

ASSERTING INDIGENOUS CITIZENSHIP THROUGH POST-SECULARITY: A QUEER ANALYSIS OF PAKISTAN'S TRANSGENDER LEGISLATIVE REFORM

Muhammad Moiz¹ and Firdous Gaewalla²

ABSTRACT

In 2018, after years of lobbying and effort, khwajasira feminists managed to pass the landmark Transgender Persons (Protection of Rights) Act, 2018 through the Parliament of Pakistan. The word “khwajasira” literally translates to “the caretaker of the house,” and it consists of intersex, non-binary, genderqueer, transgender, and gender fluid people. It is difficult to translate “khwajasira” into English as it is far more inclusive than any of its Anglo-Saxon counterparts. Furthermore, the khwajasira community has existed for centuries in the Indian subcontinent accompanying a rich cultural heritage. Despite enjoying a benign, if not exalted, status in premodern South-Asia, discourses of colonial governmentality reconfigured the khwajasira body as the “eunuch,” and a gendered risk to national strength that must be “extirpated.” The community remains a frequent victim of violence, discrimination, and harassment; oppression emergent from colonial policies designed to commit cultural genocide against the community. Contemporary scholarship on South Asia has illuminated the divisive nature of the nation state; and how, despite

¹ Dr. Muhammad Moiz is a global policy practitioner with a strong interest in urbanism, governance reform in post-colonial states, and issues of gender and sexuality. Their research methodology is transdisciplinary, and utilizes elements of queer methods, human-centred design thinking, critical historiography, participatory ethnography, systems thinking, and econometrics. They were part of the lobbying efforts for the Transgender Persons Act 2018. They have consulted for the World Bank, International Center for Research on Women, the International Committee of the Red Cross, and Legal Aid Society. They are a Doctor of Medicine and obtained their Masters in Global Health Policy as a Fulbright scholar from The George Washington University, USA. They have taught policy and research at Habib University, Karachi. They are often featured on national and international media for their views and analysis on contemporary issues, and for their work on queering the media landscape in South Asia.

² Firdous Gaewalla is a student of Social Development and Policy at Habib University with a specialization in Queer Studies/Theory. She has previously graduated from the University of Iowa's International Writing Program and has published with the National Geographic Society. Firdous is actively involved in indigenous Khwaja Sira/Queer Activism and is devoted to decolonial policymaking for Khwaja Sira emancipation. In addition to this, she is a regular co-host and producer of the popular podcast, #StonedAlive, where she platforms Pakistani queer voices.

secularization, its focus on national identity marginalizes certain communities. This gendered citizenship in Pakistan had reified the gender-binary since colonization, and had thoroughly eliminated other indigenous genders from the public sphere. Through the 2018 Act, however, khwajasira feminists have asserted their presence in a state that hitherto had not recognized them as citizens, without relying upon a secular human rights discourse. Instead, khwajasira feminists popularized Sufi Muslim queer philosophies and indigenous gender-sexuality regimes and institutionalized them through the Pakistani legislative system, while simultaneously preventing the state from misgoverning queer bodies in the future. By examining the nature of this struggle, we examine how the khwajasira victory subverts the commonly held liberal opinion that nation states require a de-Islamized and secularized discourse, devoid of subjectivity and spirituality, to further the cause of “human rights.”

THE RACIST AND COLONIAL BACKGROUND OF HIJRA-PHOBIA

The concept of a single, large, centralized state for the governance and surveillance of all individuals, and specific communities, in a region as vast and socially complex as South Asia is a recent phenomenon. Appadurai compares surveys carried out by premodern dynasties with the 1871 Census of British India, noting that the former was uninterested in identifying and labelling populations within narrow categories, whereas the latter sought to create a new taxonomy of Indians³. The colonial state’s investment in these ethnographic efforts was premised on European anxieties about governing alien territories. Understanding Indians through a taxonomy created by the British themselves allowed them to distinguish “governable” Indians from “ungovernable” Indians and created a new socio-legal reality for the colonized to navigate within. Whereas “governable” Indians were allowed to advance within the colonial state’s machinery and avail the state’s services, “ungovernable” groups were designated as “criminal” and had to be policed accordingly. The khwajasira community was appropriated as such an ungovernable tribe, and that historical legacy of violence continues till date.

The khwajasira community consists of an assortment of predominantly femme expressive Assigned Male at Birth (AMAB) bodies⁴. Members of the community belong to the khwajasira culture and its intricate quasi-familial systems, rather than identifying with an essentialist gender category, a hallmark of Euro-US queer praxis. This distinction is demonstrated by the difficulty in translating the term “khwajasira” into English. Khwajasira literally translates to “the home’s caretaker,” emerging from the khwajasiras’ occupation as custodians of the women’s quarter in noble households in South Asia. Whereas “transgender” inscribes a literal definition of the body upon the body, khwajasira is a term that evokes a culture, history, and community, rather than

³ Appadurai, A. 1993. "Number in the colonial imagination." In *Orientalism and the Post-Colonial Predicament: Perspectives on South Asia*, by Ridge Brecken and P Van der veer, 314-343. Philadelphia: University of Pennsylvania Press.

⁴ Khan, F A. 2014. "'Khwaja Sira: 'Transgender' Activism and Transnationality in Pakistan.'" In *South Asia in the World: An Introduction*, by S S Wadley, 170–184. Routledge.

describing a body. In pre-colonial South Asia, the khwajasiras were living their lives as the “third sex” by virtue of their gendered expression and sociality. Yet, British India’s 1871 Census relied upon a rigid gender code predicated solely upon biological sex –understood by British colonial machinery as the male-female binary⁵. This fundamentally displaced the many indigenous South Asian gender-sexuality regimes that were conceptually built upon fluid gender expression.

This gender categorization and categorical elimination of an entire indigenous gender-sexuality regime has obvious eugenicist and racist contours. The British struggled to comprehend ambiguity, particularly “ambiguous” bodies that fell outside the Anglo-Saxon heteronormative gender binary. Gender had to be marked visibly on the body in the form of genitalia because for the colonizers, a “sub-human” Indian’s profession of their own gender could not be trusted. In their efforts to assert white supremacy, Europeans increasingly began associating “appropriate” gender expression with biological sex, considering it a feature of a civilized society. Fluid and queer gender expressions, hence, became criminalized in the colonies as well as the metropole⁶. Colonial doctors were obsessed with khwajasira bodies, chronicling their “abnormal” bodies, and offering these tales as evidence of Indian, and Muslim society’s sexual depravity⁷. This demonization served the purpose of asserting European civilizational superiority, and therefore legitimizing colonial rule. During these medical examinations of “eunuchs”, colonial surgeons would find an assortment of bodies: intersex persons, castrated persons, non-castrated persons, and gynecomastia. This variety further fuelled colonial anxieties regarding khwajasiras, leading to the infamous “hijra panics” in Awadh that saw an intense police and judicial crackdown on the community in the northern regions of British India. During these hijra panics, the findings of these medical examinations were presented before judges to encourage state action against the community. The subsequent outcome of these hijra panics was the promulgation of the ⁸Criminal Tribes Act (CTA) of 1871 by the Raj⁹.

Though numerous scholars have discussed how this legislation inadvertently targeted certain “tribes” and castes across South Asia, such as the Mirasi and Kanjar, few have discussed how the CTA sought to commit cultural genocide against the khwajasiras. Indeed, the CTA’s ¹⁰preamble specifically states that the law sought to “rid” India of the hijra “menace.” This law empowered

⁵ Cary Gabriel Costello, *Beyond Binary sex and gender Ideology*, December 2019 <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780190842475.001.0001/oxfordhb-9780190842475-e-14#oxfordhb-9780190842475-e-14-bibliography-12>

⁶ Stoler, Anne Laura. 1995. *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*. Durham, London: Duke University Press.

⁷ Hinchy, Jessica. 2019. *Governing Gender and Sexuality in Colonial India: The Hijra, C.1850-1900*. Cambridge, New York: Cambridge University Press.

⁸ (CTA) 1871 <https://ccnmtl.columbia.edu/projects/mmt/ambekar/web/readings/Simhadri.pdf>

⁹ Hinchy, Jessica. 2019. *Governing Gender and Sexuality in Colonial India: The Hijra, C.1850-1900*. Cambridge, New York: Cambridge University Press.

¹⁰ Gandee, Sarah, (Re-)Defining Disadvantage: Untouchability, Criminality and ‘Tribe’ in India, c. 1910s–1950 <https://journals.sagepub.com/doi/pdf/10.1177/0257643019900089>

the newly formed Indian Imperial Police to specifically target key facets of khwajasira culture. For instance, travelling between different shrines and villages for collecting alms was a vital source of income for khwajasiras, carrying spiritual and cultural significance, and maintaining inter-community bonds. The CTA sought to ban the travel of people perceived to be “eunuchs”, hence further disrupting the social fabric of khwajasira existence.

Conclusively, the British effectively relegated khwajasiras to the status of non-citizens in the modern colonial state through three measures: By establishing a rigid gender binary through the ¹¹1871 Census; Designating “appropriate” and “inappropriate” gender expressions incompatible with indigenous gender-sexualities, and 3). Criminalizing khwajasira cultural practices through the CTA. Unfortunately, this status did not change in the newly independent nation states of India and Pakistan, even after the departure of the British.

I. THE (MIS)GENDERED EXPERIENCES OF THE POST-COLONIAL NATION STATE

The nation state insists upon a national identity that everyone must conform to, otherwise they fall out of the nation state’s community, and thus protection. It would make sense to conclude that the khwajasiras find themselves displaced in contemporary South Asia because of the gender binaries of the nation state, which leaves no place for people whose gender expression is ambiguous or inordinate. All communities outside the nation state’s imagined ideal must attempt to join the nation state’s community to interact with it and to avail the advantages of the state-citizen social contract. Otherwise, the community shall remain isolated, and be seen as sub- human. Not only will they not be owned by any nation, but they will also be vulnerable to abuse by all nations as nationless people.

Recognizing this, human rights advocates worldwide have tried to present the rights discourse as superseding the nation states, charting a map for how nationless communities can become a part of a nation. This allows for the guarantee of human rights to all ¹²“persons” regardless of the character of the state where they are “citizens.” In other words, through international charters, such as the Geneva Conventions and the United Nations Declaration of Human Rights (UNDHR), a global standard for what a human right ought to be emerged; one that is, supposedly, universally applicable. Since these rights are assumed to be absolute standards, they are supposed to be used by activists to compel nation states to meet these standards through legislative and policy reform for its citizenry. This necessitates citizenship itself as a universal human right; indeed, ¹³Article 15 of the UNDHR states that all “humans” have a right to “citizenship,” and it is this article that is used to legitimize the indigenous struggles of stateless people.

¹¹ p. 57, Jessica Hinchy *Governing Gender and Sexuality in Colonial India: The Hijra*, c.1850–1900

¹² Britannica, T. Editors of Encyclopaedia. "Citizenship." Encyclopedia Britannica, September 3, 2020. <https://www.britannica.com/topic/citizenship>.

¹³Article 15, the UNDHR, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

These international “laws” are considered vital to ensure the respect of citizens by all nation-states, even though the who-protects-whom-and-how is framed within a Euro-US modernist framework. This underscores that nation states have vested agendas emerging from their biopolitical majorities and minorities, and these overarching international human rights are needed to ensure that no state would breach their citizen’s rights. By establishing fundamental human rights as foremost in the political order, all people are theoretically assured citizenship rights.

However, Mahmood¹⁴ discursively demonstrates how Euro-US biases and concepts underpin these international “laws”, specifically how ¹⁵Article 18 pertaining to “religious freedom” was framed according to the Protestant and Evangelical lobby in the United States. Similarly, while examining international development discourse on gender, Rao writes how the World Bank’s assessment of the economic impact of “homophobia” on the GDP of India was also marred by such universalist claims, particularly when they assumed that the lesbian “wage premium” (a Euro-US queer phenomenon where lesbian women have higher incomes than their heterosexual counterparts on average) also existed in India, discarding the caste-ist and gendered reality of queer women in India¹⁶. As such, these “laws” are less universally applicable and more neo-colonial, making them inadequate for native-informed “human rights” frameworks. With this inadequacy in mind, Arendt offers an alternative framework for emancipating “minorities” by arguing that it is not the rights’ discourse that grants people citizenship, but rather citizenship itself that grants people rights¹⁷. Once the fair status of a citizen is conferred, it allows the citizen in question to interact with the nation state since the social contract applies to them as well, allowing new possibilities for indigenous people’s “rights” that are locally informed instead of being conceptually driven by Euro-US paradigms. Arendt¹⁸ explains,

“If a tribal or other "backward" community did not enjoy human rights, it was obviously because as a whole it had not yet reached that stage of civilization, the stage of popular and national sovereignty, but was oppressed by foreign or native despots. The whole question of human rights, therefore, was quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one's own people, seemed to be able to insure them.”

She challenges those who place rights above national law, explaining that even in native tribes, some people were oppressed in their social orders. For oppressed people to become equal to

¹⁴ Mahmood, Saba. 2016. *Religious difference in a secular age: a minority report*. Princeton, NJ: Princeton University Press.

¹⁵ Article 18, the UNDHR, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁶ Rao, Rahul. 2020. *Out of Time: The Queer Politics of Postcoloniality*. New York: Oxford University Press.

¹⁷ Arendt, H. 1958. "The Perplexities of the Rights of Man." In *The Origins of Totalitarianism*, by H Arendt, 290-302. Cleveland: The World Publishing Company.

¹⁸ Arendt, H. 1958. "The Perplexities of the Rights of Man." In *The Origins of Totalitarianism*, by H Arendt, 290-302. Cleveland: The World Publishing Company.

everyone else, they needed national emancipation to believe that they possessed the ability to become equal. To that, there needed to be a government willing to recognize them as citizens and willing to offer a modicum of sovereign protection so that they could advance their rights.

Arendt further explains that the loss of human rights is correlated with the loss of national rights. So, the “rightless” try to make themselves a part of a nation and develop strong community bonds to counter discrimination unitedly. This is starkly reflective of the khwajasiras, who have developed strong networks that allow them to stay protected in a society violently hostile to them. It also explains why they regularly repeat that they are “Pakistanis” and entitled to the same rights and privileges as other citizens. Even the fact that khwajasira activists sought protection from the nation in the form of a bill is demonstrative of how important the role of the nation state was to the community and how they clung to their national identity. After all, colonial policies had already relegated the khwajasira community of Pakistan to the status of a “rightless” community as it fell outside the community of the nation state. Reverting this status of khwajasiras in Pakistan, and their subsequent position, required them to first be seen as citizens of the nation state.

However, the modern national/colonial state is a gendered experience for its citizens. Nagel writes how the nation building process is one of masculinizing where women appear as supporting characters¹⁹. Yet, despite their supposed role as secondary characters on the national stage, national and international politics revolves around them. Since the nation is repeatedly described as a “family,” the figure of the ideal national woman, following her duties in supporting the men she is related to, becomes not only her personal duty as a woman, but her national duty, as well. As the nation would not be strong without women’s nurturing roles, she also simultaneously becomes the site of conflict; a “man” must protect “his” woman, and by extension all the nation’s women, against the barbaric or perverse outsider. Any “man” not “man enough” to do this is not only weak but is treasonous. Evidently, this gendered national narrative is fundamentally exclusionary for the khwajasiras.

Fatima Jinnah, widely known as Madar-e-Millat, or “Mother of the Nation,” is idealized within national narratives as the hard-working woman who sacrificed her personal life, her “womanhood”, and her dental career to support her widowed brother in his house. Fatima Jinnah was active during the Pakistani separation movement, was a presidential candidate against the military dictator Ayub Khan, and has significant anti-establishment contributions to politics post-independence. But this domestication of her overlooks her political mettle and presents her as the woman who, in supposedly helping the men in her life succeed by offering “free” care, also helped Pakistan. This is evident of the gendered nature of the Pakistani national ideal where a citizen must be eulogized within the gendered binary framework of masculine strength and feminine support, fundamentally eliminating all occurrences of gender-variant existence, resistance, and patriotism.

This compels the nation state and its various enforcement mechanisms to view inordinate AMABs as displeasing failures for the nation. The refusal of the state to recognize khwajasiras according

¹⁹ Nagel, J. 1998. "Masculinity and nationalism: gender and sexuality in the making of nations." *Ethnic and Racial Studies* 21 (2): 242-269.

to the gender or sex they identified with and their established role in the South-Asian social fabric was in effect, a refusal of the state to recognize khwajasiras as gendered-citizens, khwajasira households as families, and their affective contributions within their households were never romanticized into necessary gendered national ideals. Thus, khwajasiras could not get their identification cards made as khwajasiras, and that forced them in participating in the new nation-society as dysfunctional “men”, that were at best unnecessary for the nation state and at worse a social and moral risk.

This is a legacy of the 1871 Census, which created a social map of India, constructing majorities and minorities where there were previously none. To participate in this new South Asian society, a body had to be inscribed within any of the identities created and recognized by the state. This social map is an arena that the state, whether colonial or nation, wants to assert its supremacy over because it obtains its legitimacy and security by controlling it. To this end, forcing people into certain categories on this social map is central to modern South Asian governmentality. This map reflects what structure the state believes will be the most controllable for its specific needs, part of which is projecting what it believes is its ideal society. Pushing gender inordinate and queer bodies into a gender binary, or eliminating them altogether, was a hallmark of all colonial states. Khwajasiras, too, were forced into the male/men “identity” by virtue of their “biological sex,” taking away the community’s agency as citizens in deciding what role it wished to occupy in this social map; while, simultaneously, rendering their role in historical indigenous gender-sexuality regimes as null and void.

II. BETWEEN LOCAL AND GLOBAL: THE CONTESTED MECHANICS OF “TRANSGENDER” EMANCIPATION IN PAKISTAN

After a ²⁰Supreme Court ruling in 2009 that declared that the legislature must make provisions for khwajasiras to be recognized as the third gender on the national identity card, there was a shift in the community’s rightless status²¹. Although the ruling used the colonial-era term “eunuch” to describe khwajasira bodies, it established that khwajasiras are recognized by the state as citizens with a unique gender identity beyond the male-female gender binary – granting them recognition as citizens on their terms²². This allowed khwajasiras to now engage with the nation state while

²⁰ Saleem Shaikh, and, Sughra, Tunio, Pakistan's transgender rights law - a 'battle half won' Thomson Reuters Foundation, March 21, 2018

²¹ Jajja, S. 2015. "Unequal Citizens." *Herald*. Karachi, 19 March. herald.dawn.com/news/1152774.

²² Redding, J A. 2015. "Khwaja siras and the state (dis)belief." *Tanqeed*. March. www.tanqeed.org/2015/03/suspect-genders-khwaja-siras-and-state-disbelief-tq-salon/.

being seen for who they are. Since then, the khwajasiras worked to advance the principles of this ruling until the landmark Transgender Persons Act was passed in 2018²³.

Receiving this recognition is instrumental in decolonizing the legacy of the CTA and British rule. Arendt explains that if a people lost their citizenship, they suddenly fell outside the community of all nations. This is because suddenly, no country would claim ownership of them and therefore, they would not have any of the human rights guaranteed to citizens by any nation. Although the examination of international refugee policy is beyond the scope of this paper, we highlight this paradox to illustrate its unique effect on khwajasira rights in the “international” context. The khwajasira community is especially vulnerable in this respect as its identity and culture is unique to South Asia and is not present anywhere else. Therefore, it has been frequently a victim to violent incidents abroad, especially in the Middle East²⁴ (Aurat Foundation 2016)²⁵. If human rights were universally applicable, rather than being locally particular, then this dissonance would not exist. Precisely because this is not the case, the protection of a community in a nation as the nation’s own community is vital so that the infringement of a citizen’s rights by another nation is also considered a violation of the “parent” nation’s sovereignty – thereby, guaranteeing the citizens safety. Indeed, the recognition of khwajasiras as citizens and the shift in the conversation surrounding them has now made it possible for khwajasira scouts to go to locations legally hostile to gender inordinate people, such as Saudi Arabia – all because they now have the Pakistani state’s protection²⁶.

Our assertion is complemented by Asad’s arguments who states that the nation state is inherently secular, but what secular means is ambiguous and hard to determine. Secularism’s push for universal equality results in inequity because for there to be equals, there must be unequals²⁷. Asad presents the example of contemporary Judeo-Christian Europe’s secular hesitance to grant an equal say to ‘illiberal’ Muslims as evidence. Recent moves by the Hindutva government to marginalize Muslim populations in an otherwise secular India are also reflective of this assertion. Similarly, Pakistan’s push to create “equality” among its entire Muslim population to solidify and legitimize its national identity has come at the expense of the safety of the Shia community²⁸. Evidently, there

²³ Transgender Persons (Protection of Rights) Act, Gazette No. 4944, pp 274-281 (2018) (codified as Act No. XIII of 2018)

²⁴ Walker, P. 2017. "Two transgender persons 'tortured to death' in Saudi Arabia." *Independent*. 3 March. www.independent.co.uk/news/world/middle-east/transgender-pakistani-saudi-arabia-tortured-death-amna-meeno-11-custody-lgbt-rights-human-a7607446.html.

²⁵ Aurat Foundation. 2016. *Silent No More: Transgender Community in Pakistan*. Islamabad: Aurat Foundation. <http://af.org.pk/gep/images/GEP%20Gender%20Studies/Transgender%20Community%20in%20Pakistan.pdf>.

²⁶ Kanso, H. 2018. "Pakistan's first transgender scouts compete to attend Hajj in Mecca." *Reuters*. 23 February. www.reuters.com/article/us-pakistan-haj-transgender/pakistans-first-transgender-scouts-compete-to-attend-hajj-in-mecca-idUSKCN1G704G.

²⁷ Asad, Talal. 2018. *Secular Translations*. New York: Columbia University Press.

²⁸ Devji, Faisal. 2013. *Muslim Zion: Pakistan as a Political Idea*. Cambridge, MA: Harvard University Press.

is something about the nation state that makes it inherently exclusionary, not despite secularization but through it.

According to Arendt, a highly developed political sphere eventually becomes suspicious of the private since the former is about equality and the latter about diversity. In other words, the nation state establishes a certain gendered behavioural ideal that all its members must conform to in public – before each other, and in front of ‘the Outsiders’. Conversely, it relegates all diverse crowds to the private sphere, unable to engage in the public sphere without state approval. Since this diversity in the private sphere does not match with the nation state’s own ideal for itself, the disconnect makes the state worried about the ‘power’ of the private sphere in threatening the hypothetical stability of the public one, because the private is a territory it cannot control.

According to Asad, it is the secular doctrine of liberalism that makes nation states exclusionary like this, and not the nation state itself. Secularism insists upon a certain kind of behaviour within the public sphere, and a different kind in the private. People who are allowed to participate in the public sphere can be participating citizens. However, people like the khwajasiras who were not allowed to be a part of the public sphere were wholly incapable of presenting their interests and being recognized as equal citizens. Asad’s arguments lead to the conclusion that the public sphere must be expanded to allow the “private” to come out and be an active participant in the nation state, too.

Indeed, the work of Khan²⁹ can be interpreted as demonstrating this; he explains how many khwajasira rights’ activists actively present themselves as very visibly Muslim to legitimize their status as Pakistani citizens. Scholars have highlighted how the normative Pakistani citizen is imagined as someone who can be visibly marked as a Muslim, based on certain tangible signifiers and idiosyncrasies³⁰. In other words, all Pakistani citizens must “behave” like a certain kind of anti-spiritual, generic Muslim, regardless of their professed faith. This is something that not only the state, but Pakistani citizens themselves expect of themselves due to the hegemony of this narrative. To satisfy this necessary qualifier for being Pakistani, some khwajasira activists have presented themselves as Muslims in compliance with the doctrine of the public sphere thus becoming a part of Pakistan’s collective culture and heritage. By illuminating themselves as a part of Pakistan’s Islamic national identity, khwajasiras attempt to acquire their rights and protection through their appeal to the sensibility of the normative public sphere. As such, Khan’s work demonstrating khwajasira activists’ identification with Islam and Pakistan was not as much an attempt to demonstrate that they were a part of the Pakistani national identity as much as it was an attempt to show that they were also citizens of the country, and therefore had due rights that had

²⁹ Khan, F A. 2014. ““Khwaja Sira: ‘Transgender’ Activism and Transnationality in Pakistan.”.” In *South Asia in the World: An Introduction*, by S S Wadley, 170–184. Routledge.

³⁰ Zaman, Muhammad Qasim. 2018. "Introduction." In *Islam in Pakistan: A History*, by Muhammad Qasim Zaman, 1-13. Princeton, NJ: Princeton University Press.

to be guaranteed³¹. This also frames their plight in the normative gender-binary where the masculinized state now must step in to protect the weaker third gender.

This subversion of the nation state's gender-binarized character is precisely what the Transgender Persons Act tries to achieve. The entire document appears to be designed to enable khwajasiras to navigate Pakistani public life without threat, harassment, or obstacles. Indeed, there is a section titled³² "Right of Access to Public Spaces". The promised, and unfulfilled, gender sensitization of government employees, and especially the police (which has frequently been accused of harassing and assaulting khwajasiras), is demonstrative of the state's own commitment to facilitate the khwajasiras' integration into the public sphere.

We thus establish that all this reform has only happened because of the nation state essentially granting citizenship rights to the khwajasiras, and not by the khwajasiras' appealing to a higher form of international human rights. Going by popular reform rhetoric, the khwajasiras should not have been able to do this at all since there is very little recognition of the rights of gender non-binary people in most of the world, let alone in the unsecular Islamic Republic of Pakistan. However, the khwajasiras lobbied to get the Transgender Persons Act approved unanimously in the Parliament and with the assent of the Council of Islamic Ideology. This ruptures the popular belief that gender-justice and gender-sexuality reform is 1). Impossible in Muslim states, and 2). Must be based in a secular framework. Indeed, Pakistani khwajasira feminists have remained ambivalent towards Westernized human rights' campaigners – primarily because the Western "LGBT" narrative is fundamentally incompatible with both the khwajasira experience and indigenous gender-sexuality regimes in South Asia. As such, the community had no external reference point, and achieved its desired status in Pakistani society all by itself without taking assistance of most international rhetoric, especially while lobbying legislators.

Throughout the document, we see the government committing to being a defender of khwajasira rights. They are recognizing the community for who they are as a gender minority, as well as committing to³³ facilitate their participation in elections, which is symbolic of their new status as full-fledged Pakistani citizens. Elections and identity cards were foremost to the khwajasiras' efforts and are demonstrative of their desire to be seen as citizens of Pakistan. This altogether makes it obvious that the existing status of the khwajasiras in Pakistan was enabled through the obtainment of citizenship rights first, thus enabling them to seek other citizenship privileges later. Once the 2009 Supreme Court ruling paved the way for them to be recognized by the government

³¹ Khan, F A. 2014. "'Khwaja Sira: 'Transgender' Activism and Transnationality in Pakistan.'" In *South Asia in the World: An Introduction*, by S S Wadley, 170–184. Routledge.

³² Section 14, Chapter 1, Transgender Persons (Protection of Rights) Act, Gazette No. 4944, pp 274-281 (2018) (codified as Act No. XIII of 2018)
http://www.na.gov.pk/uploads/documents/1526547582_234.pdf

³³ Section 11, Chapter 1, Transgender Persons (Protection of Rights) Act, Gazette No. 4944, pp 274-281 (2018) (codified as Act No. XIII of 2018)
http://www.na.gov.pk/uploads/documents/1526547582_234.pdf

outside the gender-binary, only then could they demand a space for themselves in the public sphere and government protection on their own terms. Furthermore, this was an achievement on the part of the khwajasiras achieving equity in Pakistani society for being recognized for who they are, in contrast to secular equality between the two sexes, by lobbying for their different status to be a part of the public sphere³⁴.

The newfound citizenship of the khwajasiras has granted them the legitimacy they sought to further advance their interests in Pakistani society. Moving forward, the Pakistani khwajasiras proceeded politically within this liminal conflict to define “transgender” in the Act— where the secular character of the nation state forces religious, spiritual, and otherwise non-secular discourse to be translated into secular discourse, so that it could be understood by the public sphere of the state and transposed into governmental actions.

As we have already noted, transgender does not translate to khwajasira. Yet, the Transgender Persons Act defines “transgender” in Chapter 1, clause 2(n) as if it fit the definition of khwajasira. “Transgender” means something very different in Euro-American policy discourses than what it means in this post-secular bill of rights. We argue that the word transgender in the Act is a substitution for khwajasira, and not a translation. This is demonstrative of how translations between the native private and the non-native public, a leftover of colonial legacy, is challenging but possible. Now, khwajasiras will have to work on translating their other private diversities into public equality while negotiating how much agency must be relegated to the state in this newfound state-citizen contract. Evidently, none of this would have been possible without first obtaining citizenship rights within a hostile post-colonial state, while simultaneously averting the risk of being further alienated through a rhetorical equation with the Western foreign by the Muslim right-wing.

CONCLUSION

In demonstrating the practicality, novelty, and viability of post-secularity as both a modicum and paradigm of legal and social reform, we attempt to highlight the gaps in secular reformist thinking. Through this assertion, we are furthering the process of decolonizing gender-justice and legislative reform, where indigenous regimes of gender-sexuality are revisited, reinvigorated, and then repurposed in a previously hostile and gender-binarized nation state. We hope that this unhinges the current discourse on human rights in the “developing world” where the risk of failure in reform is often high. Activists in such countries, including Pakistan, navigate a very tight space. On one end they must argue for human rights with a post-colonial and post-conflict nation state that suffers from post-traumatic amnesia of history and concurrent anti-native bias. On the other end they risk being ironically labelled as foreign, anti-native, and anti-national, despite having legitimized claims to cultural nativity and historical oppression. The emerging pessimism in such a political setting is understandable. However, we argue that presumably impossible gender-sexuality reform

³⁴ Asad, Talal. 2018. *Secular Translations*. New York: Columbia University Press.

in “third world countries” is not just possible, it is better when done through the paradigm of khwajasira feminism. We hope that this elevates the praxis and foundations of khwajasira feminism in South Asia, where thus far the rhetoric of “transgender rights” has been limited to a subheading under “women’s rights”, and activists continually sought to appropriate and translate Western rhetoric to disastrous ends. We argue that khwajasira feminism, and feminists, are central to demonstrating peaceful and reconciliatory reform on volatile subjects in contemporary South Asia, and their struggle has lessons for many in policy to follow.