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Unveiling discrimination: A critical analysis of transgender laws and the marginalization of hijras in the Indian subcontinent

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Abstract

This article examines the historical and legal marginalization of the hijra, a third-gender community in South Asia, with a particular focus on the Indian subcontinent. Utilizing a postcolonial theoretical framework, the article analyzes contemporary lawfare dynamics between hijra and transgender activists in India and Pakistan. The study integrates gender and class analysis to explore key legal developments, drawing on examples from both colonial and contemporary legislation in India and Pakistan. The article argues that despite increased legal recognition of transgender rights, hijra remain marginalized as transgender activists seek acceptance as members of the middle class, often at the expense of hijra communities. By exploring legislative interventions and the narratives around activist endeavors, lawfare is analyzed at two levels, legislative and social, demonstrating how transgender activism can perpetuate discrimination against hijras in both Pakistan and India. The analyses underscore the complexity of alliances within genderqueer groups in postcolonial South Asian societies, challenging the assumption that these groups are natural allies. Ultimately, the article reveals the complex intersection of gender, class, and legal strategies, critiquing the role of lawfare in perpetuating social divisions and calling for more inclusive approaches to gender rights.

Keywords: hijra, transgender, third gender, lawfare, India, Pakistan

1. Introduction

Hijra, a historically recognized third-gender community in South Asia, have played significant roles in both religious and social spheres for over 2000 years. Most hijra are generally understood to be born as intersex or assigned male at birth, sometimes undergoing castration (Kalra 2012b). Hijra wear female clothing, makeup, and jewelry (Iyer 2009). Though they consider themselves to be neither male nor female, many hijra prefer to use the pronoun she or the equivalent in regional vernacular languages (Reddy 2005), although neutral pronouns are favored by some (Ghalzai 2020) and others switch between female and male pronouns (Pamment 2010).

In India, hijra are a common sight in residential and commercial areas alike. Hijra play a role in religious contexts, as they are considered to have the power to bless or to curse important life passages, including births and weddings (Nanda 1999). They tend to work within a small group when performing rites outside of households that have experienced the birth of a baby. Hijra will approach a household from the outside lane or street, remaining at the door while they sing and dance. Part of the routine typically involves the threat to raise their skirts and expose themselves to the middle-class homeowner unless the family offers up some payment (Pamment 2010). In addition to offering blessings and good fortune, the hijra ostensibly come to the household to inquire if a baby may be a hermaphrodite—intersex—and to see if the infant's natal family might surrender them to be raised within the hijra community (Reddy 2005).

Like their cisgender counterparts, transgender people in India and elsewhere in the global modern world live in family units, including natal and extended families, nuclear families, and, like other professional people, with roommates (Hines 2007; Bakshi & Dasgupta 2019). Hijra, in contrast, usually leave their birth families and become part of a household of other hijra (Reddy 2005). Such hijra households are headed by a guru with the others as followers (Nanda 1999). Opting for such guru-disciple units—highly denigrated under British colonialism (Hinchy 2021)—they typically leave their family support networks and resources behind, which contributes to the painful marginalization of hijra outside mainstream society.

Historical contexts and social roles played by the hijra have changed over the centuries, reflected in varying subcategories as well as shifting and relative degrees of privilege and prejudice. Under Mughal (1526–1858) and British (1757–1947) governments, the legal status of hijra fluctuated. For example, they carried out important roles in the courtly life of Muslim empires, but under British rule, hijra were legally criminalized (Hinchy 2021). After the end of British colonialism in 1947, the independent nations of Pakistan and India have alternately enacted and repealed laws affecting the political rights and social standing of hijra (Reddy 2005). These legal and legislative acts include India's 2014 legal recognition of hijra as a category of third sex individuals, in response to the Supreme Court's *National Legal Services Authority vs. Union of India* and Pakistan's 2018 Transgender Persons (Protection of Rights) law.

Most recently, movements in South Asia to affirm transgender rights, along with similar movements for dignity and social inclusion, have ironically compounded the challenges the hijra face (e.g., Puri 2016; Hossain 2017). We might expect that greater social, political, and legal acceptance for gender nonconforming individuals, both globally and across the nations of the Indian subcontinent would, by extension, also improve the social status of hijra, and thus facilitate a rise out of the poverty and marginalization that plague their communities. This article, however, examines two critical events showing how societal anxieties against hijra are leveraged in both legislative efforts and activist movements.

The goal of this article is to examine how gender lawfare is used by both the State and activist movements in the cultural-historical environment of the Indian subcontinent, taking transgender versus hijra dynamics as a focal point in exploring legislative interventions and social movements. Following Wilkerson's framework for analyzing caste (2020), which identifies caste as an underlying infrastructure that perpetuates social hierarchy and inequality, this article lays bare the techniques, the effects, the history, and the consequences of lawfare in societies characterized by deep hierarchies and rigid and enduring structures that dictate the roles and status of individuals within society, exacerbated by colonial exploitation. An emphasis is placed on how

well-meaning laws are deeply influenced by the reigning societal anxiety and moral panic directed at hijra, usually associated with sex work (Nanda 1999), and how, in fighting back against the legacies of colonial legislation, transgender groups leverage the caste system and legal frameworks rather than critically expose their discriminatory roots and effects. In the case of the hijra, activists' lawfare strategies become almost a default consequence of how modern legal systems operate in postcolonial societies such as in Southern Asia. Despite the hijra's longstanding role in legitimizing global transgender movements (Ryan 2020), they find themselves increasingly marginalized when compared to affluent transgender groups striving for social integration. As visible bodies in public spaces, hijra have struggled to attain the same level of acceptance that wealthier transgender communities have managed to secure.

Aligning with the definition of lawfare provided in the introduction to this special issue (Monzó-Nebot & Wallace 2024), this article critiques legislative and activist efforts to improve transgender and hijra rights in India and in Pakistan. The introduction of this article provides an overview of the hijra community's historical significance and current marginalization in South Asia. Following this, the theoretical and methodological frameworks section explains the use of postcolonial theory, cultural anthropology, and narrative analysis to investigate the issue of lawfare. The third section explores the cultural and historical context of hijra, detailing their ancient origins, colonial disruptions, and present-day struggles. First, the legal changes imposed on hijra under colonial rule are examined against the background of how hijra figured into the courtly lives of the Mughal Empire (1526–1858), which ruled the Indian subcontinent prior to the British.¹ The inclusion of ethnographic insights into middle-class responses to hijra in public spaces provides examples of the

¹ One note on chronological terminology is important here. I use the nomenclature *India* when referring to the pre-Independence, politically-undivided subcontinent before 1947. After the 1947 independence, India refers to the nation-state of India, separate from the new nation-state of Pakistan which came into existence in 1947. South Asia is a post-independence policy term coined to refer to the entire subcontinent, to clarify its multi-country providence.

pernicious effects of systemic exclusion through microaggressions. Section four focuses on the analysis of critical events in the modern transgender movement in post-independence times, first in Pakistan and then in India, to which I apply a narrative analysis framework. Unravelling the tensions at play within such events, comprising the narratives of social movements and legislation, exposes beliefs and practices about transgenderedness within South Asian societies, helping to illuminate implicit biases, accommodations, fears, and cultural conundrums that lie at the root of developing legislative rights for genderqueer-presenting and genderqueer-identifying individuals. The discussion in section five synthesizes these insights, emphasizing the role of lawfare in shaping transgender rights at the expense of hijra communities. Ultimately, I conclude that laws and activism are, of course, foundational to the struggle for rights and recognition in modern democratic societies, and I problematize some of the legal changes and challenges which have helped define transgender lives and livelihoods.

2. Theoretical and methodological frameworks

My theoretical approach to the study of gendered lawfare draws upon the academic fields of postcolonial history, literary analysis, and cultural anthropology. Postcolonial studies are particularly relevant to the study of sexuality and gendered lawfare, as European colonialism was typically critical of local gender and sexual practices that ran counter to the metropole's imagined superiority, especially including its presumed heteronormativity (Han & O'Mahoney 2018). Colonial rulers passed legislation in an attempt to govern the sexual life of colonized men and women (McClintock 1995). A relevant example is the British relegation of India's once highly educated and highly compensated courtesans to the status of prostitutes (Oldenberg 1990), and the importation of British homophobia in the form of anti-sodomy laws. Such laws served to criminalize same-sex sexual acts (Arondekar 2009), and were especially facilitated by the Indian Penal Code (1860, section 377. Unnatural Offences).

Postcolonial literary theory (Said 1978 [2003]; Mani 1998) provides examples of how critics can read against the grain of colonial logic, examining absences and silences in the creation of narrative structure and discursive logics (Butalia 2000). This awareness of discourse analysis from postcolonial theory helps to situate contemporary issues of sexuality and power, including those related to the hijra, in light of lingering legacies of colonialism and imperialism. In terms of critical analysis, I draw from theoreticians who examine the creation and assertion of authority through narrative strategy (White 1990). In addition, cultural anthropology, with its emphasis on immersive ethnographic study, provides insights into how beliefs and behaviors are embedded in social life. It is especially valuable for analyzing moments of tension or “critical events” (Das 1995), which expose unresolved tensions within cultures, often rooted in both pre-colonial and colonial pasts. Finally, the ethnographic lens helps us to understand how transgender individuals and hijra situate themselves and each other against contemporary norms of respectability and vie for sexual citizenship.

When examining lawfare in the postcolonial context of India, this particular blend of frameworks is especially well suited on two grounds. First, during British colonial rule in India, the British simultaneously codified knowledge about social groups and subjected Indians to the disciplinary power of the colonial State. Governance was prioritized over an understanding of social organization, making lawfare a central tool of the colonial project. Second, the operative and discursive effects of speech acts—whether in legislation or within activist movements—can serve to disparage hijra while making claims for the rights of other transgender communities. These discursive statements are rooted in colonial legacies that intentionally undermine marginalized social groups in an attempt to impose legal norms of respectability.

Like my theoretical framework, my research methods are interdisciplinary. Using a historical lens, and cognizant of change over time, I combine narrative analysis with ethnographic participant observation. My goal is to examine the hijra through three scalar perspectives—legislative interventions, activist approaches, and everyday interactions—to identify social meanings that can help to interpret activists’ lawfare and how it leverages both moral panic and legislative lawfare.

In the analysis of this article, activist efforts in Pakistan to reform the role of hijra and a photo campaign in India to address the social stigma of transgender individuals, are placed under the spotlight along with the unintended consequences of both actions and their interaction with legislative frameworks. In exploring these critical events, I rely on the contextual and experiential framework provided in section 3 to conduct a narrative and visual analysis of the photos and written captions to invite interpretations about the implicit and explicit messages being sent to the audience of viewers. For Pakistan, personal conversations with one of the foremost spokespeople for transgender rights, including a formal presentation to an academic audience of professors and students, along with representations of her work in the media, provide insight into contentious issues dividing transgender and hijra in that country.

In addressing sensitive issues, including marginalized religious and sexual identity, it is important to reiterate my own respect for the hijra and modern transgender communities alike as they struggle for sexual citizenship. To take a critical perspective necessitates being cognizant of positionality: this includes my own, but this cognizance is especially essential when it concerns that of various actors and stakeholders in various transgender movements. As such, I bring to this article extensive ethnography done among middle-class Indians in urban areas (Hardgrove 2004). From these participant observations I provide an analysis of two moments I experienced with hijra in order to highlight my own perspective along with the precarious role of hijra in the Indian subcontinent, and to elucidate some of the everyday microaggressions hijra face in gaining acceptance in public life. In each of these two examples, my positionality was marked by middle-class privilege and participation in majority socio-linguistic groups, in Hindi in Varanasi and in Bengali in Kolkata (formerly, Calcutta). Experiencing participant-observation encounters with hijra while living in the Indian subcontinent helped me contextualize middle-class tensions toward hijra, as well as notions of respectability and acceptability, that exclude hijra from an inclusive public life.

I maintain that any academic's work reflects the conditions of one's own society, the world from which we write. As a cultural anthropologist and historian, I see my work as being also a history of the present. Stating these conditions

helps to bring biases and positionality to the forefront. As such, I wish to make one acknowledgment plain from the start. However imperfect, in many ways the South Asian legal frameworks on hijra and transgender are far more inclusive than the socio-legal space from which I write in the United States. Current state-level policy debates in some parts of my country run counter to the trends discussed later in this article. Rather than attempting to afford some protection, some state officials seek to eliminate the legal status of transgender people. These perceptions mark an appreciation of my object of study which coexists with its critical examination.

3. Cultural and historical context of hijra: Ancient traditions, colonial disruptions, and a disturbing present

This section aims to contextualize the hijra community vis-à-vis its deep historical roots, while also addressing the significant changes and challenges brought by colonialism and contemporary social forces. It is structured to first explore the ancient antecedents of the hijra, tracing their roles in South Asian cultures, religious practices, and social systems. Next, this section delves into the disruptions caused by British colonialism, when hijras were stigmatized and criminalized under new legal frameworks. Finally, the section transitions to the present-day struggles faced by the community, highlighting the marginalization they continue to endure in the face of modern laws and social movements, which sometimes exacerbate rather than alleviate their hardships. Against these historical and contemporary contexts, my ethnographic work illustrates the social norms that marginalize hijras in the present. The section frames the hijra's evolving identity and place within South Asian society.

3.1 Ancient antecedents: Literary and linguistic references to hijra in ancient India

By looking to the past, or to other cultures, to find historical or cross-cultural examples of nonconforming individuals, academics and activists seek links to

lineages of ancestors in establishing historical precedence. The example of hijra—often labeled India’s third gender—is frequently and readily referenced, highlighting its thousands year-old tradition and the casting of non-cis historical actors in leading roles (Vanita 2001).

Ancient texts written in Sanskrit, the literary language of ancient India, discuss a category of people known as *Tritiya Prakriti* or what is commonly now translated as the “third sex” (Wilhelm 2010). This third sex referred to in ancient times is a rather imprecise, broad categorization of people who are neither cis-female nor cis-male. Some of the third sex are men who have sex with men, practicing same-sex sexual acts. Others are feminine men who wait on aristocratic women (Wilhelm 2010). In her translation of the Kama Sutra sex manual, which presents examples of sexual activity on the part of masculine women and feminized men, Wendy Doniger uses the broader term “third sexuality” (Vatsyayana 2009). LGBTQ+ activists and scholars, including Ruth Vanita, have turned to the Kama Sutra to illustrate ancient precedents to same-sex love (Vanita 2001), demonstrating that non-heteronormative sexualities have long existed in Indian culture. Another interpretation of *Tritiya Prakriti*, rather than focusing solely on its categorization of individuals outside the male-female binary, emphasizes its connection to the concept of *shakti*, or creative feminine energy.

The ancient epic Ramayana, dating back two thousand years in written form, and older still in its oral traditions, depicts a group of hijra as the most stalwart adherents as Ram was cast out and banished from his kingdom. The transformation of Shiva into an androgynous half woman, half man, shows divine inspiration for those who defy any simple gender binary (Doniger 2009). In these ancient tales and texts, hijra are portrayed as loyal protectors and fierce warriors who fight off maleficent demons. In this epic literature, beloved across class and caste throughout India, hijra are among important forces of good. Across Hindu beliefs and practices generally, both male and female energies play an important role in the conceptions of divine powers. As such, hijra may well be among the world’s longest-standing gender nonconforming traditions, as documented in sources extending back thousands of years as oral narratives which later became written down in Sanskrit around 200–300 AD.

In a later period of history, Muslim rulers governed in India for over one thousand years (711 AD – 1858 AD), introducing new cultural, artistic, and governance practices that became mainstreamed across the subcontinent. During medieval times, transgender individuals played a role in Muslim courtly, aristocratic life, and became known as *khwaja sira*. The *khwaja sira*s were essentially eunuchs who lived in the women’s portions of the wealthy household known as *zenana*. The *khwaja sira* were not the same as *hijra*, and the two co-existed.

The *khwaja sira*s were male-identified and worked in a variety of capacities—as guards, attendants, military officials, and government administrators under the Mughal Empire (1526–1858) and for independent, princely states (Khan 2019). Like the *hijra*, the *khwaja sira*s also lived in chosen household groups, organized around a leader (*guru*) and students or disciples (*chele*) (Khan 2019; Hinchy 2021). As the Mughal Empire waned and British rule intensified across northern India, the *khwaja sira*s faded from prominence as a social group, with *hijra* remaining the umbrella term for people who were gender nonconforming.

A historical view of the evolution of and exact origins of the term *hijra* are less certain. The *Oxford English Dictionary* lists two definitions. The original use of the Arabic word, *al-hijrah*, referred to Muhammad’s journey to Medina from Mecca, signifying Muhammad’s departure from his non-Muslim community and the start of a greater Muslim geographical area.² The people who accompanied Muhammad were known as *muhajir*, part of a larger migration or crossing. The term *muhajir* was adapted in post-Independence times to describe the elite Urdu-speaking population of Northern India who migrated to the new nation of Pakistan after 1947, becoming cultural, linguistic, and political power brokers in the multilingual nation. In its second definition, *hijra* came into English from Urdu, and referred to castrated men, eunuchs, who were female-identified.³ In regional languages, including Marathi, the word *hijra* carries with it connotations of impotence.⁴ The connection between the

² *Oxford English Dictionary*, s.v. “Hijra (n.1), sense 1.a,” <https://doi.org/10.1093/OED/3648798859>.

³ *Oxford English Dictionary*, s.v. “Hijra (n.2), sense 1.a,” <https://doi.org/10.1093/OED/4691099695>.

⁴ *Oxford English Dictionary*, s.v. “Hijra (n.2), sense 1.a,” <https://doi.org/10.1093/OED/1039869515>.

two words is linked to its etymology, derived from Latin and Arabic, to refer to leaving or abandoning one's country.⁵ Being a hijra is, by definition, to cut all of one's ties to one's origins, and to enter into a liminal state which is necessarily apart from the family of origin.

One large gap in the historical knowledge about hijra becomes evident when tracing the change of the expression *third sex* to *hijra*, from Sanskrit to Persian and Arabic literature, as the term *hijra* gained prominence and took hold as the most common, operative term for the third sex. Scholars of Hinduism (Doniger 2009) generally agree that the hijra are the likely cultural heirs of the third sex in ancient literature, yet without a clear genealogy. Likewise, scholarship that can trace the lives of khwaja sira in Urdu and Persian history and literature would be helpful in understanding how that category of people coexisted with and differed from those called *hijra*. Such future lines of investigation remain open for scholars with appropriate language skills.

3.2 *The plurality of nonbinary gender traditions in South Asia*

The Indian subcontinent is a productive context to examine issues of lawfare for nonbinary people. The region is home to a multitude of intertwined traditions and texts associated with third gender and gender nonbinarism in multiple religious traditions, some of which date back thousands of years. As such there is no denial about the existence of people who find themselves outside of standard definitions of male and female. In fact, there is a long history of legislation, starting in colonialism, to regulate and to discipline genderqueer bodies and, in more recent times, to acknowledge, protect, and help communities find acceptance and attain human rights, along with sexual citizenship.

I locate my work within the larger movement for queer rights and the diversities, heterogeneities, solidarities, bridges, barriers, and animus that

⁵ *Oxford English Dictionary*, s.v. "Hijra (n.1), Etymology," November 2023, <https://doi.org/10.1093/OED/1064839200>.

one finds therein. Scholarship on the rich non-heteronormative religious texts and practices includes investigations of homoeroticism in ancient societies in religious traditions of Hinduism (Doniger 2009) and Islam (Almarai & Persichetti 2023). Work examining gender pluralities in contemporary religious traditions (Dutta, Khan & Lorway 2019; Ewing 2021; Meher & Acharya 2022) points to evidence of structural violence and complex needs yet unaddressed by social services falling behind legislative reform. These patterns of structural violence extend across the region, and are reflected in violations of human rights. For instance, in Bangladesh, such violations are common (Amanullah et al. 2022), particularly in the wake of “straightening” tactics deployed against bisexuals and other sexual minoritized people (Alam & Marston 2023).

In exploring queer rights, access to essential services like health care emerges as one of the most pressing concerns, including mental health and suicidal ideation (Kalra 2012a; Gomes de Jesus et al. 2020; Halli et al. 2021; Arvind et al. 2022). Sexual health issues abound, ranging from HIV/AIDS to access to hormone therapy (Rajueni et al. 2022) and gender affirmation care (Jain 2022). The politics of nonbinary bodies’ claiming public space (Atluri 2012), sexual expression and representation (Gairola 2019), and the medicalization and subsequent de- and re-criminalization of homosexual sex acts (Waites 2010; Chandran & Narrain 2016; Yadav & Kirk 2018) has been largely affected by South Asia’s long history of British colonialism and orientalism.

Beyond issues of healthcare access and representation, the legal landscape plays a critical role in shaping the lives of gender minorities. South Asian nations arguably have had the most ambitious legal reforms, ostensibly to protect the rights of third gender individuals. However, colonial legacies of homophobia, including stigma about sex work, have proven harder to extinguish. As Saria (2019) notes for India, the Transgender Persons (Protection of Rights) Bill (India. Government of India 2016) reinstates heterosexist bias by normalizing medical sex reassignment. Jain (2020) maintains that a mandatory pre-legislative review by stakeholders, including transgender and gender nonconforming people, would help prevent drafts of new legislation from failing the very people it is supposed to protect.

3.3 Being seen: Hijra in historical legislation in India

As the previous example illustrates, legislative frameworks have both protected and yet disciplined hijra and their bodies. It was during the period of British colonialism in South Asia that the beginnings of systemized lawfare against hijra took root. British legal systems and rulings were partly inspired by legal frameworks in the British metropole, including the importation of the practice of taking legal action against same-sex sexual activity among men, or sodomy (Indian Penal Code, section 377).

In colonial India, part of British lawfare toward colonial subjects was to document and solidify the distinctions between various castes and communities, fossilizing and cementing what was once a more flexible and ever-changing social hierarchy (Dirks 2001). The significance of this change is that identities that were once malleable became essentialized and reified in a fixed hierarchy. Entrenching stereotypes and power imbalances, the change made it much harder for groups to improve their overall community image vis-à-vis other groups.

This heightened importance of caste and community can be seen in loan words from Hindi into English, including *pariah* or *thug*, which are used as pejoratives to describe social undesirables. Before British rule, pariah was the Tamil-language name of low-caste hereditary drummers excluded from religious festivals. Thugs were professional bandits who the British felt were essentially prone to violent acts (Lloyd 2008). The modus operandi of British colonialism reshaped local identities into stereotyped sociological groups enshrined in legal instruments, thus using lawfare to codify British ideological fantasies (see the introduction) and disadvantage local subjects.

Much like the thugs, India's transgender population were also targeted as having essentially violent tendencies and criminal intent. The British in India used the umbrella term eunuch to describe transgender people. Jessica Hinchy's study of hijra across northern India during colonial times (2021) demonstrates the negative and very cruel effects of British rule on transgender people. The British categorized all gender nonconforming people under the

category of *eunuch* in drafting English-language legislation. Furthermore, by defining this heterogeneous group as a criminal tribe, under the Government of India Criminal Tribes Act (India. Government of India 1871), the British literally outlawed their very existence (Hinchy 2021). According to Hinchy, hijras' very existence and presence in public was construed as obscene and offensive, and devaluing them contributed to entrenching the caste system (Wilkerson 2020). Cross-dressing was seen as an act of intentional deceit and was criminally banned. To the colonial government and to elite men writing editorials to the newspapers, the figure of the hijra stood for lurid depravity, in that it was assumed that hijra routinely kidnapped, castrated, and enslaved Indian boys (Hinchy 2021). Such assumptions disseminated the internalized belief in the superiority of the upper caste, the colonizers, and the inferiority of the lower caste, the hijra, thus supporting the caste system (Wilkerson 2020). Furthermore, the guru-student structure commonplace to hijra living arrangements was considered to be a form of slavery, fundamentally incompatible with modern bourgeois respectability (Hinchy 2021). Being stigmatized as criminal under the British created a lasting association of undesirability and fearfulness toward the hijra.

Recent times have seen a shift in political will, and possibly in public sentiment. For example, in 2014, the Supreme Court of India established the right of people to choose the third gender as a legal status, which was an important victory in terms of the ability of hijra to represent themselves legally on government identity cards and other legal documents. However, scholars have noted that subsequent legislation in Pakistan, the 2018 Transgender Persons (Protection of Rights) bill, required applicants to produce a certificate from a licensed physician certifying that gender-reassignment surgery had taken place (Baumgart & Farooqi 2020). The requirement for this kind of paperwork raises numerous problems. Practically speaking, hijra are a medically underserved community, living at the margins of civil society. As people who scrape together a meagre living through day labor, the challenge of raising the money needed to see a doctor and get a certificate—along with a probable bribe, as Baumgart and Farooqi (2020) note—could be nearly insurmountable. The requirement reduces transgender identity to biology and,

of course, to people who were able to accumulate the funds to have surgery in the first place, which is financially prohibitive for the vast number of people who would opt for it. Of course, transgender men remain virtually absent in the conversation, almost entirely invisible even to activists (Baumgart & Farooqi 2020).

3.4 Finding rights for transgender people in Pakistan

Uzma Yaqoob, Executive Director of the Forum for Dignity Initiatives (FDI) based in Islamabad, is the country's leading organizer of transgender people in Pakistan. The goal of FDI is to promote both gender and sexual equality for gender nonconforming people. Despite the 1973 Constitution devoting several dozen articles to the protection of human rights, including gender, religion, caste, and creed, significant gaps remain in providing protections for the diverse populations under the umbrella term *transgender*. While transgender women are the most visible in Pakistani society, others who are gender nonconforming or transgender men are the least visible (Yaqoob 2023). Social stigma, discrimination, marginalization, and violence are common. Yaqoob cited the statistic that over 315 people had been killed in the last seven years (Yaqoob 2023). The violence often occurs in the context of sex work, where the victim is often accosted by a gang associated with the client. Typically, in these tragic situations, the client will refuse to pay, and will tease, harass, and eventually kill the sex worker (Yaqoob 2023).

The realities of lawfare in the operative definitions of transgender and hijra are far from merely semantic. The definitions and wording of legislation very literally could make the difference in seeking justice, especially when seeking emergency medical care. Yaqoob and her organization—in what became a cause célèbre—worked directly with a trans woman named Julie, who came to FDI for help in 2016 after being gang raped at gunpoint outside of Faisalabad, in east Central Punjab. According to a Rutgers photo essay, Julie was abandoned by her family, who rejected her gender nonconformity, at the age of ten. Only a brother and sister accepted her. In order to survive, she

worked as an entertainer by dancing at parties, engaging in sex work, and begging on the streets (Mehboob 2020). Julie wished to pursue legal justice but found no support for her cause until she approached FDI. The police refused Julie's request to register a complaint, which is the first step in the legal system, claiming that only women could be raped, and a transgender woman could not. The police asked her to leave, would not listen to her story, and would not administer a rape kit. A protest was planned in Faisalabad, but only a very few people turned out to support her. After blocking the road for two hours, the police eventually decided to file the complaint and to proceed with medical testing. The problem that Julie ran into was that there was nothing in the Pakistani legal code criminalizing the rape of transgender people. Yaqoob described to a reporter at *The Guardian* that the only recourse was to turn to a British colonial-era law that criminalized male same-sex sexuality (India. Government of India 1860, Section 377; Saleem 2016).

In addition to Julie's case, other dramatic cases of injustice towards transgender people have attracted public attention. A print story appearing on National Public Radio's website in the United States described the case of a transgender activist who was shot several times in public. The hospital staff lost valuable time debating whether to treat the patient in the women's ward or in the men's ward. In their indecision, she died (Ingber 2018).

These tragic 2016 incidents illustrate how the legal system, rather than offering protection, was weaponized against transgender individuals in both codifying fantasies that demonize them and in failing to implement potentially helpful legislation in critical situations. Clearly, the current code of law—a combination of colonial and post-independence Sharia law—did not have provisions for transgender people to find representation and rights. These cases of discriminatory lawfare—and many such others—resonated with many Pakistani intellectuals. The social alarm led the government of Pakistan to begin working on passing comprehensive legislation for transgender people. After an initial draft was prepared by a government representative, there were understandable complaints that members of the transgender community themselves were not consulted. The bill was later amended after input from the community.

3.5 *Ethnographic insights: Meeting and seeing hijra*

In addition to formally recognized, broad forms of discrimination that emerge from national legislation and public debate over hijra are the minutia of cruelties in everyday life and, to borrow the apt expression, death by a thousand cuts. Documenting the daily lives of hijra is a crucial step toward understanding how this beleaguered community persists despite suffering the systemic effects and generational trauma of lawfare. How do middle-class people engage with hijra in public life? What are the microaggressions that hijra endure in daily experiences? A growing number of ethnographers have done fieldwork among hijra in both Pakistan (Roy 2015) and in India (Reddy 2005), ground-breaking research work due to the precariousness of both hijra lives and livelihoods. Outside of academic researchers or sex clientele, it is highly unusual for the average person to associate with hijra in any public way unless they work in some kind of advocacy role or clandestinely seek services of sex work, which speaks to the degree to which the hijra are truly socially isolated. It is very different than the interactions people have across different castes, because even the people of the highest caste, such as a wealthy homeowner, would have normal, daily contact with the Dalit (former untouchable) servants who come into homes to clean and work.

The most familiarity the average person in India has with hijra is if a troupe of hijra were to show up for a birth or wedding, in which they would be paid and sent off as fast as possible. With modern high-rise living, even those types of encounters are increasingly more infrequent. But in daily living in South Asia, especially if one leads a middle-class existence and walks or takes public transportation, encounters with hijra are common, albeit liminal experiences. It is perhaps my positionality as an outsider to Indian culture—though with close ties in it—that has afforded me opportunities to engage with people not commonly part of mainstream society. While studying intensive advanced Hindi in the Ganges city of Varanasi (Banaras), I had the unprecedented experience of spending an hour with a working hijra as part of a group of international graduate students. The director of my language school arranged for weekly, Hindi-only speaking visitors to come and present to the class and discuss their

occupations. One week a hijra came to our school and discussed what it was like to work and live in the hijra community. Toward the end of the session, she began to sing and to suggestively lift her skirts above her ankles unless our group would pay, which of course we eagerly did, as part of the ruse. What struck me the most about this person was how impoverished and under-educated she was. The woman had only spent a few years in school before leaving her natal family and beginning to work. While living in Pune, New Delhi, and Kolkata, and during visits to Karachi and Dacca, I would see hijra on city streets and public transportation.

Years later, during three years of ethnographic fieldwork in India, I often rode on public minibuses which noisily sputtered down Kolkata streets. The buses were shabby, hot, humid, and crowded, costing only a few rupees to ride. Getting a seat was somewhat of a sport, often a spectator one. There were two doors to enter and exit the bus, which was a good thing when the bus merely slowed down rather than stopping for its passengers to scramble aboard. One day I jumped on and entered the bus through the second door, toward the back. As usual, many people were standing. To my amazement, a row of three seats was available, save for a woman sitting in the middle. Exuberant with this minor victory, I sat down next to her, taking a moment to catch my breath and take in my surroundings. After a few moments, I realized I was sitting next to a hijra, whose tall, angular body was clad in a neat sari. The fact that only a clueless foreigner, me, was willing to sit down next to a hijra spoke volumes. A rare, coveted, empty seat became a non-viable space for the more bourgeois-inclined members of middle-class Bengal society on board. Though I often engaged in light-hearted Bengal small-talk with female seatmates as a way of passing the time as the bus ambled down traffic-congested, bumpy streets, I knew enough that it was better not to speak to her. Often hijra strike an aggressive, defensive persona in public spaces outside of their performances. I did decide to stay seated, and considered the range of messages I communicated by remaining in the seat. Any intended message of solidarity, of acceptance and accommodation, likely fell on deaf ears. More than likely, most in the crowd would have assumed that I was naïve, did not recognize my seat mate for a hijra, and did not keep an appropriate distance from the imminent danger that a hijra would have signaled.

I provide this brief vignette as an everyday example of the uneasy socio-legal place of the hijra, who are part of the transgender population in the religiously diverse Indian subcontinent. Everyone on that bus, except for me, apparently, could instantly recognize the woman as a hijra. There was no trouble, either physically or verbally. I do not recall anyone making snide comments or remarks. This is perhaps what Indians and South Asians mean by their societies being “tolerant.” No one contested that the hijra claimed her seat, as is anyone’s right. And yet, no one else sat down next to her either. While I did make a move to claim space in her proximity, I, too, did not partake in the usual chit-chat that people engage in. My own default was that of my middle-class Indian counterparts. That ethnographic moment of tension, when creating a “cultural mistake” of sitting next to her, gave me valuable insight into why most middle-class people react negatively to and disengage from hijra.

4. Analysis of critical events

This section analyzes two critical events that illustrate the ongoing tension between hijra and transgender communities in South Asia, focusing first on Pakistan and then on India. The first case, one of legislative lawfare, explores the legislative efforts in Pakistan to protect transgender rights, highlighting the consequences of these reforms for the hijra, whose traditional identities and livelihoods are increasingly marginalized by State interventions. The second case, where lawfare is used by social movements, examines an Indian photo campaign, where transgender activists sought to distinguish themselves from hijra in their pursuit of middle-class respectability. These cases are presented in this order to emphasize the broader geopolitical and cultural dynamics at play in South Asia, showing how national contexts shape the specific forms of lawfare enacted against hijra. Together, they provide a comparative framework for understanding how legal and activist movements, despite aiming for inclusivity, can perpetuate exclusion within gender-nonconforming groups.

The critical event that I choose to analyze first refers to the post-independent nation of Pakistan, in the context of legislation that has arisen in the face of

global transgender movements. Taking a bill that emerged from the awareness created by the media as to hijra's difficulties and lack of access to adequate legal protection, several critical questions arise. The second critical event occurred in cyberspace, yet with tangible effects on human bodies. A 2016 internet photo campaign in India, organized in response to proposed legislation on transgender rights, led to an unexpected backlash when it appeared that hijra were being characterized as incapable of sexual assimilation, and compared negatively to their more modern transgender counterparts. In both cases, the transgender rights movement purports to eclipse hijra who remain in traditional roles.

4.1 Legislative interventions into the lives of hijra in Pakistan

Like most postcolonial societies, Pakistan is full of contradictions on gender and sexuality. In comparison with India, Pakistan has a far greater gender separation than India. This is true from middle-class dinner parties in Karachi (Ring 2006), to public buses where men sit on one side and women on the other. Generally speaking, women are far less visible in public in Pakistan than they are in India. Transgender people in Pakistan face similar obstacles of acceptance and stigmatization. At the same time, Pakistan has a number of well-known transgender television personalities and comedienne who have attracted widespread popular audiences. These include news anchors, beauty queens, and actors.

The situation in Pakistan has produced many examples of lawfare against transgender people. Laws in Pakistan that may have appeared to be helpful to hijra have actually proved to be harmful. Faris Khan points out that between 2009 and 2012, transgender people experienced widening attention from both the public and from government agencies. Advocacy groups brought welcome attention to the poverty and plight that characterizes life for many hijra (Khan 2019). At the same time, the government also attempted to regulate and discipline hijra, which was largely unwelcome. Khan uses the term "translucent citizenship" to describe the uneasy place of the hijra in civil society. Though equal rights from the Pakistani State were desirable, hijra still

sought to cultivate a distance from mainstream society. Privacy and being left alone were essential to hijra identity. In Khan's ethnographic work, he found that many gender nonconforming people preferred to be called *khwaja siras* (Khan 2019). Adopting this name accomplished a number of objectives. As Khan notes, the monikers of "transgender" and "LGBTQ+" carried distinctive Western connotations and were seen as unwanted foreign imports and as a legacy of imperialism. Furthermore, as a nation formed in 1947 as a Muslim homeland, legal charges of blasphemy against Islam are a commonplace tool of oppression against minority groups.

The legislation that was ultimately passed by Pakistan (Islamic Republic of Pakistan 2018) was perhaps the most comprehensive, empathetic government action to recognize the rights of transgender people. The bill allowed people to choose a third gender that would be accepted by national forms of identification, including national identity cards and passports. The bill outlawed discrimination against transgender people at educational institutions, in the workplace, in health care, and on public transportation. One of the biggest victories of the bill was that it eliminated the need for a genital medical evaluation done by a committee of lawmakers and medical providers. Unfortunately, the Islamic Court in 2023 struck down the bill, leaving transgender rights in a legal limbo. Pakistan's Islamic courts placed a stay on the transgender laws of 2018, leaving in their wake an uncertain future for transgender rights.

In Pakistan, there is a noteworthy tendency toward the erasure of one genderqueer group in favor of another in the realm of activism and advocacy among transgender allies. In her work as a proponent of transgender rights, Uzma Yaqoob is one of the leading activists in Pakistan to promote support for transgender communities, including hijra. Her approach to her work with hijra is to encourage the mainstreaming of the community in terms of their choice of occupations. Specifically, she advocates that they should renounce sex work in framing a bid for respectability. It is only when hijra can enter the modern workplace, she argued, and be accepted into professional training programs and occupations, that hijra will truly escape their very marginalized and precarious social and economic status (Yaqoob 2023).

And yet, if hijra were to abandon their traditional occupations of singing and dancing for entertainment, as well as begging, would they still be considered hijra? Being full members of the economy and society depends upon accessing educational programs which train people for modern professions. Most hijra are rejected by their families and left to navigate civil society on their own, a tragic reality hardly conducive to success in the extremely competitive, mainstream education system. At one level, the advice for hijra to stop being hijra and simply be transgender bodies otherwise integrated into mainstream professions is a practical one. This is where the colonial legacy of the stigmatization of hijra identity comes into play. Such stances beg certain questions. Must a tradition predating the British by thousands of years be destroyed? Is the only "solution" for hijra to be found in their very eradication? In other cases of British denigration of Indian sexual customs, such as of Hindu temple dancers and high-class courtesans, performance traditions have been reborn as dance lessons and coming-of-age recitals for upper-middle class girls in India and its diaspora. This process happened by deliberate anti-colonial nationalists who were successful in moving dancing from temples to auditoriums, while those doing the performances changed from temple dancers and prostitutes to high-caste, middle-class Brahmins (Weidman 2006). This nationalist move preserved an art form which dated back to ancient times but removed it from its colonial associations with lower-status temple performers. Is it possible that, as transgender identity in general becomes more familiar and acceptable in public life, in a distant lawfare-free future we can imagine a hijra repertoire of song and dance being mastered as an art form in itself, for public performance? Like the temple dancers, this move might save their artistic legacy, if not the hijra themselves (see, e.g., Roy 2015; 2017).

However, legacies of British lawfare against hijras, in criminalizing them, intersecting and denigrating their livelihoods including sex work in general, have made it difficult if not impossible for hijra to be assimilable into modern bourgeois society. Their origins in ancient times, their social organization in hijra households, in addition to the lawfare they have endured since British times, set hijra apart from society and entrench the caste system. According to anthropologist of Pakistan Tahir Naqvi, the hijra function almost like a medieval

guild.⁶ Hijra live together as a socio-economic household unit to practice their craft, which includes singing and dancing at births and weddings. Less openly discussed, and far more controversial, their livelihoods include the practice of sex work with male clients. Abdullah et al. (2012) identify two divisions of Pakistani hijra. *Khusrapan hijras*, considered true hermaphrodites, reject commercial sex work, while *Zananapan hijras*, who identify as women at heart, often do. It is the sex work aspect of the hijra livelihood that is perhaps the most troubling to activists like Uzma Yaqoob, because hijra are frequent victims of violence from their sex work clientele (Yaqoob 2023). There are no easy answers to the thorny question of how the economic and social plight of hijra can be changed and improved in order to secure financial well-being and safety from people who would prey upon them. To comply with minimum ethical standards, campaigns to claim respect for any transgender group should not rely on the erasure of another.

4.2 Responding to a transgender bill in India's parliament

On August 2, 2016, India's Lok Sabha or Lower House issued a draft of a new Transgender Bill (Transgender Persons [Protection of Rights] Draft Bill, India. Government of India 2016), aimed at generating discussion among the legislative body of Parliament. The proposed bill aimed to provide a legal definition of transgender people, outlaw discrimination against them, guarantee individuals the right to be recognized as transgender, and make provisions for people to have their transgender status recognized on their government identification cards. More interesting than the bill itself, for my purposes in this article, is a response to the legislation from transgender activists. In considering this rejoinder, I use narrative analysis to pinpoint how the kinds of speech acts and performative utterances are used in it as a way to tease out strategies and consequences of lawfare at play between two genderqueer constituencies.

⁶ Tahir Naqvi, personal communication, San Antonio TX, 30 March 2023.

There were a number of issues in the proposed bill that gave transgender rights supporters pause. Stakeholders pointed out that the definition of transgender in the draft legislation was too dependent upon stereotypes of what trans activists euphemistically called in their response the “Indigenous Cultural Transgender communities of India,” or in other words, hijra (Das 2016). This particular wording used by the transgender activists, which curiously excludes naming the hijra directly, is intentionally oblique and also intentionally biased against the hijra. In wanting to distinguish themselves from hijra, trans activists would not even name the hijra in their response. Nor were other common or regional terms used. The unspoken intent was to separate hijra from a broader, transgender community who were explicitly not hijra, but who rather identified as a group who were educated and aspired to professional occupations. The use of this peculiar phrase also taps into potentially pejorative connotations toward more traditional indigenous groups. In most circumstances, the word indigenous in the context of the South Asian subcontinent is reserved for India’s diverse tribal peoples who have remained outside mainstream society, some subsections of which remain hunter-gatherers, and others who were not historically absorbed into India’s caste system but became Christian under British colonialism. Using the term *indigenous* as a stand in for the term *hijra* also serves to tap into colonial stereotypes of other non-mainstreamed and stigmatized groups.

In 2016, transgender activists led by Neysara Rai, an engineer from Bangalore in South India, launched the website Transgender India (Das 2016). After finishing higher education, Rai came out as transgender to her family and revealed child abuse at the hands of relatives, only to be asked if her plan was to become a hijra. The immediate family took her to a range of faith-based and medical science practitioners, hoping to find a way to dissuade her from gender-reaffirming surgery and transition. In recognition of the fact that education of the Indian public on transgender identity was severely lacking, Rai created a network with initially five other transgender people from across India. The goal of these activists was to promote a campaign aimed at improving the public perception of transgender people (Das 2016). Transgender India’s response to the proposed legislative action was a widely-discussed and controversial

internet photo campaign called “I am not a Hijra.” Though the original post has been removed from the Transgender India website and also from Facebook, Borges (2016) has reproduced fifteen of the seventeen images, which are available for analysis.

A series of photographs of transgender women, shown in a variety of feminine clothing styles against domestic and other backgrounds, set out to challenge mainstream stereotypes of transgender people. In each photograph, the subject held up a handwritten sign, in English, that typically covered their face, neck, and usually shoulders, which are considered sexualized body parts for women in South Asia. Only clothing, hands, and perhaps a wisp of hair revealed any identifying characteristics. Each sign consisted of three phrases written in capital letters, with the beginning and ending identical. The start of each sign read “I am Trans*” followed by a statement. Below are written descriptions of the statements included in the fifteen photographs, along with my description of what the photographed people were wearing:

Wording on sign held in front of face	My description of the clothing and image
and I draw a six-figure salary every month.	a stylish, buttoned work blazer
BUT I AM A HUMAN FIRST.	a beautiful white empire-waisted sun dress
& I AM NOT A SEX WORKER.	a dress with a fitted bodice
& I AM PHYSICAL TRAINER.	a polo shirt and exercise skirt, Nike socks and sneakers
& I AM A SURGEON.	a short dress with a doctor's coat and stethoscope
& I AM ASEXUAL.	a white dress with geometric pattern cinched at waist
& I DON'T LIKE MAKE-UP.	a flowery t-shirt over a flabby stomach and body
& I HAVE MY OPINIONS & DESIRES TOO.	a black burqa covering face, showing eyes and hands
& I AM BRAVE ENOUGH TO ACCEPT IT.	an androgynous plaid shirt, in front of an escalator
I GET RAPED TOO.	a fitted black tunic over black leggings, a star tattoo

& I'm not confused about my gender.	a handloom cloth worn as head scarf, plaid shirt, jeans
& I AM A DAUGHTER, SISTER, WIFE & MOTHER.	a sari and matching blouse, traditional regional style
& I'M NOT LOOSE .	a fitted salwar-kameez with an elegant dupatta
& I AM FORCED TO WEAR MEN'S CLOTHES 24/7.	long sleeve button down shirt, amid store mannequins
& I AM A CORPORATE EMPLOYEE.	a pink top with silver metallic stripes
BUT I'M NOT A SEX MANIAC.	a striped top and denims, standing on a pavement
& MY RIGHTS ARE WOMEN'S RIGHTS TOO.	a sarong-style strapless mini-dress

Table 1. "I am Trans*" photo campaign slogans and attire of activists

The first column of this table reproduces the hand-printed or cursive wording on the signs held by the photographic subjects in the Transgender India education campaign, as republished in Borges (2016). Capitalization and punctuation follow the original. The second column lists my descriptions of the clothing worn by the photographed individuals holding the signs. Each of these handwritten posters was clearly tailored to an upper-middle class, Westernized, English-educated audience. In my reading of the photo campaign, subtle differences of implied class and educational status emerge through wording, punctuation, and sartorial choices. The use of capital letters in most of the signage gives the impression of a more activist agenda to a public audience, whereas the title case lettering in two of the signs creates a more personalized feel. In terms of clothing, Western-style dresses signify a nod to globalization, in finely tailored "export quality." The dresses tend to be more revealing of skin and legs, perhaps signifying the wearers' comfort in a sexualized feminized body. Other clothing styles, such as the sari and salwar kameez (tunic over pants), radiate a sense of beauty, professionalism, and respectability through nationalistic style. More casual Western outfits signify comfort and perhaps a slightly lower middle-class sensibility, possibly more in keeping with the clothing more often found outside big cities and in provincial towns. Taken in

their totality, the unwritten message conveyed by each photo presents one of gainful employment and middle-class respectability, albeit among a range of income levels and degrees of professionalization. But the final line of each and every sign held by each person delivered perhaps the sharpest one-two punch: "I am NOT a hijra."

In these statements, there is zero presumption of ambiguity, allyship, or solidarity. Not being a hijra arguably presented an unassailable claim to a respectable, non-sex working, non-begging, affluent, fully modern selfhood, and as a bold claim to sexual citizenship in a bourgeois public sphere. The captions tap into and reinforce the negative stereotypes of hijra as beggars and sex workers, scorned by educated middle-class people. Sociologists (including Mount 2020) studying the "I am not a Hijra" campaign by Transgender India conclude that the patriarchal assumptions of binary gender ideology have led transgender women to aspire to conventional roles for middle-class women, including living in familial households and holding professional employment in offices. Since these options are not yet feasible for hijra, these aspirations are based on their respectability and normativity, opposite to that of the hijra (Mount 2020). These actions to increase one's social position based on appearance, education, and appropriated status signs replicate the caste flexibility of what classic anthropologists of India called *Sanskritization*, whereby lower-caste people might emulate the habits of an aspirant caste, in an attempt to raise the status of their caste vis-à-vis others in the larger hierarchical system (Srinivas 1987).

Yet, when viewing "I am not a Hijra," from a historical perspective, as an attempt to influence the originally proposed legislation, the campaign takes on a somewhat different, nuanced perspective. Of course, there is no disputing the overtly anti-hijra sentiment of the photos and their captions. Nevertheless, if we see the Transgender India activists as responding to the hijra-specific language of the introduced legislation, another point is clear. Owing to their longstanding history and visibility in Indian society, the default stereotype of a transgender person, even among the transgender curious themselves, are hijra. Many people, if not most people, do not realize that there are other ways of being transgender outside of the role of hijra, which stereotypically implies a lifetime of begging and sex work.

I interpret from the similarity of the photographs, in their presentation, that these transgender participants were part of a well-choreographed campaign with a coherent message, rather than any kind of organic, individualistic self-expression. Notably, only a couple of photographs presented people wearing a sari, considered the most professional of women's attire yet also, when worn on a transgender body, associated with the chosen wardrobe of hijra. With one exception, that of a person standing in front of a backdrop of other people in an unidentifiable workspace such as backstage at a theater, each person was portrayed individually, perhaps as a stand-in for the modern political subject. Hijra often work and appear in public in small groups, reflecting their *guru-chela* (teacher-disciple) familial structure. A plurality of transgender people pictured together would immediately call to mind a group of hijra, as they most typically work together and move through public spaces in groups. Picturing transgender people as individuals, rather than as a part of a transgender group, strategically negates any association with hijra.

Both the socio-economic class and occupation status emphasized in the posters held by people is what is the most significant. Poverty-stricken, day laborer hijra suffer extreme marginalization that keeps them wedded to traditional economic activities of publicly blessing marriages and childbirth, begging in public spaces such as in traffic, and behind-the-scenes sex work. But the point of the photo essay is to show that in stark contrast, by means of the assertion that "I am not a Hijra," the modern transgender subject is integrated into the modern political economy as a professionally skilled and compensated contributor to society. In the photos whose posters do not reference occupational status, there is a concerted effort to show how the person contributes to a bourgeois domestic sphere. In the only photo that shows the face, a burqa revealing eyes and a mouth, the transgender woman sits in a chair at a table in a well-appointed, immaculate kitchen. This Westernized room is a far cry from the much more basic kitchens ubiquitous across South Asia, where much food preparation and consumption are done on the floor. The class dimension of the photos, as signifier of wealth and Westernization, use economic status as part of a way to normalize and mainstream transgender people into upper middle-class lifestyles. The English language used on the signs, in the

unhesitating handwriting of a native speaker, reflects a global sensibility of an elite class whose chosen medium of expression is the global cosmopolitan. At the same time, the proposed acceptance of transgenderedness is predicated upon the very explicit rejection of hijra identity. Here we see the transgender activists appeal to the bourgeois sentiments of potential allies with the assurance that they are not hijra, meaning they will not disrupt family weddings and births, they will not demand payment with the threat of exposing themselves. By rejecting all association with hijra they both refuse to be labelled according to a traditional identity, and imply that trans identity is more closely aligned to the binary gender norms of modernity. There is an implicit forced teaming between the subject of the photograph and the viewer. Both can agree and remain complicit that the hijra remain unworthy of respect.

5. Discussion

Both activists and spokespeople for gender affirmation have benefitted from the rich scholarship and extensive documentation on hijra and their traditions dating back from ancient India. Yet the hijra, of course, do not only exist in history as historical “examples.” Across South Asia, in the modern nation-States of India and Pakistan which are examined here, approximately three million hijra live and work in traditional occupations in India and a couple hundred thousand hijra do the same in Pakistan (Rhude 2018). Hijra are embedded in the daily experience of South Asian traditions, by singing, dancing, and showering blessings on households with new babies, Hindu temples, new business ventures, and weddings. Doniger (2009) even points to an example of how a municipal government once employed hijra as door-to-door revenue collectors, based upon their reputation and finely-honed skills of getting people to part with their money.

The scope of this article has been to discuss the social and rights-related reality of hijra against the background of some of the debates and lawfare that arise in the transgender movement in South Asia. Different sets of laws, along with cultural distinctions, have produced a variety of legalities under

which transgender people live, establishing a hierarchical classification among them and entrenching the caste system (Wilkerson 2020). The critical events analyzed show how, struggling to cope with intersectionality, legal structures reinforce intersectional asymmetries that have legal and social faces.

On the one hand, there are distinct social tensions between the hijra and the gender-affirming movement which have emerged in the struggle for rights and legal recognitions. In line with Hinchy (2021), I argue that, for the photo essay described in 4.2, depicting each transgender person appearing as a single individual was a strategy to disrupt the stereotype that they might be part of a larger group of hijra, a deliberate positioning aimed at freeing themselves from certain stigma while at the same time reinforcing the stigma by becoming complicit with it.

On the other, hijra communities, which operate outside traditional family structures and mainstream workplaces, encounter further marginalization within legislative reforms designed to support transgender individuals. Pakistan's legislative reforms demonstrate that while strides have been made to support transgender rights, these reforms often fail to accommodate the unique socio-economic and cultural realities of hijra. By prioritizing a middle-class, Westernized model of transgender identity, the legal structures unintentionally exclude hijra from protections, further alienating them from both the legal sphere and bourgeois transgender communities.

This exclusion reflects a broader problem: legal frameworks tend to homogenize transgender identities, overlooking the intersection of class, traditional roles, and cultural heritage. For hijra, whose livelihoods are deeply embedded in non-mainstream occupations such as performing blessings or engaging in sex work, the binary legal approaches reinforced by new transgender laws are incompatible with their social structures. Consequently, these legal interventions do little to affirm hijra's status or address their specific forms of exclusion. Instead, they often perpetuate the marginalization of hijra by aligning transgender rights with norms that implicitly demand assimilation into middle-class respectability. This legal and social invisibility further reinforces the perception of hijra as being outside the scope of "legitimate" gender identities worthy of state protection, creating a schism between

different gender-nonconforming groups and diminishing the potential for broader solidarity.

The struggle for the rights of transgender people, along with hijra, is far from over. Part of the power of the lawfare of the transgendered against hijra comes from a clash of social organizational structures found among each group. The transgender population who act as activists have found ways to affirm their gender identity without joining the ranks of the hijra, and therefore remain a part of bourgeois society. Their choice of educational paths, occupations, and professions echo those of cis-gender people. By contrast, the guru-student model of hijra social organization, which dates back millennia, is, by definition, antithetical to family-centered social structure, either traditional, extended, multi-generational families or smaller, nuclear ones. Hijra work with other hijra to bestow blessings and curses in religious landscapes. It makes sense for hijra to live in community together. Transgender people, on the other hand, are often integrated into their natal family unit. Transgender lives conform more easily to their cisgender family members' expectations and to middle-class environments, where professional careers are expected. Certainly, transgender people face unwarranted discrimination and other forms of lawfare, both legally and socially. But to put it in terms of the language of intersectionality, transgender lives do not carry the additional burdens of implicit poverty and social marginalization of the hijra. The lawfare enacted upon transgender people is notable, albeit less repressive than the doubly-punitive lawfare on the hijra, and transgender people contribute to it for their own gain.

Because hijra inhabit a traditional social and cultural space outside the mainstream of the middle-class domestic sphere in South Asia, the hijra offer a convenient foil for the modern transgender rights movement. Unfortunately, this cultural position has had the effect of establishing the hijra as a legal target as well. The trans activists who position themselves in opposition to hijra by declaring emphatically that they are not hijra are seeking cultural, social, and legal allyship among modern bourgeois South Asians. This is the basis of the lawfare waged against the hijra: denying them a place in modern law as a means to secure protections for other transgender people.

6. Conclusions

In modern South Asia, hijra are no longer, and perhaps have never been, the only transgender population. In urban middle-class spaces, a new kind of gender-affirming movement has taken hold across mainstream society. The rise of non-hijra transgender activists in India represents a new chapter in a centuries-old tradition of gender nonbinary identities. Quite unlike the hijra, there are those transgender individuals, as we have seen globally, who are mainstreamed yet experience gender dysphoria while living in the sex assigned to them at birth. Transgender people globally share much in common in navigating worlds organized by gender binaries. The hijra, on the other hand, are removed from so many of the structures of bourgeois life that they are even further marginalized. Even in legislation purportedly trying to improve their social standing, lawfare roadblocks are erected to further marginalize those who do not conform with the law. In the case of India's legislation, a main drawback is that the government demands proof of gender affirming surgery before it will change the sex assigned at birth. If desired by the person themselves, most people would not be able to afford such expensive medical treatment, compounding the intersectional blindness of the law.

It is noteworthy that hijra are perhaps the most important group cited by Western transgender movements, but are the most likely to face increased discrimination and erasure in South Asia because of the way that those transgender movements have been framed (Roy 2015). The reason that hijra are most often invoked by proponents of rights for transgender people is due to their history of gender nonconformance across millennia. Looking to the ancient past is, after all, that most modern of moves, as it establishes legitimacy through claims of historical depth (Anderson 1976).

However, this article explored a case in which middle-class transgender individuals have ultimately relied on discrimination against the hijra as a tool to legitimize their own rights, leveraging legal frameworks shaped by social discriminatory discourses. Ironically, this transgender activist movement, and the gender-inflected lawfare that accompanies it, comes at the explicit expense of and rejection of the hijra. Instead of claiming solidarity with hijra, the

living representatives of centuries-old gender nonconforming traditions, some transgender activists cast themselves as standing in opposition to the hijra, claiming a higher status than their better known yet disparaged counterparts. Many people who identify as transgender are firmly middle class (Borges 2016). As such, more mainstream transgender communities project a public image that is typically impacted by fewer intersectional issues of marginalization, in stark contrast to the stigmatized employment of sex work, economic instability, and poverty that are part of the characteristics frequently associated with being hijra (Borges 2016). Here transgender people weaponize a status of limited and relative privilege, at least vis-à-vis their hijra counterparts.

The lawfare at play between some transgender activist groups against the hijra in the search for acceptance, assimilation, and normalization is a useful example of how genderqueer groups are not natural allies in postcolonial societies. Transgender people identify themselves separately from hijra, and hijra identify themselves separately from transgender people. Employment and class status are key. Transgender acceptance in the second critical event analyzed here is predicated upon the social death of the hijra, as people rendered non-commensurate to the dictates of modernity and individual rights. In order to achieve upwardly mobile status, transgender people emphasize respectability, as opposed to the exclusion and stigmatization of hijra. In attempting to gain social acceptance, transgender people's publicity campaigns have both implicitly and explicitly reinforced the negative stigma of hijra, reinforcing inequalities. Being recognized and protected by the law as well as having the right to educational and employment opportunities provide a significant advantage for those who are able to live in their families of origin and benefit from the dignity and respect of socially legitimate structures. Hijra, on the contrary, lack such benefits, which exposes them to further vulnerabilities based on the class they cannot inherit from their families, the traditional roles they are assigned, and the cultural heritage they represent. If hijra are to be given increased opportunities, provisions are needed to address such intersectional disadvantages.

Law is an important tactic, but not the only one, that can serve to make life more inclusive for disadvantaged social identities. The public refusal to sit

next to a hijra on a Kolkata bus shows that there are still many societal norms and moral anxieties about sexual citizenship that law in and of itself cannot fix. Becoming worthy as an acceptable body on public transportation would mean being treated warmly, being invited into the ubiquitous conversations that characterize Bengali society, and yes, being sat next to. Capitalizing on the moral panic introduced by the colonizer's lawfare, as well as the current social and legislative lawfare, has continued to stigmatize the hijra. Moving toward a more equitable framework for all gender-nonconforming communities in South Asia requires confronting and addressing the intersectional disparities that fuel the legislative stigmatization of hijra, thereby alleviating the colonial legacy of moral anxieties and preparing societies to become more inclusive.

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