

**Jyoti Puri, *Sexual States: Governance and the Struggle Over the Antisodomy Law in India*. Durham & London: Duke University Press, 2016. ISBN 978-0-8223-6043-8**

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In *Sexual States*, Jyoti Puri uses her ringside view of the struggle against India's antisodomy law to make a larger point about the state: sexuality produces the state just as much as the state shapes sexuality. In a postliberalization context in which the downsizing of the state has become *de rigueur*, managing the threats purportedly posed by sexuality to health and morality has become a central element in the justification of the state. Nowhere is this clearer than in the words of a government affidavit responding to the Naz Foundation petition challenging the constitutionality of the antisodomy law, section 377 of the Indian Penal Code: "deletion of the said section can well open flood gates of delinquent behaviour and be misconstrued as providing unbridled licence for the same" (117).

Puri teases out the affective stances underpinning the state's view through ethnographic work in a range of locations—the National Crime Records Bureau, the Delhi Police, the Ministry of Home Affairs—to offer an epistemology of sodomy as seen by the Indian state. In doing so, she unravels the colonial genealogies of beliefs about "inherent" criminality and practices of racialization that result in the disproportionate use of section 377 against gender minorities (hijras) and religious minorities (Muslims and Sikhs). One wishes that the ethnographic analysis of the state had been extended to the judiciary (where do

judges get their ideas about “sodomy” from?), given the pivotal role it has played in both undermining and upholding the antisodomy law.

Nonetheless, Puri pays considerable attention to judicial decisions concerning section 377, foregrounding two central anomalies. First, police reports and caselaw suggest that section 377 today is used primarily to prosecute child sexual abuse, suggesting the contemporary irrelevance of its original legislative intent to penalise homosexual sex regardless of consent. Second, section 377 is only one of many anti-queer laws: the misuse of laws against sex trafficking, vagrancy, nuisance, kidnapping and abduction has often been more consequential in the harassment, stigmatization and prosecution of queers. These findings, long recognised by sections of the queer movement, furnish the basis for a critique of the queer mainstream’s focus on “law struggles,” and a single legal provision at that, which are made to bear the weight of a more complex injustice.

The final two chapters of the book focus on two recent judgments that symbolize the potentials and perils respectively of a law-focused strategy, namely the 2009 Delhi High Court judgment striking down section 377 as unconstitutional (*Naz Foundation v. Government of Delhi*) and the 2013 Supreme Court judgment resurrecting this provision (*Suresh Kumar Koushal v. Naz Foundation*). While Puri’s celebration of the former and dismay at the latter resonate with broader queer public reactions in India, her diagnosis of the “shared contexts” (138) of these divergent judgments will likely provoke debate. Thus Puri locates even the more progressive *Naz* judgment within a neoliberal imaginary in which the

institution of rights mediates relationships between individuals and the state, while sidestepping urgencies of economic, cultural and social injustice (141). At the same time, the book consistently bemoans the expansion of the state, brought on in part by the demands of a “governance feminism” that has sought greater protection from the state against sexual violence directed at women. Both critiques are valid, but in combination pose a dilemma that Puri leaves unaddressed: how will the redistributive justice that this critique seeks be possible without strengthening the agency of the state? Here Puri does not engage sufficiently with the paradox of queer and other radical movements that, quite reasonably, want *both* more *and* less state in different realms.

More troublingly, Puri calls into question perhaps the most hailed aspect of the *Naz* judgment, namely its finding that “constitutional morality” rather than “public morality” provides the sole touchstone for the adjudication of rights. Puri sees constitutional morality as “profoundly tied to the sanctity of the individual over the collective in ways that do not travel well across time” (144), arguing that while individualism may have promised liberation over collective caste, religious and gender oppressions in the years following independence, it now looks suspect in a postliberalization India. Puri is too quick to dismiss individualism, too ready to see it as irredeemably yoked to neoliberal imaginaries. No one who has read the now iconic suicide note of Dalit student leader Rohith Vemula (2016) could have failed to have been moved as much by the profound individualism of his aspiration to be a science writer, as by his determination to utter the collective rallying cry of the Dalit community: “For one last time, Jai Bheem.” Far from being reducible to individualism,

constitutional morality references a dialectical relationship between individual and community, embedded in the Indian constitution, that continues to fuel the radical politics of contemporary India.

### *References*

Vemula, Rohith. 2016. "My birth is my fatal accident." *Indian Express*. January 19.  
<http://indianexpress.com/article/india/india-news-india/dalit-student-suicide-full-text-of-suicide-letter-hyderabad/>