with Lawrie, Patrick Hehir published the following books: *Alcohol: Its Moral, Physical and Social Effects* (Madras: Lawrence Asylum Press by G. W. Taylor, 1891); *The Rudiments of Sanitation for Indian Schools: With a Section on Diseases and Injuries and Accidents* (Calcutta: Thacker,

1891); *Opium: Its Physical, Moral and Social Effects* (London: Balliere, Tindall and Cox, [1894]); *Prophylaxis of Malarial Fevers in India and during Indian Frontier Warfare* (Lucknow: I. D. T. Press, [1907]); *Popular Lectures on Malaria in India* (Madras: Higginbotham, 1911); *Prevention of Disease and Inefficiency: With Special Reference to Indian Frontier War* (Allahabad: Pioneer Press, 1911); *The March: Its Mechanism, Effects and Hygiene* (Calcutta: Thacker, Spink, 1912); *Hygiene and Diseases of India: A Popular Handbook* (Madras: Higginbotham, 1913); *The Medical Profession in India* (London: Frowde, Hodder and Stoughton, [1923]); and *Malaria in India* (London: Oxford University Press, 1927). He had his own book series known as 'Hehir's Sanitary Science Series', including *A Catechism of Hygiene and Sanitary Science in XV Parts. Part 1: Water* (Calcutta: Thacker, Spink, 1894). Hehir published many articles in the *IMG* and elsewhere. His most unforgettable was probably 'Effects of Chronic Starvation during the Siege of Kut', *BMJ* (3 June 1922), pp. 865–8.

Appendix H: *Kitson v. Playfair*

Kitson v. Playfair did not appear in the English law reports. However, the *TL* and *BMJ* followed the case closely. In the *TL*, see 'High Court of Justice, Queen's Bench Division: Kitson v. Playfair and wife' (23 March 1896), p. 3; (24 March 1896), pp. 13–14; (25 March 1896), p. 3; (26 March 1896), p. 13; and (27 March 1896), p. 14. In vol. 1 of the *BMJ*, see 'Kitson v. Playfair', no. 1839 (28 March 1896), p. 806; 'Kitson v. Playfair and Wife', no. 1839 (28 March 1896), pp. 815–19; 'The Obligation of Professional Secrecy', no. 1840 (4 April 1896), pp. 861–2; 'Kitson v. Playfair and Wife', no. 1840 (4 April 1896), pp. 882–4; 'The Case of Kitson v. Playfair', no. 1842 (18 April 1896), pp. 989–90; 'Kitson v. Playfair', no. 1845 (9 May 1896), pp. 1161–2; and 'Kitson v. Playfair', no. 1846 (16 May 1896), p. 1236. See also 'Obituary: William Smoult Playfair', *BMJ*, vol. 2, no. 2225 (22 Aug. 1903), p. 439; and 'Discretion and Ethics', *BMJ*, vol. 4, no. 5729 (24 Oct. 1970), p. 247. For scholarship on the case, see Angus McLaren, 'Privileged Communications: Medical Confidentiality in Late Victorian Britain', *Medical History*, vol. 37, 1993, pp. 129–47; or *The Trials of Masculinity: Policing Sexual Boundaries, 1870–1930* (Chicago: University of Chicago Press, 2008), pp. 90–110; and Holger Maehle, *Contesting Medical Confidentiality: Origins of the Debate in the United States, Britain, and Germany* (Chicago: University of Chicago Press, 2016), pp. 74–86.