Sexual States

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PART ONE

INTRODUCTION
Bharatiya Bar Girls Union (Indian Bar Girls Union), Nityananda Hall, Mumbai, field observations:

In a large hall in Mumbai on an overcast July afternoon in 2005, some one hundred women have gathered to react to an imminent statewide ban on dance bars. The bar dancers are young, mostly in their midtwenties, dressed neatly in salwaar suits, trousers, and saris. Several dance bar owners are also present, not far from where I sit, but it’s the women’s voices that reverberate throughout the hall as each steps to the microphone. One woman wonders how bar dancers could be robbed of their jobs because of what they wear while performing, since the women in Hindi films (aka Bollywood) and discos dress so much more revealingly. Why, then, doesn’t the government take notice of the film actresses? What about the women who perform in discos? Another woman counters state officials’ accusations that dancing in bars is “easy money,” lamenting the hardships of the work, the need to take loans from taxi drivers at times, among other indignities. Other bar dancers are intent on distinguishing themselves from sex workers. Many of them wonder about the government’s claim to be “helping them” by closing the bars.¹

With less than a month to go before some seventy-five thousand bar dancers lose their jobs due to a hastily passed state law, women’s con-
cerns, anxieties, and anger are palpable at the union meeting. Mere months before, a prominent elected official unexpectedly proposed such a ban on dance bars—where fully clothed groups of women danced to popular Hindi film songs for a male clientele—initially applying only to the state capital, Mumbai, but then encompassing the entire western Indian state of Maharashtra. It is puzzling, the women note, that state officials singled out dance bars over brothels, Bollywood, and bars and discos at posh hotels. Even though the bars had been a staple of the provincial state’s nightlife for over two decades, subject to regulation, and a significant source of revenue, officials were now stridently condemning these bars for “corrupting rural youth” and “damaging the (state’s) culture.”

Urging attention to these inconsistencies, the bar dancers at the meeting ask why dance bars, why now, in order to understand (and overturn) the regional state’s edict. But interpreting the Maharashtra state’s capricious actions is not easy, not least because of the confoundingly arbitrary discourses justifying the ban. The initial allegations of cultural depravity soon give way to criticisms that dancers are making “easy money,” then projections that they are helpless victims of sex trafficking who need to be rescued, views hotly contested by the women themselves. Indeed state pronouncements oscillating between blaming and saving women and officials’ empty promises of public assistance for the thousands who would be rendered unemployed lead to additional furious speculations at the meeting about the state’s intents and irrationalities.

Some eight hundred miles north, in the nation’s capital, New Delhi, another struggle for sexual justice is pivoting toward the state in ways that, too, are surfacing inconsistencies in discourses and practices of governance. Under way since 2001, these efforts are aimed at decriminalizing homosexuality by overturning the nationwide antisodomy law, Section 377, first introduced by the British colonial state in 1860 and retained in the postcolonial penal code. Unlike the bar dancers reacting to the proposed shutdown, this struggle was initiated by Naz Foundation (India) Trust, an organization established to fight HIV/AIDS, as part of a strategy to seek rights and protections for same-sex sexualities, beginning with a writ petition filed in the Delhi High Court against Section 377. As the legal process unfolds, these petitioners are foregrounding incongruities in how Section 377 is applied—for example, the law is being used to harass and extort from vulnerable same-sex sexual subjects—
and the irrationalities of administration, whereby the government is opposing decriminalization but the state-run National AIDS Control Organization is favoring it.

Coming to grips with these messy discourses, inconstant practices, and competing laws and policies through the edicts against dance bars or homosexuality underscores that states are fragmented and deeply subjective. Further, if subjectivity is redefined to mean not just inconsistency and bias but also the passionate, the affective, and especially the sexual, then it animates a more critical view of the states’ injunctions on dance bars and same-sex sexual practices. Recognizing states as subjective expands the focus on the state’s impact on sexuality to asking how these instances of regulating sexuality serve states. Insofar as states are neither autochthonous entities nor mere material realities, a position I take, awareness shifts to how these preoccupations with managing sexual practices, forms of sexual labor, and such are discursively producing “the state” and serving to achieve state-effect (after, Timothy Mitchell). In other words, these instances suggest that governing sexuality helps sustain the illusion that states are a normal feature of social life, unified and rational entities, intrinsically distinct from society, and indispensable to maintaining social order.

Most pressing, the issue of dance bars, which I discuss but briefly, and the criminalization of homosexuality that is the focus of this book underscore the expanding significance of sexuality to states. Unfolding as they are in the thick of liberalization’s aftermath in India, these sites compellingly signal how regulating sexuality through a variety of mechanisms assumes importance, especially at a time when states are understood to be in decline. That is, states are seen to be diminishing due to the erosion of public services, the relentless drive to privatize, the ubiquity of market-based logics that are exacerbated by transnational flows of capital, and the pressures of transnational political structures, such as the World Bank and the World Trade Organization. While the sexual struggles emphasized in this book have kept Indian state institutions, practices, and discourses in the analytical foreground to an extent, widespread perceptions elsewhere of the scaling back of the state due to the effects of neoliberalism have intensified attention to sexuality in other sites of governance: personal relationships, consumerism, the media, and more. Useful as these studies are, the cases energizing this book show that regional and national states may be retreating from some as-
pects of social life, but the mandate to govern sexuality perpetuates the state as central, even crucial. The charades of the Maharashtra government’s edict and the criminalization of homosexuality are cautionary accounts of how states continue to thrive by leaning heavily on sexuality’s arguable potential to engender widespread social chaos.

With the concept of sexual states, this book advances the argument that governing sexuality helps account for the idea and inevitability of states, especially when they are in flux. It shows that regulating sexuality in its various dimensions, such as behavior, marriage, sexual health and disease, fertility, sexual labor, media representations, and the sex industry, are crucial mechanisms through which states are generated and the expansions and modifications in governance are justified. And it hones the understanding that the institutions and agencies, spaces, routinized practices, and discourses composing states are thoroughly imbued by considerations of sexuality. Efforts to decriminalize homosexuality and other sites of contestation flanking the book—closing dance bars, discourses of sexual violence, and policies against migration from Bangladesh—are crucial in demystifying states, foregrounding as they are the iterative, multivalent forms of governance giving heft to the illusion of states. Sustained attention to these instances offers insights into states’ impacts on vulnerable groups while also revealing how these and other constituencies become implicated in upholding them.

Useful as the issues of dance bars and other cases explored at the end of the book are, it is the protracted struggle to decriminalize homosexuality in the contemporary Indian context that provides insights into sexuality’s constitutive effects on states. When Naz Foundation sought the modification of Section 377 of the Indian Penal Code, the antisodomy law that declares “carnal intercourse against the order of nature,” so that it no longer pertained to adult, consensual, same-sex activity, it was not the first attempt at decriminalizing homosexuality. That honor belonged to the AIDS Bhedbhav Virodhi Andolan’s (AIDS Anti-Discrimination Movement, ABVA) attempt to repeal Section 377 dating back to 1994. But Naz Foundation’s legal initiative is distinctive and worthy of sustained attention because it inspired a national-level campaign, beginning gradually, with the first cross-country coalition of activists and organizations aimed at securing rights for sexual and gender minorities.
Unlike the bar dancers’ turn to the Maharashtra government as a result of its edict or the resort to national and Delhi-based state institutions during a watershed in sexual violence against women, Naz Foundation’s turn to the state was premeditated. Seeking to use the antisodomy law as a threshold for long overdue rights and equal citizenship for same-sexualities, it attempted to engage a variety of state sites at the national, regional, and local levels, including the courts, government, and the Delhi Police. Parsing “the state,” the Naz Foundation intervention gestured right from the start toward provisional and contextual understandings. As the campaign escalated, it yielded fresh insights, such as that the breadth of statecraft can get smaller as well as larger, from the local dynamics of policing to regionally specific patterns of governance, national-level agencies, and transnational discourses, and that what counts as the state is ever contingent.5

Presenting a rich, complicated, and performative arena animated by numerous constituencies, the Naz Foundation–led engagements of sexuality and state are best apprehended through fieldwork. One aspect of my research was focused on the Naz Foundation–led legal challenge, the gradual emergence of a nationwide political campaign, and the positions of supporters and detractors; the other was aimed at unraveling “the state” by pursuing the antisodomy law through a variety of state institutions, agencies, and practices. Spanning five major metropolitan sites—Bangaluru, Chennai, Kolkata, Mumbai, and New Delhi—my fieldwork also included Naz Foundation; its legal representative, Lawyers’ Collective HIV/AIDS Unit; a range of sexuality rights, children’s rights, and nonfunded groups; and HIV/AIDS organizations with a stake in this conflict. These forays unearthed concerns about the nature and impact of the antisodomy law and, more pressing, cautions about locating the state at the center of this activism.

Contesting the State: Sexuality, Law, and Reform

Naz Foundation’s recourse to the state shadows histories of sexual regulation and reform in India. Pointing to this arc, Patricia Uberoi notes that questions of sexuality have been at the heart of the social reform agenda, its debates and contestations, in the colonial and postcolonial periods.6 Others too have emphasized a tight link between sexuality and legislative social reform starting in the nineteenth century.7 For the
most part, though, such deliberations over the “woman question,” or, for that matter, over marriage, pro-natalism, or population control, have been pegged to nation and nationalisms, while institutional analyses of state and sexuality are harder to find. Further, state is frequently collapsed into nation, as seen repeatedly in treatments of sexual violence and trauma during the Partition of India and Pakistan in 1947. In contrast, revised readings of this inaugural moment of the Indian state by Veena Das and Christine Keating’s retelling of the framing of the Indian Constitution emphasize the weaving together of the social and sexual contracts, thereby helping reinsert questions of state and sexuality at the heart of Indian postcolonial history.

State institutions are the hub of contestations over sexuality in contemporary India more acutely than ever before. Such contestations—related not just to homosexuality but also to HIV/AIDS, sex work, sex trafficking, sexual violence, population control, and media representations, among others—play out intensively in the Indian context, making it an especially useful lens to apprehend what is relevant in other settings as well. Anxieties about obscenity in media representations or art, for example, have been defined in terms of the need to protect the moral and social fabric of the Indian nation but are actually channeled through local police stations and the courts. Citizens and representatives of political and religious groups routinely register complaints; reportedly thousands of such complaints are pending, and although few prosecutions occur, state institutions remain the focal points of redress.

More than any other institution, law and the attempts to enforce, reform, and redefine it in ways that match the aspirations of ordinary people, what Nandini Sundar calls law struggles, has come to define the interface between state and sexuality. Not surprisingly, then, ABVA’s abortive attempt at repealing Section 377 and Naz Foundation’s subsequent intervention worked squarely within this paradigm. The antisodomy law had been increasingly commanding center stage due to the heightened contestations around same-sex sexualities amid the impending HIV/AIDS crisis. Marked by greater governmental scrutiny of same-sex practices and identities, deemed as high risk, this period also witnessed increased countermobilizations to protect people from the intrusions of governance. Increasingly Section 377 was identified as the symbol of institutionalized homophobia and an instrument of legal and extralegal persecution. Additionally, insofar as it criminalizes same-sex
sexual practices and, by implication, gay, lesbian, and queer subjects, it was also seen as the barrier to securing necessary rights and protections for them.

Conceived as a legal strategy to be waged procedurally in the Delhi High Court, the Naz Foundation intervention was from the beginning circumscribed by its pivot to the state. Aimed at persuading the court to decriminalize homosexuality, the writ highlighted the antisodomy law’s ill effects on same-sex sexualities and, most important, the violation of constitutional rights. In so doing it surfaced questions about the potentials but also the limitations of its bent, arguments, and strategies. For one thing, the writ sought to expose the inconsistencies and biases of state policies, whereby some state institutions acknowledge and serve same-sex sexualities even as the law criminalizes them. Yet its principal arguments were couched in a grammar of reasonableness: that decriminalization would ensure better public health and effective regulation, thus raising the greater concern for me about the extent to which decriminalization might actually lead to strengthening governance.

Curious about this and the complex relationship between state and sexuality that was emerging as a result of Naz Foundation’s challenge to the antisodomy law, I spoke with a number of activists and lawyers who were part of the legal process. More and more intrigued about how the state was being imagined through the writ petition and how officials were representing notions of state, governance, and sexuality, I visited a number of state institutions and agencies in the first phase of my fieldwork. Looking to gain insight into the positions of the respondents (Delhi Police, Union Government of India, and others) named in the Naz Foundation writ and also the bureaucratic procedures and mechanisms through which such positions are crafted brought me up close to the state and the intricacies of governing Section 377.

**SEXUALIZING THE STATE: CONCEPTUAL FRAMINGS**

Alongside surfacing the inconsistencies and incongruities of state agencies and institutions, this ethnographic view also confirmed the need to dismantle the overarching idea of “the state.” It dovetailed with post-structuralist understandings of the state as culturally and historically produced and reliant on active fashioning through ideas and practices, giving it the illusion of being monolithic, coherent, rational, permanent, and irrefutably “there.” Seeing the visits to police stations, gathering
of police crime records, and other occasions through this critical lens in fact laid bare the state as fragmented, messy, contingent, and inconsistent. For instance, it raised questions taken up in chapter 3 about how to contend with a law that was intended to criminalize same-sex sexual behavior regardless of consent but that in fact has been used primarily to prosecute sexual assault on children. This approach also emphasized the need to interrogate how administering this code (among others) was continually breathing life into the state.

It became clear that the discursive illusion of the state could be confronted only through an investigation into the nitty-gritties of governance, their pedestrian, iterative qualities. Following Foucault’s emphasis on studying the micro practices of power affirmed the insight that engaging the state critically means attending to its constitutive elements, that is, the discourses and micro practices of governance, reports, documents, interactions, procedures, and more. Intent on uncovering this banal and therefore influential thick web, I became especially interested in the minutiae of Section 377, its case law and enforcement as also the ideological production of crime data, meanings ascribed in the government’s legal responses, exchanges during the hearings in the Delhi High Court, and so on.

More crucially, my fieldwork raised questions about the role of sexuality in ways that could not be satisfied by seeing these discursive practices only as biased and inconsistent. For instance, my search for data, which is where chapter 2 begins, revealed that the difficulty of accessing statistics on Section 377 in contrast to the glut of tables on (hetero)sexual crime on women is not adequately explained by erratic institutional practices. Indeed, moments throughout the fieldwork reinforced the insight that the domain of sexuality blurs putative distinctions between the public and the private, or the political and affective aspects of the state. Law, the seemingly dispassionate arm of the state, it turns out is colored, for instance, by justices’ affects, passions, and anxieties that became evident during the Supreme Court hearings discussed in chapter 6.

Trailing the broader spectrum of institutional practices and discourses, though, suggests going beyond the scope of law to unearthing sexuality’s far-reaching significance to governance and, in effect, the state.

Thus, although the Naz Foundation–led efforts to decriminalize homosexuality were invoking conventional understandings of the state, the struggle inadvertently triggered an analytic of the sexual state. First, it
brought home the long-standing insight in feminist and sexuality studies that states are deeply subjective, preoccupied with regulating sexuality especially among vulnerable constituencies. Reaching for the nuanced analyses in this body of work paved the way for seeing that in fact sexuality impacts states just as much as states seek to define sexual normality, discipline bodies, and control populations.\textsuperscript{19} Coming to grips with these complexities required shifting meanings of sexuality away from notions of individual or collective identity toward its structural connotations, as a domain at the level of relations, institutions, and more.\textsuperscript{20} As such, the task expanded to tracking how applying the antisodomy law serves the state and, more broadly, seeing the state from the angle of sexuality.

Second, the view from the ground exposed sexuality’s role in helping produce state-effect. The government’s first legal response to the Naz Foundation writ was telling in this regard. Analyzed in chapter 5, this reply showcases how sexuality’s seeming threat to society is used to produce and affirm the role of the state. Another pivotal moment at the National Crime Records Bureau (see chapter 2), which I visited to get a sense of the scope and circumstances in which crime under Section 377 is recorded, was equally illustrative. An “inside” view of this state agency revealed bit by bit not only sexuality’s impact on its various aspects but also how these sexualized processes, spaces, functions, and interpersonal interactions cumulate into an idea of the state and the mandate to govern.

Third, a comprehensive view of the antisodomy law showed that concerns with sexuality implicitly and explicitly propel governance, often in incremental ways—as in the pattern of expanding judicial interpretations of the crime that Section 377 ought to cover. Equally important, the upshot was that not just juridical but also biopolitical and neoliberal rationalities are implicated in applying the antisodomy provision. This, contrary to the fact that sexuality is often left out of theories of biopolitics, with which I take issue in chapter 2, and that the state is typically overlooked in notions of neoliberalism, a point I reconsider in chapter 6.\textsuperscript{21} In other words, issuing from this critical appraisal of the sexual state is the conceptual challenge of contending with multiple rationalities of governance rather than taking a teleological view of it (whereby neoliberal forms are seen as supplanting juridical and biopolitical modes).

Coming to grips with the sexual state in these ways highlighted the fourth aspect: that ordinary people also participate in animating it. Com-
monplace criticisms and ridicule of the state abound, yet it is difficult to sidestep the state in the search for justice, particularly for marginalized groups. Vulnerable to the effects of state power, they are also likely to become implicated in fetishizing the state. Setting into motion the legal process lasting for over a decade, the campaign to decriminalize homosexuality and the entire constellation of actors, constituents, opinions, and criticisms it prompted spun around projections of the state. Thus Naz Foundation’s interpellation of the state as antagonist and protagonist mattered, as did more far-reaching critiques of the state offered by the coalition Voices against Section 377 (considered in chapter 6). Understanding the inciting of the state in these complex ways brings to light that in dispute between the Delhi High Court’s decision decriminalizing homosexuality and the Supreme Court’s subsequent overruling of it was the role and reach of the state.

Generating an ethnographically grounded appraisal of the sexual state yielded additional insights around which this book is constructed, beginning with the point that Section 377 is not, nor could it be, the principal law through which same-sex sexualities are governed. Even though the antisodomy law was intended to curb same-sex sexual activity (and other behavior seen as transgressive), a review of legal history indicates that it has for the most part not been used to prosecute adult consensual activity. Rather sexuality’s significance to the state links a whole nexus of laws, policies, and discourses—among them the anti–sex trafficking act and lower order laws, including vagrancy and public nuisance, that are easier to enforce and therefore likely to have greater impact than the antisodomy law on same-sex sexualities, especially those vulnerable due to their gender expression and social class.

Pressed further still, it is debatable that sexuality’s effects are limited to any one expression, pointing instead to an approach that goes beyond troubling states’ heteronormative underpinnings. Taking an integrated view of sexuality’s disparate iterations has the distinct advantage of providing thoroughgoing critiques of the state, especially in contexts where the dualities of heterosexuality and homosexuality have not been foundational. The examples of the dance bars, agitations against (hetero)sexual violence, and attempts to stall immigration from Bangladesh, alongside the struggle to decriminalize homosexuality, fruitfully
expose contiguities between sexuality’s various iterations and highlight its effects on states even when not easily perceptible, as in the case of emigrants from Bangladesh.

Gesturing to neither a single law nor a specific aspect of sexuality, the analysis also throws into question the premise that Section 377 imperils only, or mainly, homosexual subjects. The campaign against the law presumed that Indian legal history tracks closely with Foucauldian genealogies of the homosexual, who is seen as brought into history through institutions such as law only to be persecuted. But if, as noted earlier and explored fully in chapter 3, such a pattern is not borne out by case law, then it throws into doubt the presumed subject of this statute. More gravely, the ethnography examined in chapter 4 points toward the ways the law’s enforcement is likely to target hijras and, significantly, religious minorities, especially Muslims, regardless of their sexual practices. Accounting for how some religious minority groups are racialized and pejoratively queered, the discussion provides a broadened understanding of the range of subjects impacted by the antisodomy statute. As such, a close analysis of this law, coupled with the other cases I consider, illustrates the need to bring “least powerful” constituencies—on the basis of marginalized social class and caste, sexual orientation, gender expression, and religion—and the numerous points of regulation into the same field of analysis, without of course collapsing relevant differences.

In sum, a critique of the sexual state advances radical appraisals of state, sexuality, and governance. This theoretical turn keeps states in the analytical foreground and demystifies them by drawing attention to the subjective and especially sexualized governance practices, laws, policies, and discourses that help realize them. Analyzing how states are constituted partly by the mandate to contain sexuality’s putative threat to the social order, this stance looks at the ways sexuality easily affects every aspect of the assemblage abbreviated as “the state.” Highlighting the banal as well as multiple iterations of governance actually giving substance to states, it encourages awareness of how race, gender and expression, and social caste and class are implicated in the exertions of power. Not least, this approach underscores that it is not only the nitty-gritties of governing that help produce state-effect but also the quests for sexual reform that (are obligated to) pivot around the state.

To illustrate the relevance of this approach beyond the efforts to decriminalize homosexuality, I return to the ban on dance bars for the rest of
this introduction. Marking the differences presented by the dance bars—heterosexuality, sexual labor, and the politics of the regional state—from the decriminalization of homosexuality, I show the urgency of grappling with states' reliance on sexuality and striving further toward critical assessments of discourses and practices of rule.

**Dance Bars and Remaking the Postliberal Regional State**

Dance bars took center stage in public discourse once the regional state's deputy chief minister and home minister, R. R. Patil, suggested a prohibition on women's performances in these settings. When the state governor refused to sign an ordinance initially proposed by Patil to shut down dance bars, a bill (Bill No. 60 of 2005) was swiftly introduced into the Maharashtra State Legislature on July 8, 2005.26 The bill, entailing an amendment to Section 33 of the Bombay Police Act of 1951, which regulates entertainment such as dance performances in restaurants, bars, and so-called permit rooms, was unanimously passed within two weeks:

AND WHEREAS it is brought to the notice of the State Government that the eating houses, permit rooms or beer bars to whom licenses to hold a dance performance, have been granted are permitting the performance of dances in an indecent, obscene or vulgar manner;

AND WHEREAS it is also brought to the notice of the Government that such performances of dances are giving rise to the exploitation of women;

AND WHEREAS the Government has received several complaints regarding the manner of holding such dance performances;

AND WHEREAS the Government considers that such performance of dances in eating houses, permit rooms or beer bars are derogatory to the dignity of women and are likely to deprave, corrupt or injure the public morality or morals.27

The inconsistencies of state discourses on dance bars encapsulated in the bill were conspicuous right from the start. This, not just because the bill exempted establishments with ratings of three stars or more or performances in Hindi- and Marathi-language films but also because of how the ills of dance bars were framed. Hinging on questions of women's bodies and sexualities, the discursive legitimation for closing down dance bars had as much to do with the vulgarity of the performances
and the “easy money” women could net by dancing and manipulating men’s weaknesses as with women’s sexual exploitation and trafficking of women and girls. State logics alternated between the violation of the dignity of women and the threat that the women posed to public morality.

For those who opposed the state’s edict, not least the bar dancers and feminist scholars and researchers mobilized by the implications of the ban, its rampant contradictions were fodder for contention. Since little was widely known about dance bars beyond the handful of popular representations and an account based on a sample too small to carry heft, two studies conducted by feminist researchers, “Background and Working Conditions of Women Working in Dance Bars in Mumbai” and “After the Ban: Women Working in Dance Bars of Mumbai,” became crucial in countering the underlying schisms. Contrary to state officials’ claims, the first study showed that women were not trafficked into the profession, were between twenty-one and twenty-five years on average, and lived precariously on incomes of less than Rs. 15,000 (approximately $330) a month, entirely dependent on a share of the tips from customers.

Noting that bar dancers were largely from culturally and economically marginalized communities, this study and other emerging accounts troubled the uneven and unjust effects of state policy as well as its underlying motivations. From these counterhistories it became clear that as many as 42 percent of the women in the study were from caste-based and marginalized Muslim communities, where unmarried women supported families through some form of sexual labor. Further, the injunction against dance bars stood to exacerbate, as it subsequently did, the vulnerabilities of women from migrant communities who had been forced to migrate from within the state and elsewhere due to the impact of uneven development. Identifying the state’s preoccupations with the dance bars as trails of earlier colonial histories aimed at reforming nautch (singing and dancing) girls as well as elitist attempts to rid Maharashtra of its regional sexualized entertainment forms, such as lavani, feminist critics rightly indicted the casteist, moralistic, hypocritical tendencies of the state.

After the law was passed and the dance bars were closed on midnight of August 14, 2005, challenges to the biases and subjective hues of the Maharashtra state had little choice but to seek recourse from another state institution, namely law. A number of writs from the bar owners association, bar dancers union, feminist coalitions, and a variety of social
and activist groups contested the ban in the High Court of Bombay primarily on the grounds that it violated constitutional rights—including the right to practice a profession, occupation, or trade; the right to life and livelihood; and the right to freedom of expression—while discriminating against this form of labor. In a prompt decision, Indian Hotel & Restaurants Association v. The State of Maharashtra and Others, the high court declared the state decree to be unconstitutional, while safeguarding the bar owners’ and dancers’ fundamental right to practice a profession, occupation, or trade and making much of the state’s irrationalities in passing the law: that the injunction was arbitrary since it exempted other elite establishments and that if the dance bars were morally suspect, how could the state allow women to work as wait staff. Rejecting the Maharashtra government’s subsequent appeal, the Supreme Court upheld the high court’s ruling and arguments and delivered a searing critique of the state’s illogic, paving the way for reopening the dance bars in 2013.

Despite the apex court’s pronouncement, the state government remained defiant under Patil’s leadership, seeking measures that would preserve the ban on dance bars. Proposing in fact to extend the embargo to exempt elite establishments, the state government waded deeper into the mires of sexual regulation, reenergizing questions about dance bars’ importance to the state. Taking on this question, I build on feminist appraisals the regional state, while critically reading the state through the histories of dance bars and attempts to regulate them.

Regional Itineraries of the Sexual State

The rise and fall of dance bars chronicles the remaking of the Maharashtra state over the past two decades. Emerging in the 1980s, dance bars flourished outward from Mumbai to its suburbs and satellite cities and then on to other cities and towns under a morass of regulations as well as extralegal arrangements that were the offshoots of the developmental state characterizing postindependence India. Managed through an elaborate system of licensing and a density of state laws governing restaurants, serving liquor, and dance and entertainment that were gradually put into place over the years, the dance bars were lucrative sources of state revenue from taxes and fees, as well as extralegal payoffs for staying open past the official closing time, placating police, or contributing to various political parties.
The apex and turning point of this economy of exchanges occurred in the mid-1990s under the right-wing coalition government of the Shiv Sena and Bharatiya Janata Party (BJP), just as the regional state was being impacted by liberalization. Introduced in 1991, liberalization measures ushered in the deregulation of markets and licensing control, foreign capital investment, and privatization, as well as increasing political decentralization that granted greater autonomy to states and oriented them directly toward transnational capital and global governance. As Sarah Joseph notes, these changes represented the incorporation of market rationalities in the structures of the state and mechanisms of governance. Subsequent efforts to revive Mumbai as a global financial and service center, for example, attest to how the regional state was and is being reconfigured, simultaneously repressing and abetting market rationalities and further blurring the boundaries with corporate capital and the interests of elite consumers.

The Maharashtra government’s increasingly fraught relationship with the dance bars by the late 1990s reveals the regional state’s attempts to transition from a regulatory system embedded in licensing and payoffs to one that is more liberal and rational. Flavia Agnes explains that the strains initially involved a punitive excise tax hike of 300 percent and police raids in 1998 under the right-wing coalition government, which led to a bar owners’ lobby and unprecedented public attention to a rally of some thirty thousand bar dancers. Particularly noteworthy is that in 2001 the subsequent government, led by the Nationalist Congress Party, to which Patil belongs, introduced for the first time measures specific to dance bars that would have lessened corruption, but for disagreements with the bar owners later adjudicated by the courts. Then, only a year before the dance bars were closed, the government issued a fresh set of rules in July 2004, levying restrictions on the kinds of clothes bar dancers could wear, establishing a barrier between the dancers and customers, and stipulating a maximum of eight dancers on stage at a time, among others.

These escalating public conflicts and protracted efforts to manage and eventually shut down the dance bars were undoubtedly part of a larger project, as critics have noted, to “cleanse” the city of lives and lifestyles incompatible with state-sponsored neoliberal visions. But they were also signs of a state in crisis. In a postliberal era when the state is no lon-
ger the focal point or, as Joseph argues, is no longer seen as the guardian of public interests, dance bars provided an opportunity for the regional state to remake itself.\textsuperscript{44} Rather than a calculus of retraction or expansion, the state’s dogged attention to dance bars over the years and across the political spectrum reveals a crisis of relevance and legitimacy.\textsuperscript{45} Speaking to these representational aspects, Akhil Gupta and K. Sivaramakrishnan observe that liberalization entailed shifts in arrangements between the state and economy and a change in “the way relations between state and other institutions and social groups are recast and re-imagined,” thus raising the question of what was peculiarly significant about dance bars for the regional state.\textsuperscript{46}

**SEXUAL PERILS AND STATE-EFFECTS**

Setting dance bars apart from other forms of sexual labor is the widely held view that they do not simply provide sexual entertainment to men but drive them to irrational sexual behavior and fiscal excess through the seductions of love and romance. Indeed over the years dance bars were gradually associated with the false promises of love and romance that would lead men to irresponsible and excessive behavior. Reinforced in the first extensive journalistic portrayal of dance bars, Suketu Mehta’s book *Maximum City*, this is how dance bars came to be understood and reproduced once they were under the harsh light of mainstream media. Spelling out these discourses of excess and extraction, Mehta chronicles what he sees as a typical scenario:

It goes this way: A gangwar boy might start becoming a regular at a bar. He might see a girl whom he fancies. He might imagine himself protecting her from villains, or he pictures the girl nursing his wounds after a gunfight or an encounter. So he goes up to the girl on the way out and asks to see her after the bar closes. She smiles and asks him to come back tomorrow. He goes back the next evening and sits there and now watches only her among the dancers. She remembers him from the previous day, smiles once or twice at him, and he asks the waiter to garland her with thousand or five thousand rupees. She dances a little faster for him, in his direction. He stays until the bar closes and then asks her again for her number. She asks him to come the next night; she will be waiting for him. And so he comes again and again to the bar, throwing a little more money over her head.
each time, until one night, when he is least expecting it, she quickly thrusts a piece of paper into his hand. On it is written the magic telephone number and her name.47

Mehta’s narrative sees emotional intimacies between dancers and patrons at the crux of transactions of cash, gifts, and sex, while showing how extraction and excess are inherent to dance bars.

These populist accounts further diverged into bar dancers as sexual predators and men as prey. It is for this reason that although portrayals of women as hapless victims of the trade entered state and mainstream criticisms of dance bars, they were consistently offset by apocryphal accounts of women earning staggering amounts of money from merely (!) dancing in bars. Mehta’s chapter on bar dancers singles out one such woman with the pseudonym Monalisa, as if to suggest that exceptional cases such as hers illustrate the danger inherent in the trade. Similarly, soon after the ban went into effect, a Mumbai bar dancer, Tarannum Khan, was arrested on charges of illegal betting, gambling, and links to the underworld. She captured attention for having amassed vast wealth from dancing at the bars and reportedly being literally showered with 90 lakhs in one night by a male patron later indicted on charges of massive corruption. Raids by income tax authorities on the homes of several bar dancers and media reports of untold extralegal wealth further fueled the discourses of extraction and excessive accumulation. As one commentator observes, these images effectively displaced media representations of despair and desperation that emerged after the ban was enforced.48

In contrast, male patrons of dance bars were seen as gullible, easily seduced into fiscal irresponsibility, and needing to be saved from the dancers and themselves. A frequent point of concern was that men often squandered their entire monthly income on the bar dancers, thereby harming their “respectable” wives and mothers. If this discourse was implicitly about men from the working classes with dependents and limited income, another point of anxiety derived from the intersections of masculinity and surplus wealth, often associated with the underworld. The stories about men bestowing lakhs of rupees on the object of their desire, as Mehta describes, were stories about the overindulgences of money and masculinity. Indeed one of the five amendments proposed by the state prior to the embargo on the bars was that clients could not shower money on the dancers. What tied together the two discourses
on masculinity was the fervent belief that dance bars make men behave irrationally, both sexually and fiscally. Despite the fact that the discourse of male irrational sexual behavior was not widespread, it dominated in the context of dance bars.

The notoriety of dance bars was and continues to be especially conducive to reassembling the illusion of a regional state with increasingly blurred boundaries and uncertain relevance. Introducing one regulatory mechanism after another, especially since the late 1990s, helped reassert the state’s indispensability in managing sexuality’s irrational, excessive, and ever-present potential to disrupt the social order. The imperative to “save” besotted men and the women who posed a danger to men as well as themselves aided in reproducing the state as the centerpiece of governance despite liberalization, or perhaps more necessary because of it. Positioned at the crosshairs of transnational capital and global governance, the regional state was produced as both modern and moral by dovetailing with U.S. State Department–led antitrafficking rhetorics and globalizing discourses of women’s rights to justify the imminent dangers of dance bars.

These sexualized edicts, policies, and discourses, then, are fruitfully understood as traces of the sexual state, which is reproduced amid changing regional, national, and transnational contexts and reflected in the struggle against the antisodomy law. Despite the differences between the two sites of contestation, not least issues of (hetero)sexual labor and (homo)sexual identity, accounting perhaps for their noticeable lack of engagement with each other, and the significantly different outcomes in the Supreme Court, a careful exploration of the injunction against dance bars illustrates that states continue to remain the hub of sexual regulation, governing through a nexus of laws, policies, and discourses rather than simply the injunction against dance bars or the antisodomy law. Consider therefore the sexualized regulatory mechanisms that both preceded and outlasted the closing of the dance bars: state officials’ defiance of the apex court’s ruling to reopen dance bars, the refusal to issue fresh licenses, proposals to make licensing fees prohibitively high and issue more stringent rules to discourage dance bars. Despite the rulings in favor of the dance bars by the Bombay High Court and the Supreme Court, the regional government remains committed to obstructing the reopening of dance bars and in so doing continually reproducing the state and justifying discourses and practices of governance.
The Roadmap

This book is about the intimacies of state and sexuality that play out widely in the Indian context, typically through law, sometimes at the behest of the state institutions and at other times through the pursuit of redress. Focusing on the struggle to decriminalize homosexuality, the book is organized into three sections. Supplementing this introduction, chapter 2 begins with a pursuit for statistics related to the antisodomy law in order to gain some insight into the extent to which this law is enforced. Bringing an up-close view of the National Crime Records Bureau, my fieldwork yields crucial insights about sexuality’s impact on such agencies composing the state by holding up to scrutiny its spaces, iterative practices, and routinized procedures for crunching and reporting data on crime. The discussion revolves around the difficulty that heterosexual violence against women is emphasized and rendered into a social problem, whereas the numbers for Section 377 are deliberately omitted. Rather than heteronormativity, I account for this difference by way of the agency’s concern with ensuring the biopolitical welfare of the population. Taking issue with the neglect of sexuality in theories of the biopolitical while emphasizing the connections between biopolitics and sexuality leads to the insight that seemingly objective measures such as statistics as well as state definitions of social problems are deeply subjective sexualized practices. It also makes clear that Section 377 is not the primary law but one among a thicket of decrees, policies, discourses, and iterative practices through which same-sex sexualities are governed and states affirmed.

Part II further disassembles the idea of the monolithic, rational state by exploring the subjective histories of law and law enforcement. Showing that case law and police crime reports (known as FIRs, First Information Reports) for the antisodomy law are primarily related to child sexual assault, chapter 3 reveals the irrationalities of a law used quite differently from its original intent. This approach leads to a fuller understanding of how law’s practices and discourses regulate sexual crime and subjects in ways that reaffirm its indispensability and, by extension, the state in preserving sociosexual order. Reading case law from the angle of sexual violence on children, the analysis reveals a steady expansion in the range of sexual practices and discourses that fall within the ambit of governance. As such, I argue, case law or police crime reports do not support
a Foucauldian understanding of “the homosexual” as the beleaguered subject of the antisodomy law, and I note the pitfalls of such readings. Arguing for the need to disentangle the homosexual from these records of child sexual violence, I also caution that Foucauldian readings of law and homosexuality risk strengthening the state—by assuming it as the primary site of injustice and then as the arbiter of justice.

Continuing the focus on juridical aspects of the state, chapter 4 turns to the antisodomy law’s significance to law enforcement. Fieldwork conducted among the Delhi Police helps highlights the subjective, sexualized aspects of law enforcement in three ways. First, pivoting around discussions with police constables and more senior members of the force, the chapter shows that the generic homosexual is not the primary target of law enforcement. Rather the crucial insight is that policing in Delhi is likely to imperil racialized religious minorities, particularly Muslims, whom the police associate with sexual crimes. Making the case that Muslims are being racialized within the national context and specifically within police discussions, the chapter explains the inconsistencies of policing and the endemic forms of prejudice that so quickly rise to the forefront in relation to enforcing the antisodomy law. Second, indicating the ways police also target hijras, the analysis speaks to the flexible uses of Section 377 that permit governance well beyond the law’s scope. Third, revealing dissent among the Delhi Police, this discussion notes that while there may be some leeway in the policing of the generic homosexual, the regulation of racialized religious minorities and gender non-conforming persons is more intractable.

Following the groundwork laid in the two previous sections, part III shifts course to documenting the legal campaign to decriminalize homosexuality that ends abortively with the 2013 Supreme Court decision. Framed against the previously established insights that the antisodomy code is not the only law governing same-sex sexualities and its potential impact is not limited to same-sexualities, chapter 5 begins with a discussion of how the Naz Foundation writ was constrained by a pivot to the state and a necessarily reductive understanding of the antisodomy law. Drawing on fieldwork at Naz Foundation as well as interviews with sexuality rights activists and visits to organizations across five major metropolitans, I account for early criticisms of the writ and its evolution into a national-level campaign focused around the antisodomy law and the generic gay subject. Also building on fieldwork conducted among
state agencies, especially the Ministry of Home Affairs, I underscore the subjectivities of the government’s legal response opposing decriminalization, exposing its appeal to the perils and excesses of sexuality in order to preserve the integrity of state institutions and justify state intervention. Leading to the writ’s initial dismissal by the Delhi High Court in 2004 on a mere technicality, the chapter concludes by chronicling Naz Foundation’s plea to the Supreme Court and the subsequent directive instructing the High Court to decide the case on its merits, thereby rendering Section 377 as the flashpoint for a national legal and political campaign for justice.

Delving into the second phase of the struggle against the antisodomy law (2006–13), chapter 6 juxtaposes the 2009 Delhi High Court ruling decriminalizing homosexuality and the subsequent 2013 Supreme Court decision recriminalizing it. The chapter begins with the decisive impact of Voices against Section 377, a coalition of Delhi-based groups, on the historic Delhi High Court ruling. Reading this decision alongside the apex court’s overruling, I make the case that the two judgments represent diverging views of the relationship between state and sexuality in postliberalized India. Thus, the argument goes, the lower court seeks to reduce the reach of the state, except that it does so by deploying an individualized, assimilationist, and neoliberal rights regime. Turning to the Supreme Court 2013 pronouncement, the analysis comes to grips with the ways it too is shaped by the imperatives of postliberalization. The chapter shows that, in contrast to the lower court’s vision, the apex court seeks to reaffirm the state and prolong governance through legislative intrusions into the realm of sexuality.

The postscript, “Afterlives,” offers a summary and discussion of the implications of the arguments developed in the previous chapters. It also extends the implications of the concept of sexual states through an analysis of the agitations around sexual violence that swept India after December 2012 and its applicability to a site where the imperatives of sexuality are not so obviously marked, namely migration from Bangladesh into New Delhi, before ending with the concept’s relevance outside of India.