

## Spectral power

Ratnabir Guha



### **SEXUAL STATES: GOVERNANCE AND THE STRUGGLE TO DECRIMINALIZE HOMOSEXUALITY IN INDIA** By Jyoti Puri, *Orient BlackSwan*, Rs 895

Those who have been bemoaning the decline in the power and function of the entity called 'State', particularly in the aftermath of liberalization, need not be worried. If Jyoti Puri is to be believed, the State has managed to redeem itself and reinforce its authority by exerting its power over matters relating to sexuality: its practices, forms of labour, types of behaviour, and so on. Puri makes this argument quite convincingly in her new book, *Sexual States*, which takes a close look at the strange resurrection of State power at a time when non-State actors - be they private corporations or supranational institutions - are increasingly becoming important in the lives of citizens.

Her arguments acquire an added resonance when we try to read them in the present context of political upheaval the world over - liberal democratic regimes that are respectful of sexual and religious minorities are on the decline and conservative, fascist-like, populist forces are on the rise. This seems to be true not just for Europe and America but also for this part of the world. How did this come to pass? There is a general agreement among scholars that the period of globalization saw a diminishing of authority of nation-states, especially in the economic sphere: trade barriers were removed, national borders were pulled down, tax regimes were liberalized and transnational institutions, such as the World Trade Organization and the World Bank, became powerful. Going against this traditional argument, Puri makes the point that it is through the continued governance of sexual matters that the State ensures its legitimacy and longevity.

The case of India, in the aftermath of privatization and liberalization, proves this point quite succinctly. The Indian State, as it emerged out of the authoritarian colonial rule, assumed a liberal socialist garb under Jawaharlal Nehru. While we did witness its intervention in the spheres of marriage and inheritance during the Nehruvian regime, the overall reach of the State was nothing like as it is today. The debate surrounding triple *talaq* and the demand for a uniform civil code, the changes in laws relating to sexual offences brought about by the gang-rape of a student in the winter of 2012 and the recent amendments made to adoption and surrogacy legislations are some of the examples

that Puri cites when she talks of the outreach of the State and its institutions.

However, the author restricts her discussion to the controversial and well-publicized episodes of decriminalization of homosexuality and its subsequent re-criminalization: first, the 'reading down' of Section 377 by the Delhi High Court in 2009 and, then, the upholding of the section's constitutional validity by the Supreme Court in 2013. The choice of Puri's subject is not unusual, given the fact that she is an important scholar in the field of feminist theory and queer studies and an expert in Foucauldian theories on the nature of modern, liberal States. All these diverse interests intersect in this pithy but densely written book that is heavy on theory and heavier on empirical data. However, her jargon-heavy prose should not be a disadvantage for interested readers. This book should find an audience beyond the limited erudite readers it seemingly hopes to cater. It is important to reiterate this point when we discuss Section 377. Supporters of judicial intervention in decriminalizing homosexuality end up expanding the scope of State power by allowing it to arbitrate on the most intimate areas of human behaviour. For better or for worse, they give the State the chance to posit itself as the guardian of sexual conduct, thereby "sustain[ing] the illusion that states are a normal feature of social life, unified and rational entities, intrinsically distinct from society, and indispensable to [maintain] social order".

Puri's book demystifies this illusion. Understanding the process of this myth-making helps us to disassemble the idea of the State as a "monolithic", "rational" entity, and to foreground the multiple, iterative ways in which it governs its citizens. Crimes that are recorded under the damaging section are good examples of how social bias informs the understanding of the State and its governance. For instance, rummaging through the files of National Crime Records Bureau, Puri finds that while the number of crimes committed by heterosexuals is staggering, those under Section 377 are quite measly. More strikingly, a large chunk of the crimes recorded under the pernicious law is related to offences involving sexual assaults on children. Similarly, in the actual implementation of the law, the worst victims are not the urban, upwardly mobile, middle-class gay men but Muslims and *hijras*. What do these facts tell us about the nature of the Indian State? Puri's arguments tend to suggest that the inherent social bias (relating to children or against certain communities) of the agencies and the actors that carry out the will of the State dictates how a particular law is enforced.

The legal campaign to decriminalize homosexuality best explicates the argument that governing sexuality is perhaps the most efficacious way in which the idea and inevitability of the State is fortified. Instead of suggesting that it was inherent homophobia that prompted the court to take the rather retrogressive step of upholding the section, Puri contends that while the Delhi High Court judgment may be seen as a moment that delimited the scope of judicial reach (and, in effect, that of the State), thereby upholding the notion of an individual right-bearing citizen, the 2013 Supreme Court decree must be understood as an event when the State, once again, sought to reassert its authority.

The book is a painful reminder to all of us who fight unjust statist logic of the fact that there is, perhaps, no way we can circumvent the overwhelming reach of power structures, whether in India or anywhere else in the world. But a knowledge of the myriad ways in which power works helps us to arm ourselves in our fight for social justice, individual rights and democratic freedoms. Puri's book gives us the helpful ammunition we need in our struggle.