

Architects of Rebellion:  
Stories from Haris and Khawaja Siras

by  
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## ABSTRACT

This dissertation is a collection of three essays that take seriously the knowledge generated through and by communities in struggle in Pakistan. This project reveals how communities in struggle are systematically excluded and power is monopolized in the hands of a few, engages the means through which communities find ways to survive and thrive under harsh conditions. The first essay, “Beyond Bondage: Hari Women’s Communities of Struggle” centers the testimonies of peasant Hari women, or bonded sharecroppers, in Sindh, Pakistan, describing the carceral conditions of labor to which they are subjected. The essay historicizes the ability of wealthy, politically empowered landlords to retain their monopoly over land resources and attempts to make explicit the tacit state support that allows this system of bonded labor to continue unregulated. These testimonies also document the Hari women’s tools for escape and their movement to free others. The second essay, “Khawaja Sira Life Struggles: Is Womanness Really a Loss?” traces the stories of Khawaja Sira Gurus from Lahore, Pakistan, who are engaged in organizing their community to advocate for rights and human dignity, and how they make inroads into the imposed gender regime. It argues that Khawaja Siras create a third space inside a heavily enforced gender binary. It also shows how the Khawaja Sira community provides its members home to exist in their womanness that eases their alienation from their family and society. The final essay, “The Movement for Transgender Rights in Pakistan” traces the history of criminalization of the Hijra/Khawaja Sira community and argues that colonial legal formations set in motion marginalization of trans\* lives, which the post-colonial Pakistani state folded easily into its binary understanding of gender. Trans\* activists have been engaging the state on its own terrain to make trans\* life legible to the state, with the Transgender Persons (Protection of Rights) Act of 2018 being the most recent gain.

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In 2015, a group of feminists (including myself) organized a community conversation entitled “Sexism in Leftist and Progressive Spaces.” The event was an invitation to women to speak about their experiences and an invitation to men to listen without responding. The Lahore Feminist Collective<sup>1</sup>, a collective of cis women and trans\*<sup>2</sup> folks who had an intersectional approach and a focus on learning, was formed from this event. One of the priorities of the Feminist Collective became to engage with the Khawaja Sira<sup>3</sup> community to draft a bill for transgender rights that was proposed in Parliament in 2017. This bill was intended as a welfare measure to uplift a disadvantaged community (discussed in “The Movement for Transgender Legal Rights in Pakistan”). In doing so we sought to open a common coalitional space between feminist and Khawaja Sira activism and organizing spaces. By participating in that group, I developed a deeper association with the Khawaja Sira Gurus, whom I had known previously while participating in activism in Lahore. Struggling together to work on the bill, start community conversations around it and finding a space inside the heavily bureaucratized spaces of the government made us closer and based on these ongoing relationships in 2019, I conducted interviews with the Gurus regarding their life experiences, the violence they endured, and the triumphs they engendered.

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<sup>1</sup> The Lahore Feminist Collective (TFC) is a leftist feminist collective set up in Lahore in 2016 that conducted regular study circles and a yearly event called “Evening of the Women” (Ghani, 2016; The Feminist Collective, 2017)

<sup>2</sup> Trans\* denotes the many different kinds of non-binary and transgender identities including Khawaja Sira, trans\* women and other trans\* feminine and trans\* masculine identities

<sup>3</sup> A community entered through certain pre-established rules of gender fluid folks who are organized like families and have system of Gurus/mothers and Chelas/daughters who live and work together.

In 2016, I read in the news about Veeru Kohli, a free(d)<sup>4</sup> Hari<sup>5</sup> woman, who was contesting elections in Hyderabad, Sindh, against an established politician of the Pakistan People's Party in Sindh, Sharjeel Inam Memon. In both candidates' statements disclosing their assets, it was apparent that Memon was amongst the richest politicians running (Ferozi, 2020). For Veeru, these assets were "just two beds, five mattresses, cooking pots and a bank account with life savings of 2,800 rupees" (Rapila, 2013). Memon's assets included "residential and commercial properties in Dubai worth around Rs170m, and his properties in Pakistan, including two houses in DHA, Karachi and *agricultural land in Tharparkar, valued at around Rs. 30million*. His business in the UAE is worth around Rs. 3million. He has not shown any source of income, but he and his spouse have Rs. 95million cash in hand and Rs. 3.87million in bank" (K. Ali, 2020, emphasis mine). At the time I was trying to understand the conditions<sup>6</sup> and persistence of bonded labor in Pakistan. This story illuminated the structure on which it is predicated: on one side, there are those with historically accumulated, landed power that has always been supported by the state and the structure of electoral politics, and on the other side, there are indigenous dalit Hindu minority communities of peasant farmers made landless by climate change and forced to migrate, and whose bonded

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<sup>4</sup> Expanding on Fuentes (2016, 16) I use 'free(d)' to signal the act of freeing oneself from bondage, freeing others, and getting free together, as inextricable elements of complex process. In this understanding, no single person is the rescuer or the exceptional hero that saves others; instead, it recognizes the relational and collective nature of the struggle to get free.

<sup>5</sup> Hari women are part of Hari families who work as sharecroppers/bonded laborers on agricultural land in Sindh. They are mostly landless but skilled peasants/farmers. They care for and till the land for the landlords. The landlords try their best not to give them the status of sharecroppers (which would entitle them to rights) so instead label them "tenants at will" who can be expelled whenever the landlord wishes. Using this threat to expel, as well as concocted debt and carceral conditions to control Haris, the landlords extract their labor to enrich themselves.

<sup>6</sup> This stark difference in resources between Memon and Kohli represent the conditions that allow for bondage labor to persist. Landed classes accrue control over land, political, social, and economic power to become strong enough to maintain private jails. On the other hand landless Haris remain vulnerable to extraction of their labor through bondage, through their minority status as Hindus, and by virtue of being landless.



labor fuels the wealth of the landed. These conditions shed light on the brutality of this monopolization of power, resources and exclusion that perpetuates the extraction of labor and life to subtend its own hyper life.

After some digging, I eventually found a story written about Veeru's colony of escaped Haris near Hyderabad, in Sindh (Mehmood, 2014). This is where other free(d) people lived who had escaped bonded labor and were then working to free others. The journalist who authored the story, Rabia Mehmood, is a comrade and friend, and I reached out to her for contacts in Azadnagar. She gave me the contact for Veeru Kohli and other folks she had worked with to write her story.

In August of 2016, I gathered the courage to make the journey from Lahore, Punjab, where I lived, down south to Hyderabad, Sindh, where Azadnagar is located. Once I reached there, I met Veeru and the others. After talking to my comrades I realized that the way to access the reality of my comrades was to listen to their stories, to spend time with them, and to offer my support to their movement to free others like them, in whatever way I could. That meeting and connection spawned a friendship and a mutuality of care that became an abiding premise of my own life. Veeru and I now talk almost every week, discussing her life and mine, her health and mine. However, since 2015, I have been in and out of hospitals battling cancer and given the limitations on my health and mobility, I was able to make only two extended trips to Azadnagar instead of the entire year of fieldwork I had originally planned.

### **Scope and Structure of the Dissertation**

This project is a compilation of three papers mapping the stories of women engaged in struggle in Pakistan. Their oppression is multi-faceted, targeting their gender, gender

expression, sexuality, religion, class status, and religion, which I more specifically label the cis-heteropatriarchal-islamo majoritarian-authoritarian accumulative capitalist structure. This terminology elucidates the specific forces (cissexism, heteronormativity, patriarchy, Islamism, majoritarianism, authoritarianism, and capitalist accumulation) that are arrayed to enact violence against these groups of women, and which are the targets of their organizing.

I have tried to describe different parts of this structure as it becomes visible through the stories these three essays. “Beyond bondage: Hari women’s communities of struggle” reveals the capitalist accumulation of land resources that allows landlords to wield the power of life and death over the Haris (peasant farmers) that work for them. It also reveals an Islamo-majoritarianism played out by Muslim landlords and contractors against the dalit Hindu Haris: Young Hindu women are often abducted and converted to Islam, making being a dalit Hindu and a woman a vulnerability that signals that you will not have the social, political, or economic capital against Muslim male majoritarian aggression and consolidation of power. Similarly, “Khawaja Sira Life Struggles: Is Womanness Really a Loss?”, reveals the heterosexual family structure as it buttresses state and patriarchal control by imposing the gender binary as the only acceptable future. The expulsion of Khawaja siras from the natal home for expressing their womanness reveals the way in which being male is privileged in Pakistani patriarchy, and how tending towards womanness is seen as a double loss. This reveals the structure of cis-heteropatriarchy that works to expunge diverse gender embodiment. Together these chapters try to build a map of the normative structure that I am describing as the cis-heteropatriarchal Islamo-majoritarian, authoritarian accumulative capitalist structure. It is inherently authoritarian as it uses difference as a marker of vulnerability and majoritarianism as a tool to oppress others, instrumentalizing Islam to

normalize the matrices of gender, caste, class, and labor that deem some bodies disposable in their labor in the service of others.

Bringing together the stories of Hari women who have freed themselves from bonded labor<sup>7</sup> in Hyderabad, Sindh, as well as the Khawaja Sira Gurus in Lahore, Punjab, reveals that woman and trans\* folks are born into a patriarchal gender regime that conceives of womanness as a social, economic, and political loss. For Hari women this is compounded by their positionality as dalit Hindu—poor and landless; for Khawaja Sira Gurus there is an element of double loss as their birth is initially celebrated by their natal families for being assigned male at birth but then as they exhibit womanness this unearned privilege turns to loss (the loss of unearned male privilege and the loss of inhabiting womanness). Trying to explain the dominant cultural understanding of womanness as loss is an important part of this dissertation, but I also wanted to describe the transformational potential and practices of both freed Hari women and Khawaja Sira Gurus as they engage in breaking the patriarchal gender regime’s meaning-making by and through struggle, establishing a terrain of gender practice that is their own. Through their testimonies they point to a profound struggle for life and wellbeing in the face of ceaseless and organized brutality meted out by rich private citizens, families, disciplining male violence through contractors and clients in the case of Khawaja Sira, law enforcement, and government agencies. This conflict is coupled with survival through community building, employing civil society network, personal struggle, and collective struggles.

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<sup>7</sup> Bonded labor is a form of slavery present in many industries across South Asia. In Pakistan it is prevalent in agriculture, bangle making, carpet making and brick kilns among other industries. I am focusing on bondage experienced specifically by peasants from minority community in Sindh. The bonded Haris cannot leave as they are enslaved by the landlords who claims that Hari (peasants) owe them large debts. Since these peasants are unable to read and write, and the landlord keeps the records of this debt, more often than not this debt is concocted to keep the Haris under the landlords’ control and extract labor from them without any payment.

The first essay, “Beyond Bondage: Hari Women’s Communities of Struggle,” examines the stories of peasant laborers, known as Haris, who freed themselves from intergenerational bondage on large agricultural landholdings in Sindh, Pakistan, through a collaborative effort between other escaped Haris and non-governmental organizations. It explores the carceral conditions Haris endure under the necropolitical carceral regimes<sup>8</sup> of landlords. As the essay will demonstrate, these landlords deploy guards, contractors, and local law enforcement to incarcerate, intimidate, violate, capture, and recapture Haris.<sup>9</sup>

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<sup>8</sup> Achille Mbembe argues that “subjugation of life to the power of death (necropolitics) profoundly reconfigure the relations among resistance, sacrifice, and terror” (Mbembe 2003, p.39). Necropolitics describes the right exerted by those in power to determine certain people to be available for death for the extraction of profit. Necropolitical power unleashes terror on those it deems disposable, making “terror...a defining feature of both slave and late-modern colonial regims” (Mbembe 2003, p.38) Bringing Mbembe’s insights about the relationship between terror and death zones created in colonies and in conditions of enslavement, together with the conception of the carceral state as developed by feminists in the U.S. that explores the role of the state in replacing social welfare provisioning with incarceration as Neoliberalism became the dominant program. Furthermore, Dillon further the connection: “necropolitics of slavery inhabit and drive the biopolitics of neoliberalism. I argue that under neoliberalism, the market—which, along with the prison, is structured by antiblackness — functions as a carceral technology” (Dillon 2012, p.115). Here, where the market and prison co-create each other as spaces of anti-blackness, and the state functions to solve social needs and problems through incarceration, the regime becomes carceral. In Pakistan, landlord control of Haris—indigenous, marginalized, debt-burdened, and often non-Muslim—facilitates state control of worker populations and minorities, maintainng peasant disposability by facilitating the landlords’ use of carceral technologies. In this way, Pakistan functions as a carceral state by proxy.

<sup>9</sup> There are numerous reports and studies produced by international NGOs that document the carceral conditions under which Haris endure. See, for example, the research done by Hussein, Saleemi, & Mali, which states that “A household survey by the Asian Development Bank based on a stratified sample in five districts of Sindh where there is a preponderance of bonded labor (Badin, Dadu, Mirpurkhas, Thatta and Umerkot), found that 60 percent of the households were Haris... However, the nomadic Haris from the minority community are in very vulnerable positions: unable to meet their requirements from their existing sources, prone to high levels of indebtedness and living in conditions that approximate bondage (i.e., without freedom of movement and completely dependent upon the landlord in terms of basic requirements and choice of occupation).” (Hussein, Saleemi, & Mali, 2004, p.8). Another report by the Pakistan Institute of Labor Research from 2008 notes that the Haris of lower districts of Sindh have restricted movement and freedom due to their caste vulnerability (PILER, 2008, p.9). As Lali and Veeru both describe in their testimonies, they were constantly surrounded by guards who took them to and from work. According to a recent report launched by Hari Welfare Association (HWA) called state of peasant rights 2019, state that government implementation of laws against bonded labor is nearly non-existent and therefore many Haris remain in bondage (Hari Welfare Trust, 2019, p.14).

In “Khawaja Sira Life Struggles: Is Womanness Really a Loss?” I lay out the social structure of Pakistan’s gender regime that frames womanness as loss. When “womanness”—the experience where one inhabits the role, disposition, comportment, soul, and life world of a woman in and outside of a female body—is attached to a person, that person is experienced as a loss that must be mitigated by family and society. In this chapter I am using trans\* to signify the multiplicity and diversity of non-binary trans\* feminine and trans\* masculine ways of being. These include indigenous formations like Khawaja Sira or zenana—both socially and historically constituted gender-fluid communities with certain norms that need to be abided in order to join—in addition to folks who express themselves as trans\* women and trans\* men. As Khawaja Siras embody womanness, they face significant violence, but womanness as a source of exclusion also becomes their source for community, to find livelihood, and organize to ultimately re-make the world through protest, negotiation, and persistence. In their interviews, the Khawaja Sira Gurus testify that they believe that their gender is a form of divine grace, and this gives them the courage to persevere against the Pakistani gender regime<sup>10</sup> and its excesses.<sup>11</sup> Their struggle is a repository that reveals ways to live with dignity and demand public space and equal citizenship for trans\* community.<sup>12</sup>

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<sup>10</sup> Together, these essays demonstrate that the dominant Pakistani gender regime is the structure that imposes the gender binary that is undergirded by notions of men as superior, with the ability to own property, carry the family name and line, control and dominate both public and private spheres; coupled with notions of women’s inferiority and little space for gender and sexually diverse people. It also imposes compulsory heterosexuality within a family setup based on the exchange of women as a culturally necessary means to reproduce families at the expense of women’s vulnerability and devaluation.

<sup>11</sup> Excesses such as the expulsion of gender non-conforming children from the family, for expressing too much or not enough womanness. Socially women are deemed inferior just because they are women, and social, economic and legal structures are in place that support male control and domination for the excesses of the Pakistani gender regime; and this is barely scratching the surface.

<sup>12</sup> In the face of the gender regime that would want their expulsion or assimilation trans\* life persists, a subterranean current that nourishes itself through community. For example the Khawaja Sira

In “The Movement for Transgender Legal Rights in Pakistan,” I examine several cases that appeared before the Lahore High Court and the Supreme Court of Pakistan petitioning for full citizenship rights of trans\* people, along with the rights to self-determine gender and to alter one’s body according to one’s identity. The essay shows that trans\* people approach the law with the expectation of having their full citizenship rights upheld and supported, and when state support is not forthcoming, trans\* folks have engaged in strategies of legal petition, negotiation, and protest to gain legal ground against discrimination. They educate the state about an alternative epistemology of gender and reinforce its obligations towards its citizens. I situate these cases within the context of the pre-independence British colonial campaign to exterminate the long-standing Hijra/Khawaja Sira community. This campaign to rid the British colonials of illegible subjects began in the late nineteenth century, and its legacy has meant the continued marginalization and impoverishment of generations of trans\* folks since 1947 (Hinchy, 2019).

Together, these essays demonstrate that the dominant Pakistani gender regime is a matrix of operations that imposes the gender binary that is undergirded by notions of men as superior to women, with the ability to own property, carry the family name and line, and control and dominate both public and private spheres. This is coupled with notions of women’s inferiority and little space for gender and sexually diverse people. It also imposes

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community exists as a parallel family structure to the normative family structure which eschews them. Strangers enter the Khawaja Sira community based on their gender fluidity, which is acceptable within community, but not at large. Entering the community has its own rituals and codes that need to be followed and rules that must be abided by and therefore the stories of the Gurus are so important as they give us clues about how in practice the gender regimes are constantly punctured, negotiated and re-made. This more diverse and complex picture of gender is only visible through stories that pass orally from generation to generation. This form of oral story telling has been part of south Asian oral culture and reported as “sina ba sina” or passed down from chest to chest, heart to heart. This repository of stories of struggle and of self-determination with community is what I am trying to document.

compulsory heterosexuality (Rich 1980 2004; Bhan Narain 2005; Boyce 2008) within a family setup based on the exchange of women (Rubin 1975; Siru 2008; Shaud & Asad 2020) as a culturally necessary means to reproduce families at the expense of women's vulnerability and de-valuation in this setup. As conceived, the theme that binds these essays are communities in struggle that house rebellious subjects (Rashid, 2013; Callahan, 2016). Those who are narrated in dominant discourses as always unhappy, and those who fall victim to violence—dead or alive—are dismissed for having 'chosen' to disregard or challenge (oppressive) social, economic or political norms that order society. The social narrative about them is that they are victims of their own difference that society would not, could not and will not create space for.

Their life stories show a different picture even as they are situated on the margins of society: the men, women, trans\* people, and free(d) Hari women do not subordinate themselves to the dominion of those who give themselves the power to claim a right or wrong way of being, instead they are very much alive and ready to tell their stories on their own terms. They themselves, and their comrades, fissure the dominant discourses that would frame all gender as binary, all relationships as heterosexual, and all work/labor as consensual. Yet, the Khawaja Sira, trans\* and queer Pakistanis, and Hari women show that this is not the case. The activism of each group reveals gender relations in Pakistan as patriarchal and corrosive, and labor relations as dominated by landlords who use lies, coercion, violence, and law enforcement to detain bonded laborers. These narratives about dominant groups as having complete control also re-inscribe the lie that things are meant to be this way, and this is the necessary order of things. Yet with each law that is passed for transgender rights and Khawaja Sira rights, and each court case that frees a bonded laborer, the fissures start to show.

## Defining Subjects Through the 'Field'

Veeru was one of my main interlocutors in Sindh, and she introduced me to her comrades from the free(d) Hari colonies on different outskirts of Hyderabad called Azadnagar (place of the free), Himatabad (place of courage) and Sukhpur (place of contentment). These small towns had bare, basic living arrangements where free(d) slaves found respite and a place to stay. Most of Veeru's comrades were a group of women whose stories are a powerful testament to the resilience of the human spirit and to the value of mutual aid. The folks I met had gone through some of the worst excesses of violence and brutality imaginable, and those experiences had made them fearless. They had escaped from bonded labor using any and every tool that was available to them, pouring everything into escape, survival, and eventual wellbeing. They had been hunted by the landlords' guards and contractors, beaten, kidnapped, physically and sexually assaulted, incarcerated, forced to work, had their children stolen from them, and witnessed the deaths of their families and comrades. When I talked to them, there was nothing the landlords could do—nothing they had not already tried—that could scare them anymore. Now, even though their circumstances were hard, and they worked daily wage jobs, they expressed contentment to me. They were trying to get their children into school, although there were none in the immediate area. They aided Veeru with her electoral campaign, all while facing false criminal charges, having their homes demolished, and suffering regular harassment from local law enforcement. Veeru explained it this way:

When I stood in the elections, I would get threats every single day that 'we'll get you a challan in a false case, we'll do this, we'll do that,' so I told them to do what they like, I'll do whatever I like as well. What I say is that such women should come forward and work, they can do a lot. I went straight from a hunger strike to Badin to free some people. I was alone there for three days so a lot of people said that you shouldn't go alone, they will kill you. I told them that killing me is in Allah's hands, not



theirs. Even then they would attack me, send the police to me; the police enters my home and drags me to the jail by my hair. I would not be upset if a female constable comes, beats me up and takes me away, but here male constables beat me up over and over and take me to jail.

Given that they had been bonded and escaped, Veeru and her crew seemed to me to be unblinking in the face of a brutal carceral regime and determined to do what they thought was important for justice, together, regardless of the danger and difficulty.

Walking and learning with the Khawaja Sira Gurus over the last decade, I learned that policing and carcerality also heavily constrain Khawaja Sira life. This showed up in their lives as they were exiled from formal professions, workforce, families and society through enforced marginalization and exclusion. Khawaja Sira families had their own professions like dancing at functions to collect money, going in groups to give blessings on the births, wedding and other auspicious occasions, begging and sex work but it is obvious structurally that other avenues are not open to them as they would be to cis people. Neeli's encounter with the police reveals this when she tried to report brutality, she faced at a wedding function. The Police treated her like she is the problem just because she was a Khawaja Sira rather than the violence she faced. Such attitude of police towards Khawaja Sira community is documented every day in news reports and became the basis of the Supreme Court petition seeking justice against police overreach and violence against a group of Khawaja Sira performing at a wedding function in Taxila. I saw that the testimonies of the Hari women and the Khawaja Sira had in common the state's heavy hand in controlling and subjugating precarious lives for the purposes of state and capital. Neeli Rana, a Khawaja Sira Guru, lists off what her community of struggle has achieved:

A bill has been passed for the transgender rights and that is an achievement for our community. There is an organization that is completely run by Khawaja Siras from program officer to finance officer. There was a theater play called Teesri Dhun [A Third Melody] that had Khawaja Siras in leading roles, telling their stories in their

own voices. We have the talent, and our community has the power to achieve these goals and we will achieve them. Before we used to be afraid of going to police stations and scared of the police. Now, I myself go and sit in the police station as it is my right. I'm a worker. Wherever I work, I pay tax, and that tax is used to pay the police; therefore, I can hold them accountable. Are the police doing their job properly or not? This is a change. We cannot always be the victims crying, begging, and being beaten down. We are moving away from that. (Careeb Studio, 2018)

Neeli and Veeru share a similar orientation to the world. They are trying to change it through organizing their communities and pushing boundaries through engaging in protests and helping others like them. They have skin in this game because they do not want others to face what they had to face. They are connected to their communities and draw strength from them.

### **Methodological Quandaries and Ethics**

When I decided to do this research, I do not think I quite understood the nature and quality of the task that I was undertaking. When I studied about slavery in the United States, I felt it was about a historical institution against which Black Americans had fought and made significant gains although much more needs to be done given the rate of incarceration, poverty, and police brutality towards the Black community. Despite all the violence there was a rich tradition of resistance and studying it made me feel hopeful about enslaved people creating the conditions of their emancipation. I wanted to understand if similar sites of resistance to enslavement existed in Pakistan. The conditions of coloniality in the two contexts are distinct since the United States is a settler colony whereas Pakistan has gone through a different form of colonization and then neo-colonization, which waned after the British Empire left formally and the Pakistani state sought to make alliances with the U.S. Empire in the cold war context. However, the nature of resistance in those contexts prompted me to look for resistance in the context of bonded labor in Pakistan.

When I returned to Pakistan it dawned on me that the issue of bonded labor as an institutionalized form of caste, class, religion, and location-based discrimination seems normalized in society. Labor is a fundamental relationship that gives meaning to our lives and through which we are bound to each other and to institutions. I wanted to interrogate the persistence of bonded labor as a naturalized occurrence. Through the process of research on bonded labor I realized that it is not just a call for study but also a call for action. There was an entire class of people who have no freedom and are enslaved so that others can benefit. In a capitalist society, even the freedom to sell one's labor power to whom one wishes is a sort of choice and a kind of freedom—even that freedom is not available under these circumstances. This laid bare for me my own privileges of having lived an upper-class urban life. What do I have in common with women who are escaped bonded laborers? Why should I be writing their stories? After much turmoil and reflection, the only category that is in common and allows us to work together is that of “struggle.” My struggle is that of an urban woman who is queered to the entire complex of compulsory heteropatriarchy and urban class ascendancy through acquiring gains in the patriarchal matrix, and theirs is the struggle to free themselves and thrive under conditions of class-, gender- and caste-based domination. Even though the contexts are quite different, the ability to struggle against our oppressors and oppressions binds us and gives us a shared vocabulary through which we can speak. The hari's believed as did the Khawaja Sira Guru's that a different world is possible where their oppressions did not define the conditions of their existence, but their struggles defined their solidarity as they collectively worked to change their circumstances.

As a storyteller of someone else's struggle, I faced many barriers, foremost was the language difference. Although I understand the native language spoken by my collaborators, I have not quite mastered speaking it. The difference in terms of my location coming from

urban Punjab and them from semi-urban Sindh and the fact that I am gender non-conforming makes me a visible outsider. But I was committed to engaging in a collective dialogic process with my collaborators as I am part of a leftist feminist collective that seeks to center marginalized women's voices. Thus, this dissertation project is an attempt to engage escaped bonded laborers who are women, and connects them, I hope, to lines of power in a major urban power center of the country (Lahore), with a network of activist women who can share networks and resources across all class and caste boundaries. In this process of research, my hope was that "a living theory emerges out of situated struggles and refuses to impose an already determined or imagined future. Living theory privileges collective ways of knowing and struggling, underscoring that any given struggle necessarily produces theory. Ultimately, the task of living theory, as all 'theory,' should be to, according to Hardt and Negri, 'identify the existing conditions for potential collective struggle and express them as a political proposition'" (CCRA, n.d.).

Looking back now at my hopes and plans for this dissertation, it has been a tumultuous journey of nine years, racked with doubt and impediments that seemed insurmountable. One major obstacle was getting a cancer diagnosis just as I was beginning my fieldwork. This changed my relationship to the doctorate, and to the idea of 'the field' itself. As the cancer invaded my body, the doctors told me that it will try to grow until it engulfs everything; and yet despite its power, my body was fighting it with what tools were available to me (surgery and chemotherapy). To me, the comrades I was working with were also combatting continually shifting threats to their survival and wellbeing. Their fight was against a structure riddled with patriarchy, rapacious capitalist accumulation, and domination based on religious, gendered and landed status; my body's fight was against my own shifting cells. Their survival is through coming together; a large part of mine has been through

joining with them. What has not killed us has opened up ways to work in solidarity to forge a kind of resistance that made it easy to network together, because we were all a loss, in some way, to the world in which we were born. Despite the everyday indignities of being trapped in physical, material, psychic, and symbolic structures that will not accept your humanity, there is pleasure in the small things in life—of being alive, sharing time with your people and loved ones, fighting the unjust world with your comrades. There is happiness and joy in all our lives that no one can take away from us. We recognized, respected, and accepted each other's humanity.

Academic writing and research can sometimes be as dehumanizing as the structures we are trying to describe. There is an inherent level of alienation from one's 'subjects' as they become the 'objects' in a process of knowledge production, and the researcher is expected to maintain a certain distance for the sake of objectivity. This is what we are taught in methods classes. But for me, this journey and process radically shifted after my illness and my return to Pakistan. I was no longer doing this work just to receive academic credentials. I was doing this work because I believed in the people I was working alongside. The relationships and work connected me to my land, language, and people in a way that I did not know was possible. I have actively avoided muting, altering, or obfuscating my co-conspirators' voices, and often quote them at length, treating their theoretical interventions born of life experience with the same respect and authority I give to the feminist scholarship with which I engage.

That said, all my interviews are in Urdu, Sindhi, or Punjabi, making translation into English a critical task. I am a native speaker of Urdu and Punjabi, so I have unmediated access to the language used by many of my interlocutors. I can understand Sindhi, which was spoken in my home by my Sindhi grandmother, but I cannot speak it. I thus had direct

access to what my comrades were saying, and they spoke to me in the language they were comfortable with without an interpreter. In spite of the fact that I could access my comrades' spoken words, our life worlds were divided by differences of class, caste, social, economic and political capital. These differences along with my gender queer presentation did not seem to bother Veeru and her comrades as they focused on the fact that I was studying and conducting a research that could be potentially helpful for their community. They wanted me to write articles for them in the newspapers to bring attention to the issues that confronted their community: that there was no school close enough that their children could attend; that there was a factory nearby that was polluting the environment that they were living in; and that the systematic discrimination and resource exclusion they faced was completely naturalized. They were clear in how they wanted me to use my privilege to help the struggle they were engaged in, and to assist them in building cross provincial solidarities with peasant movements in Punjab and feminist movements in Lahore. Towards this end I raised the issues impacting freed bonded laborers with the Lahore Feminist Collective, and also used social media to raise funds for helping bonded labors escape. I wrote an article (Suhail 2014) about the work my comrades were doing in Hyderabad and tried to highlight their work in every way that I could and remain in touch with them, so I can emotionally and materially ally with their struggle and bring more coverage to their struggle.

My intentionality before I landed in Hyderabad had been to employ a convivial process. This is a research process that “engages the tradition of participatory, politically situated practices of collective, community-based knowledge production by highlighting transdisciplinary, reflexive investigative approaches that prioritize local, situated, and poetic knowledges.” (CCRA Callahan, 2012, 2015a, 2015b, 2015c, 2016, 2018; Gómez, 2016; Illich, 1973). Much of this methodology, I learned through my participation in Humanities Behind

Walls, a worlding activity where a group of us joined women who are incarcerated and read material together to find meaning and to make sense of the violence of incarceration, and to create new answers to social problems. As “individual freedom realized in personal interdependence” (Illich, 1973, p. 11), conviviality “advocates recognizing a community’s fundamental genius to organize itself in such a way as to generate and share locally rooted collective wisdom and tools that address the problems that threaten to limit a community’s capacity to reaffirm its genius” (CCRA, n.d.).

Although I would have wanted a much more participatory and collective research project, but the constraints of time and health did not allow for this to happen. Since I was continually working with the communities, their concerns inform my research process which was made possible by being continually in conversation with my comrades and by taking their input regarding their struggles. In this way, I was able to make sure that I highlighted what they thought was important even as the nature of the struggle was evolving. Even as the questions I addressed were those that I had formed while I was in graduate school. For example, with the chapter on Hari women, even as it describes the violence, they experienced which galvanized them to escape, in my interviews their focus was on how they had escaped and how they wanted to help others like them escape. They were interested in gathering resources and, through the research process, I have tried my best to be a part of the process to collect resources and to raise awareness about their struggles. I have attempted to use their stories to reveal the structures of oppression and their determination to live lives of dignity in the face of these structures.

## My Positionality

As a genderqueer person, I experienced that people most often resorted to bullying, humiliating, and ridiculing me for being obviously different. This is both the curse and blessing of gender as an outward signifier because it can be quite hard to hide in plain sight if your gender presentation is outside the binary. I was drawn to women's and gender studies because I wanted to understand my oppression as someone who was born in a woman's body but who did not fit in the societal categories of woman or man. I saw how Pakistani society viewed women through the scripts that were being imposed on me—how to dress, how to talk, what to do, what not to do, much like the three Gurus in “Beyond Bondage: Hari Women's Community of Struggle.” But I had the privilege of growing up in an unconventional family, where my grandmother was the head of the household and a renowned gynecologist, a working woman who supported the next two generations of her family. Although my grandmother's language was often patriarchal, in practice—in a complex way—she was a feminist. She wanted my sisters and I to work and to study, but she also hoped that we would get married like everyone else did, that we would cook and keep house and be pretty. That was the only acceptable possible future for us in her speech even as materially she supported us to study further and to do more with our lives.

However, she was deeply patriarchal in how she dealt with my mother, who was her daughter-in-law and therefore always an outsider in my father's family, and thus less ‘worthy.’ In these ways, my mother demonstrated the narrative of womanness as loss when she moved from her natal home to the family of my grandmother and became my grandmother's second-in-command in the family gynecological practice, always remaining in her shadow. The trope of the overbearing mother-in-law who was unhappily sharing her son with an outsider fit my grandmother well. My mother's deep love and non-confrontational



nature proved to be the balm for my grandmother's harshness. She would eat all the bitterness and still be her gentle, loving, and calm self. There were two primary, constitutive experiences that shaped my vision: watching my mom feel small at home and experiencing harassment at school for my gender non-conformity and feeling unable to defend myself. These lodged themselves in my heart, forever influencing me. I wanted to understand why people become part of systems that are blatantly unjust, but even more importantly, I wanted to document how people thrive and survive despite these systems. This quest and my own struggle, my training in graduate school about the struggle of women of color activists and black feminists led me to study resistance and search for an emancipatory vision of our society that would connect to local histories of women in struggle specifically those considered on the periphery society due to their class position, their gender difference and their religious difference.

My experiences also crucially opened my eyes to the operations of gender and the available scripts and tropes that created unjust expectations, and the policed categories of man and woman that left no room for those who do not fit either category (Hunt, 2018; Lugones, 2007; Hoad, 2010; Kidwai, 2001; Afshar, 1989; Moghadam, 1992). Throughout my life it truly irked me why our society normalized gender difference and treated women and trans\* people as less than men. Their thoughts, ideas and being were treated as either of less worth or entirely worthless. The social messaging, I received from society as a young child was that women are weak and trans\* people were deviant outsiders to the system. Women were unintelligent, fit only to do domestic chores and produce children. Even as these assumptions were repudiated in my own life, in my person and in the support, I received from my grandmother, who was a gynecologist and the head of our household, I knew the loss to be there—indeed, it was evident even in her own words when she openly preferred

male births to female births, just like her patients' families. She continued to extol the virtues of being male, just by that fact being born as one. In fact, she was adamant that my mother keep bearing children till she bore a son. The value and status of having a son was so central to my grandmothers' discourse and the sexism and patriarchy so deeply engrained there seemed to be no logic to it but just a blind adherence. She believed that girls should be married sooner and that they belonged to the marital family and not the natal family and that from her words it felt that being a woman itself was a burden.

As I grew older, I worked in different movements in and around Lahore, the labor and left spaces would be filled with male comrades and very little participation from women and no trans people at all. Conversation with male comrade would reveal that women needed to stay home to take care of the children and household responsibilities. Usually, when women are exchanged into the marital home, they become responsible not just for household chores, child rearing but also taking care of the old and young in the house. These caretaking responsibilities, emotional work and other forms of unpaid labor that women put in leaves little room for participation in other activities. The structure of the joint and extended family system places an inordinate burden of all forms of care work on the women of the family. There wasn't really ever a conversation about including trans people. Therefore, even in organizing spaces I saw notions about women's fragility and lack of worth in terms of political organizing, and a silence around trans\* people. This led me to understand how and why these assumptions and structures persisted and propagated themselves as if they were the entire story, while all these amazing women and trans\* people that I knew, in the feminist, domestic workers, working women's, peasant and trans\* movements and otherwise, were barely a footnote in history. The search for these stories and the training in graduate school helped shape my understanding and outlook as I made the

journey to visit the freed Haris in Hyderabad and interviewed the Khawaja Sira Gurus in Lahore as we worked together to shift conversations to be about emancipation and self-determination the architects of which were the Hari women and trans people themselves rather than narratives about the government saving and coming up with top heavy welfare programs that treated marginalized folks as objects for their schemes unable to determine what was best for themselves.

The stories that I have gathered required a kind of patchwork of theoretical framings depending on explanatory need rather than a coherent framework. The stories are an embodied form of emancipatory knowledge that reveal how struggle with communities allows people to forge paths in opposition to dominant structures of society. I urge readers to resist the temptation to follow the readily packaged orientalist scripts that are always available but rarely emancipatory or transgressive (Said, 2012; Abu-Lughod, 2001; Prakash, 1995; Liddle & Rai, 1998). My own experiences and trainings, including the stories herein, suggest that gendered thought and praxes are rarely confined to any particular geographical location or the exclusive province of a people. Indeed, the chapter that follows tries to elaborate the stories of the Hari women and reveals their ingenuity in self organizing, mutual aid and leveraging civil society networks to achieve a measure of stability and control over their own lives and aiding those who are still bonded - something almost entirely absent from dominant narratives about such communities and peoples.

Beyond Bondage: Hari Women's Communities of Struggle

The way we are struggling for our cause, I'm sure that one day these landlords will be defeated and the movement and struggle for the freed Haris will keep going.

—Lali

On the landlord's estate where Lali lived there were high walls surrounding the dwellings. Guards were stationed at the single exit, continuously monitoring movement. Every day, under this heavy surveillance, Haris are forced into exhausting, uncompensated labor. Minority haris are indigenous<sup>13</sup> dalit Hindu peasants<sup>14</sup> who moved from their lands due to climate change related drought and famine and became landless agricultural laborers who were coerced into bonded labor without the rights of sharecroppers<sup>15</sup>. This concocted, compounded debt is carried over between generations. They are disciplined with physical and

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<sup>13</sup> Ghulam Husain writes about the how the Kohli community was spread across the regions of Gujrat, Kutch, Sindh and Rajasthan and are one of the forty-seven groups that are enumerated as scheduled caste and tribes. This designation means that they are the ones who have been most marginalized on the basis of caste due to association with lowest caste status which activists have reclaimed and politicized as the “dalit” identity and lay claim to a history where “Dalit communities as having Dravidian-aboriginal origins, and as the indigenous inhabitants and owners of the land of Sindh (Kolhi B. M., 2014; Kolhi V. , 2011; Mal, 2000).”(Hussain 7, 2014). A majority of Kohli among other dalit castes find themselves in bondage in lower Sindh after their displacement from Tharparker.

<sup>14</sup> Khoso and Khaskheli have taken the definition of peasant from Via Campesina an international farmers' coalition that spans over eighty countries and work on issues of peasant rights, climate and environmental justice with peasant movements. They define peasant as “A peasant is a man or woman of the land, who has a direct and special relationship with the land and nature through the production of food and/or other agricultural products. Peasants work the land themselves, relying above all on family labor and other small-scale forms of organizing labor. Peasants are traditionally embedded in their local communities, and they take care of local landscapes and agro-ecological systems. The term peasant can apply to any person engaged in agriculture, cattle-raising, pastoralism, handicrafts-related to agriculture or a related occupation in a rural area. This includes indigenous people working on the land.” (Khoso and Khaskheli 12, 2019)

<sup>15</sup> According to research done by Hari welfare trust report on the state of peasants, Pakistan ranks no.8 out of 167 countries on the global slavery index while bonded labor is most common in agriculture. Hindus represent around 1.2% of the population the vast majority of whom live in rural Sindh. The two dominant districts being Sanghar and Tharparkar. Dalit Hindus face most barriers and vulnerabilities are they face exclusions on multiple axis including caste, class, location and gender. According to the report “In Pakistan, most Dalits are landless and work in agriculture and brick kiln sectors. In these sectors, they are mostly employed as bonded workers, a status that reinforces their social and economic vulnerability.” (Khoso and Khaskheli 10, 2019)

sexual violence by the guards who stand at every door, the contractors that oversee their work, and the landowners who dictate the terms.

This essay explores the conditions under which Hari women<sup>16</sup> in agricultural bondage struggle for survival, livelihood, and freedom in Sindh, Pakistan. It engages testimonies of women who have been freed through struggle, and who then help liberate others from bondage. In doing so, it will reveal the relationship between monopolization of land and power resources by Landlord and struggle for emancipation by bonded laborers in contemporary Sindh. My research demonstrates 1) that women in bondage in Sindh resist the carceral regime under which they labor by using all the tools at their disposal to survive, flee, and assist others in flight from bondage; 2) that the regimes of agricultural production in southern Sindh are carceral in their very structure; 3) that this coercive carceral structure targets women to extract their physical and sexual labor by force and terror; and 4) that state apparatuses collude with the landholding elite, selectively applying laws and facilitating the landlords' violent regime in order to maintain this carcerality. Following Marisa J. Fuentes, I use the term "free(d)"<sup>17</sup> (2016, p. 10) to indicate the mutually dependent and necessarily collective nature of the emancipatory project that Hari women are engaged in. Fleeing and helping others to flee makes the emancipatory project a cascade of causes and effects. This

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<sup>16</sup> While both Hari men and women experience profound mistreatment at the hands of the landlords, this essay will focus on Hari women who have a particularly gendered experience of the harassment.

<sup>17</sup> The use of free(d) point to the agency of the Hari women like the agency of the enslaved black people in the Caribbean that Marisa J Fuentes is writing about but as she explicates this agency is far more complex and capacious than the "liberal humanist" conception can hold. She also points to how the gender as a focus of domination and control for both African and Afro-Caribbean women vis-à-vis white women structures how black women are represented in the archive. From the point of view of the Hari women their interviews attest to the conditions they experience in bondage and the tools they use to free themselves. The structure of domination and control are compounded by their gendered location.

essay highlights both how Hari women free themselves; and how attaining freedom is a collective, cooperative, and conspiratorial process requiring many actors.

The testimonies on which this essay is based come from two sources: interviews I conducted with Hari women in 2018 on the outskirts of Hyderabad, Sindh; and an archive of Hari testimonies gathered by the organization Mehergarh in 2007. Following a story in Aljazeera (2014) by Rabia Mehmood about the colony of free(d) bonded laborers in Azad Nagar, Sindh (Mehmood, 2014), I reached out to Veeru Kohli, one-time candidate for the Sindh provincial assembly from Hyderabad (“Veeru Kohli: from bonded laborer,” 2013), who is a free(d) Hari and an activist for Hari liberation from bondage. Through her, I met Lali, whose words begin this essay, and the rest of the crew of Hari women liberators who mount rescue expeditions to free other Haris from bondage. Veeru Kohli was one of my main interlocutors when I visited Hyderabad. She is an organizer, free(d) Hari, and local elder who has worked tirelessly to elevate the issues that face her community. She and her comrades collect resources to go on expeditions to help others escape bondage. They help the newly free(d) families set up houses among the other free(d) families. My conversations with Veeru and her comrades are the first set of testimonies that I will examine in this chapter.

The second is a set of testimonies that were archived in 2007 by Mehergarh, an organization that works on issues around bonded labor, sexual harassment, and women’s rights. Mehergarh was co-founded by Fauzia Saeed, who has worked in different capacities in both national and international non-profits and the government sector.<sup>18</sup> During the late 1980s, Saeed worked at an international non-governmental organization called Action Aid

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<sup>18</sup> Fauzia Saeed’s most successful works have discussed sexual harassment in international development (Saeed 2013), and sex workers in Lahore (Saeed & Rehman 2002).

through which she supported the work of local organizations in Hyderabad that aid people attempting to escape from bonded labor. Together, these testimonies speak to the conditions of labor, incarceration, everyday survival, and struggle to free themselves from bondage. Following Andrea Smith, my aim is that, rather “than studying native people so we can learn more about them, I [...] illustrate what it is that Native theorists have to tell us about the world we live in and how to change it” (Smith, 2008, p. xxiv). These testimonies of Hari women who have freed themselves are the primary epistemic authority on the conditions they lived in, survived, and escaped from. The testimonies of the free(d) women teach us about the conditions of carceral labor and the emancipatory vision that survives despite these conditions. This allows us to learn about how communities of struggle (Télez, 2008; Cuninghame, 2016; Callahan, 2015; 2016a; 2016b; Ben Saad 2019) can change their circumstances and arise in solidarity (Gómez, 2016, p. 9-10) even when structural conditions and power configurations are monopolized, and mobilized, against them.

Testimonies or *testimonios* have a long history in Chicano feminisms and Latin American human rights struggles (The Latina Feminist Group, 2007; Cruz-Malavé, 2017; Calderon-Berumen et al., 2018; Ramalha, 2007). *Testimonios* are as “a pedagogical, methodological, and activist approach to social justice that transgresses traditional paradigms in academia” (Delgado Bernal et al., 2012). They function “as a genre that exposes brutality, disrupts silencing, and builds solidarity among women of color” (Anzaldúa, 1990; Delgado Bernal et al., 2012). Even though testimonios were created in a different context the purpose they served was to expose abuses of power and brutality by recording people’s testimonies who were most impacted by them, in fact Reyes, K. B., & Curry Rodríguez, J. E argue that “the practice of testimonio as a legacy of reflexive narratives of liberation used by people



throughout the world” (Reyes, K. B., & Curry Rodríguez, J. E, 2012, p.525). They note that the use of first-person narratives by Chicana feminist authors in the U.S. was deeply influenced by the writings of black feminist writers like Patricia Hill. Testimonios by their very nature and form are a political call to action (Reyes, K. B., & Curry Rodríguez, J. E, 2012, p. 525). The purpose and methodological use of testimonios fits with the testimonies of the Hari women as they are not just an accounting of what transpired but simultaneously a call to action as Lali states in the outset she sees the struggle of Hari freedom succeed despite the power of the landlords.

The testimonies studied here show that, in collusion with the police, the landowners’ regime controlled Veeru, Lali, and their fellow Haris through beatings, rape, intimidation, neglect, and murder. Subject to extreme forms of violence, and laboring under concocted debt that was ever-growing and irredeemable, bonded Hari women resist through sharing stories of escape and strategic organizing to escape to safety. These testimonies describe the contours of the landlords’ carceral regimes, while simultaneously disrupting the narrative that these regimes are inescapable. They also bring into sharp focus the communities of struggle that constantly and consistently raise their voices and work together for liberation.

The notion of carceral that I use in my analysis comes in part from theorizing on the carceral state in the US that emerged from twin processes: the neoliberal evacuation of the welfare state; the tough on crime rhetoric used for decreasing expenditure on social programs for poor communities; the over policing of communities of color; the expansion of prison infrastructure; as well as the willful targeting and incarceration of groups outside the hegemonic norm (Martensen, 2020). This results in people already on the margins (due to drug addiction, disability poverty and racist policing) to be criminalized, surveilled and incarcerated with devastating consequences for communities (ibid.). Even though the

concept of the carceral state comes from the US American context, and from theorists like Richie (2012, 2017), Gilmore (2007), Alexander (2010), and James (2003, 2005), among others,<sup>19</sup> it remains useful outside the US context in defining the features of a state that uses incarceration to solve social problems and devastate communities living outside of the hegemonic norms. While the Haris are not incarcerated in state prisons,<sup>20</sup> they are incarcerated by the landlords, and live without freedom for an interminable sentence. I argue that this can happen with implicit state support because Pakistan is a carceral state by proxy.

Experienced by an estimated 1.7 million agricultural workers and sharecroppers in Sindh (HRCP, 2004), carceral labor is labor extracted under conditions of physical and economic coercion and duress. In describing carceral labor, I first take my lead from free Hari women, who describe their conditions as incarceration: they have spoken of high walls surrounding their dwellings, guards stationed at the single exit from those dwelling, and the continuous monitoring of movement. Every day they experienced threats of violence, actual physical and sexual violence, and exhausting, uncompensated labor. The guards, the contractors and the landowners, in collusion with the police, oppressed these women through beatings, rape, intimidation, neglect and murder. Carceral labor is policed, disciplined and reinforced by a regime of economic, physical, and sexual terror. It forecloses

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<sup>19</sup> See for example Gottschalk 2005, 2008; Alexander 2010; Martensen 2020; Simon 2007; Richie & Martensen 2020.

<sup>20</sup> Later in the paper I trace the government's inability/lack of political will to implement proper land reforms and to properly redistribute the land resources. The monopolization of land resources in the hands of landlords means that they are then able to use their resources to manipulate the electoral system, have a heavy representation based on their endogamous group or baradari in police, civil services, judiciary, and other branches of government. This entrenchment of the landed elite in multiple levels of government and using their power and influence to be able to manipulate government agencies means that they can exercise the kind of control they do. They have set up private prisons and Haris know that local police will do nothing about these, and in fact if they report to/or run away to the local police they mostly likely going to act on the behalf of the landlord and bring them back.

the possibility of exiting the labor relationship since the Haris are incarcerated in private jails (Karim, 1995), this system functions by heavy surveillance at all times of the day and cutting off the possibilities of other sources of income (Kara, 2012).<sup>21</sup> Because landlords and other factory owners who employ bonded labor are present in the judiciary, bureaucracy, and many other positions of power, implementation of the Bonded Labor Liberation Act is nearly impossible.

The labor of Hari women creates the conditions of possibility for capitalist accumulation in Sindh.<sup>22</sup> Indeed, Hari women's labor inside the home provides the

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<sup>21</sup> There is a strange history of tracing Pakistani law and how it treats the notion of enslavement. At the time of the initial constitutional debates in the Pakistani parliament (from 1948 -1955) parliamentarians knew that enslavement existed in the form of bonded labor, but they were unwilling to accept this as many of the parliamentarians were themselves implicated in this practice. Therefore, instead of regulating this institution they placed a blanket ban on it in the first constitution that was put in place by a dictator in 1956 using the following Article 16(1): No person shall be held in slavery. (2) All forms of forced labor are prohibited, but the State may require compulsory service for public purposes. This ban meant the discussion of enslavement could be completely avoided and was used as way to brush the issue under the carpet rather than address it directly. Despite this completely constitutional prohibition bonded labor increased manifold and movement to stem this came from bonded laborers themselves who called the Supreme Court in the Darshan Masih (1990). Muhammad Azeem argues that initially the bonded labor struggle was taken up by leftist political parties like the Mazdoor Kissan Party and middle-class activists. The underpinning of this struggle has a class and labor related dimension that was evacuated in the nineties as foreign funding for the elimination of bonded labor came in, leading to the NGOs to follow the money and donor driven agendas like building schools to teach the children of bonded laborers. Over time the leftist political party stepped back and so they did the NGOs as donor funding shifted to other causes like women's rights. The court judgment and passing of the Bonded Labor Liberation Act did not impact the position of bonded laborers. According to Ghulam Fatima who runs one of the oldest NGO's that works on bonded labor in Lahore "bonded labor cannot be abolished as long as the feudal system remains, all the feudal lords themselves being brick kiln owners and sitting in the assemblies. District Nizams (local governments heads) themselves were invigilating the implementation of law and were torturing the bonded laborers" (Azeem 2017)

<sup>22</sup> By this I mean that from the testimonies of the women it is reveal that entire families are in bondage but also when a woman gives birth she not shown any leniency and in fact as soon as the children are older they are also forced to work along with the parents. Lali describes this in her testimony how she and her brother started working early on. They would work through the night sometimes under the light of tractor beams. So as Hari women reproduce, they add to the work force of the landlord.

conditions<sup>23</sup> for reproducing, maintaining, and caring for the regeneration of a carceral laboring class<sup>24</sup> (Dalla Costa, 2012). I contend that bonded labor is a kind of state-sanctioned or state-facilitated space of carceral labor that fosters regimes of necropolitical control for capitalist accumulation (Mies, 1986).<sup>25</sup> Furthermore, to reveal the violence that bonded labor<sup>26</sup> entails I contend that the category of bonded labor cannot just be understood through the lens of economic coercion of concocted debt, but also through the physical and sexual violence used. Finally, I demonstrate that Hari women are rebellious subjects or “geniuses of resistance” (Quan, 2005, p.1) who recognize their own “vulnerability to premature death” (Gilmore, 2007, p. 28) and organize to reduce harm, resist violence, and flee bondage to make community together.

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<sup>23</sup> These refers to the fact that as Hari women have children, they are included into the labor forces as soon as they are able to work. No other opportunities are available for Hari children since their parents are enslaved they are enslaved as well.

<sup>24</sup> By this I mean that in the testimonies of the women under bondage they said that they were required to do equal work in the fields as the men, Marvaan states “*There were separate managers for men and women. Our manager used to get all the women from their houses at 6:00 am and would bring us back at 6:00 pm. He would tell us that while we worked, we were all his wives*” and then they bore children. As Bayan Bhil describes “*Sumro Oad’s wife Sabiban was also with us. During the day as we were all working, she fell and started screaming. We ran towards her, but the kamdar told us to go back to our work. She continued screaming for a while and then gave birth to a child. There they started weighing every one’s grass, everyone had more than 40 kilos, but Sabiban only had 20 kilo. The kamdar beat her up with a stick so mercilessly that she fell with her 4-hour-old baby.*” They did not get any break for having children as the children grew older, they would have to work as well. I point to this as the regeneration of the carceral class.

<sup>25</sup> Capitalist accumulation depends on the unpaid housework of women, whose creation of the home, as well as the sustenance of “the male worker so that he could sell his labor for a wage at the factory door” (Mies 1988, p.19).

<sup>26</sup> Bonded labor system persisted during the British Raj, and this was well documented, Gyan Prakash traces this relationship in Bihar (India) between Maliks (Landlords) and Kamias (peasants). The cadences and resonance of this relationship under the Mughals was different since it had more to do with status difference but under the British as the money economy is consolidated the Maliks instead of being small kings turn into landlord and debt bondage form through which the position of the Kamias is understood.

## **Famine, Migration, and the Assumption of Debt**

Lali, whose words began this essay, reveals the hope and fight for a world where the Haris struggle to overcome the oppression of the landed class. In her words you hear the resonance of another world becoming possible through struggle.

Lali's story begins when she was born in Umerkot, into a family that had fallen into bondage in Dhoronaro Mirpukhas. The family started work in Dhoronaro at a landlord's farm as peasants but found themselves duped and forced into debt bondage. Lali's family was one among many to migrate from the Nangarparker and Tharparker regions of Sindh, away from drought, or in search of seasonal livelihood (Mirani, 2017). The prevalence of this is reflected in an ILO rapid assessment report about bonded labor in Sindh that finds "Haris most prone to bondage have migrated from Tharparkar, do not own their housing and are entirely dependent on the landlord for daily consumption requirements and for meeting emergencies. Four of the 16 districts of Sindh are likely to have medium to high levels of bondage... the districts with higher levels of bonded labor are those adjoining Tharparkar" (Hussein et al., 2004, p. 18). The free(d) women interviewed here report falling into bondage in Mirpurkhas, Sanghar, and Tando Allah Yar upon migrating from southeastern Sindh.

Mushtaq Mirani, a local researcher based in Hyderabad, pointed out in an interview with me in 2018 that the so-called 'Green Revolution' of the 1960s, during Field Marshall Ayub's dictatorship and presidency, focused national agricultural production towards cash crops and turning away from subsistence farming (Niazi, 2004; Imtiaz et al., 2004; Murgai et al., 2001). This resulted in widespread famine. Mirani remembers that countless promises were made to famine-stricken Hari's to recruit them into the production of cash crops.

Meanwhile, drought in the Thar region forced people to migrate to places with irrigation-based agriculture, aspiring to find work and reasonable living conditions. Poni recalls:

“[We were]living very happily in Nangarparker but the work was very demanding. We had to grind barley, bring water from far away, take care of cattle, cook and take care of children. When the drought came, we, like many others, decided to move to the barrage area because I thought life would be easier there” (Saeed & Kohli, 2007).

Poni is describing a life based in subsistence agriculture made impossible due to drought, even though the life she describes was grueling in many aspects their work and survival was based on labor they did for themselves rather than a life of enslavement. More importantly because they migrate, they became landless compounded by belonging to a religious minority which were vulnerabilities that the landlords and their contractors fully exploited.

Bayan Bhil describes her family’s similar migration patterns:

It was a rain fed area, so when there was no rain, things got very tough. We would not even have water to drink, and animals would start dying. At times like these, we would always move to the barrage area for survival and then move back after a few months, when it rained. Many years went by like this (Saeed & Kohli 2007).

The vignette from Poni and Bayan Bhils stories mark a trend of migrant families forced to leave their lands on which they practiced rain-fed agriculture or raised their livestock, now found themselves landless due to drought and climate change. Many families started working for landlords as seasonal labor, not suspecting that the landlord would keep them in bondage and in debt. Under the Sindh Tenancy Act,<sup>27</sup> a tenant must be registered with the provincial government and get half the produce, while the other half goes to the landlord. But families arriving from other areas were never given the status as tenants, and since they were vulnerable and dependent and rarely knew the rights, they could be entitled to, the landlords took advantage of them and never registered his tenant workers. They thus

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<sup>27</sup> The Sindh Tenancy Act was made law in 1950 after years of peasant activism in the late 1940s.

remained unprotected. Instead, the landlords would coerce Hari's into bondage to extract labor from them without paying wages.

According to the research conducted by the Food and Agriculture Organization of the United Nations regarding land tenancy in Sindh, the system in its present state suffers from lack of implementation, and the law has become largely outdated ('Improved land tenancy,' 2020). Most importantly land redistribution and reform efforts have born no fruit due to an absence of the government's political will to make such re-distributive changes (Esposito, 1974; 'Improved land tenancy,' 2020). This has led to consolidation of power by the landed class. Ayesha Waheed in her work on the failures of land tenancy highlights how the Haris are stuck in a perpetual situation of weakness without "legally enforceable tenure over their farmland upon which their livelihoods depend, leaving them vulnerable to poverty and exploitation. The existing sharecropping tenancy system... unbalanced revenue-sharing and cost-sharing arrangements and a complex system of dependencies as the landlords keep the accounts, transactions are rarely transparent, and landlords often over-value inputs and under-value outputs" (Waheed, 2018). This situation is clearly evidenced in Lali's words below, as she described how the landlord refused to give them wages for their work and instead said they owed him for working on his land:

At one point, we asked them to do our hisab [calculation of wages owed] so that we could leave. Instead, the landlord said you owe me one lac [Rs. 100,000]! I felt like he made up this debt. When we asked another landlord for a Rs. 100,000 to pay him off, he said your debt has increased to Rs. 150,000 and then after a few days he said the debt is Rs. 500,000. Then he said you cannot go anywhere else; you must keep working here.

These are enormous and impossible sums for impoverished farmers who left their home due to climate change. When Marvaan Kohli went looking for her wages she was similarly faced with an impossible debt:

After dodging us for days they finally shocked us with an exorbitant amount that we owed him. After we came back to our senses we sat together and realized that the landlord was playing with us. He had tricked us into being his slaves. We could never pay off a few hundred thousand rupees that he said we had to pay. We could never ever pay that kind of money. Besides, he was the one who owed us. But who could we go to for justice? (Saeed & Kohli, 2007)

The Hari do not have access to the landlord's account books and have no way of viewing or contesting the alleged debts. They have no rights even as tenants, and no means legally to advocate on their own behalf. They are fully subject to the will of the landlords who use violence and expulsion from the land as constant threat to extract their labor (Hari Welfare Trust, 2019, p. 40).

### **Conditions in Carceral Labor: Sexual Assault as Labor Control**

Bonded Hari women, like many working-class women, work "outside" the house alongside their male relatives, and on the land that is the landlord's property. The concocted debt that holds a family in bondage continues to rise to pay for the families' occupation and use of the landlord's land. This irredeemable debt makes financial release from debt impossible and renders the indebted Hari a slave. Being bonded also implicitly makes them part of the landlord's property. This is made explicit in the behavior of the landlords, as well as the contractors and guards who manage and discipline the labor, as Lali describes:

They used to ask us to remove our clothes and then greet them to show them respect in this way. If we refused to take off our clothes, they used to beat us, tear our clothes and rape us. At the place of this inhuman landlord no peasant was allowed to sleep with his wife without the landlord's express permission and if someone did, they were badly beaten. When the men went to work during the day then they would rape the women. To some women they would lie and say we will support your children. Many women would have the landlord's children whom they would give Muslim names. But later on [the landlords would] never accept the children as their own. They would say these are not our children. You must have slept with other men to have these illegitimate off-spring. If girls were born, they



would kill them, saying that it was our fault that we have given birth to a daughter. “Our semen can only produce boys” [they say].

The landlord and contractors would deny the paternity of children born from their assaults by calling the women impure and dishonorable, suggesting that the pregnancies were the result of them sleeping with other men. Moreover, if the child was a girl, she deserved immediate death for not only being inconvenient in her arrival, but valueless in her being, as the daughter of an enslaved Hari. The sexual violence meted out to bonded Hari women is the primary disciplinary tool that keeps the *entire* Hari family subdued and terrified. The repetitive subjugation is meant to terrorize the enslaved, making them believe that resistance will lead to further torture.

Saeed and Kohli (2007) also depict how sexual violence and debt correlate to keep Hari families immobilized. They describe how landlords kidnapped a Hari woman named Ganga, raped her for three days and then brought her back to her family. At that time Ganga was in terrible shape. Her family had such a heavy loan against them that they could not even react. Besides the landlord threatened them that if they raised their voice, they would be killed (Saeed & Kohli, 2007). Similarly, Poni recounts that people were afraid to speak out and so time went by without the violence being addressed. One day, the landlord stopped Poni in her work and accused her of stealing sugar cane by hiding it in a stack of grass.

I assured him that this was not the case, but he made a fuss about it and in the pretext of searching me took me into the fields at gunpoint and started to rape me. When I protested, he said, ‘Haven’t you seen what the other women faced? You better be quiet otherwise we will do the same thing to your husband and children.’ He raped me, and I was not able to do anything. I begged him for mercy, but he was brutal. (Saeed & Kohli, 2007)

Rape is a common disciplining tool, used against both women and the men affiliated with them. Honor resides in the body and behavior of women—not only women’s own

honor, but the honor of the family that raises them and the family into which they marry.

Rape is a violation not just of a woman, but of the family to whom she belongs, because the woman is family honor embodied in flesh.<sup>28</sup> Bahjo recounts the horrifying story of Adil

Mallah, the manager for the landlord she was bonded to:

Adil Mallah was very abusive towards women. Whenever he saw a woman alone in the fields, he would go and rape her. When my daughter turned sixteen, he started following her. I asked the landlord and his brother Raees Khwaja to keep their manager under control...He was furious and threatened that because I had been going around talking to everyone about him, he would kill my daughter. (Saeed & Kohli, 2007)

After Bahjo's daughter had been married for six months, and was due to visit soon, Bahjo went to Adil Mallah and asked him if he would leave her now-married daughter alone if she came to visit. Then,

[o]n my request, my daughter came to visit us on December 16, 2005. We were very happy. The whole family was very happy to see her. When we slept at night, my daughter's bed was right next to mine. Around midnight, a scream woke me up. As I opened my eyes, I saw the manager Adil Mallah standing next to my daughter's bed. I started screaming, but that vicious beast shot her twice with his revolver and left our hut. I put her head in my lap. (Saeed & Kohli, 2007)

Poni's and Bahjo's experiences describe a regime of sexual terror used to subjectify bonded laborers to be docile subjects who cannot protest rape and must submit to it as a routine condition of their gendered subjugation. The repeated rapes and sexual subjugation normalize sexual violence as an inevitable condition of being a bonded person. Landlords and their contractors' behaviors reveal that they believe they have access to the bonded woman's body with impunity. Demonstrating this, Dhori narrates:

One night when we all were at home, the landlord came straight into our hut. He ordered my son Tario to send his wife with him. He said he had some work for her

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<sup>28</sup> Regarding the discourse of honor in Pakistan, see R Ali 2001; S Khan 2003; Toor 2007; Irfan 2008; Patel & Gadit 2008; Lari 2011; Bhanbhro et al. 2013; Gupte 2013; Standish 2014; Jamali & Shah 2015; Rahim 2017; and Grewal 2018. Regarding honor and women's bodies, see Baxi et al 2006; Frembgen 2006; Bhattacharya 2014; N Shah 2016; and Hadi 2017.

at the house and wanted to take her along. We were all very angry and also afraid in our hearts but couldn't really do very much. We had to send her. He was very powerful. I could see my son's face getting red, but he didn't say anything. She looked at her husband, to get a clue about what she should do. He lowered his head. She looked at my husband and then at me to see if we would say something to stop the landlord from taking her. We looked away. We knew that he would not forgive us for disobeying him. She left with him and was brought back after two days. (Saeed & Kohli, 2007)

The physical labor required of bonded women is no less than what is required from their men, and small delays and deficits merit harsh punishment. Bayan Bhil was in the field working with other women one day when Sahiban fell and started screaming. They began to run to her, but the overseer sent them back to their work, and Sahiban continued to scream through pains of childbirth alone. After a short while, she picked up her newborn and returned to work. At the end of the day, when she returned from the field with the rest of the women, "they started weighing everyone's grass, everyone had more than 40 kilos, but Sahiban only had 20 kilos. The [overseer] beat her so mercilessly that she fell with her 4-hour-old baby. I was trembling with anger and sadness. Many women were crying and feeling sad for her but could not do anything" (Saeed & Kohli, 2007).

### **Flight**

The first thing Veeru identifies as the most important reason she decided to escape is that life in bondage was worse than death, and so she no longer feared death. She ran away to where some of her relatives lived and collected the Rs. 60,000 that she thought her family owed to the landlord, Salman Bhatti. She sent some relatives to pay the money and liberate her family, but the landlord said that he was owed Rs. 800,000. She realized she needed more help and "some people told me that there was a [free(d)] Hari camp in Matli and those people might be able to help me out." In the Matli campsite she met other free(d) Haris who

gave her support. She heard the story of Lali from her mother, her daring escape and how they found refuge in the Matli camp. Veeru lived in this camp for an entire month, gathering information about how to help her family escape bondage. She learned that she must approach Shakeel Pathan, who works for the Human Rights Commission of Pakistan (HRCP).<sup>29</sup> Shakeel Pathan is an activist known in the free(d) laborers circle for his commitment to helping people escape.

He gave me a letter for Superintendent Police (SP) of Umerkot and asked me to go to him... I figured that it was my war and I had to liberate my family and therefore I would go alone.

At the time, Shakeel Pathan was heading a cell of HRCP and took a personal interest in aiding the escape of enslaved peasants in Sindh. Pathan had been a firebrand member of the National Students Federation, a students' union that organized progressive students while resisting the tyrannical dictatorship of Zia-ul-haq. His activism which eventually led to imprisonment. Coalitional work was vital here, because his letter describing this as a genuine case of bonded labor directed the police to assist her and her family in their quest for freedom. And so, armed with this letter she headed to the police station. Veeru revealed that she waited outside the police station with Shakeel Pathan's letter for nearly three days without food, with the officers' belligerence further compounding the precarity and violence of the moment. In many ways, her experience signals how poverty, bondage, and gendered discrimination limit access to police aid. Veeru had no other choice but to wait for the officer to acknowledge her, because giving up would mean that her death and the death of

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<sup>29</sup> The Human Rights Commission of Pakistan (HRCP) is a non-governmental organization set up in 1986 to fill the gap of a national human rights commission in Pakistan. To date, it is the institution with the longest history of monitoring human rights violations in Pakistan.

her family was all but inevitable. Through much struggle she was eventually was able to liberate her family.

### **Organizing and Building Allies**

From Badruddin's interview after the unfortunate death of Shakeel Pathan, the involvement of the Human Rights Commission did not remain as strong on the issue of helping bonded laborers escape, and other employees of HRC only continue peripheral work on this issue. This points to the limits of coalitional work since the person trying to escape bondage faces many layers of precarity and vulnerability that they cannot step out of, whereas the helper can simply choose not to work on this issue if they no longer feel compelled by it. Yet coalitions are crucial in scaffolding an informal structure to help bonded people escape. That this is their own war is an important refrain, and points to a difference between the free(d) laborers and the NGO workers, lawyers, journalists, and others who support their cause. Ghulam Husain, a Hari and organizer of fellow Haris, spoke to me about this difference. Middle class people who come and do the work as opposed to the people most affected by the problem differ in their approach to organizing, as well as differ in their goals, processes, outcomes, and earnings. Husain reflects on his work for the Green Rural Development Organization where they work to get peasant and workers proper remuneration. His key critique is that

[i]deally there should be a political party that addresses these issues systematically but running a party required funds and the parties over here they run by middle class landlords. Our people do not have that kind of resources and where would they get these kinds of resources? But in spite of this, our work is political.

By naming the work of the Haris as political, Husain signals a desire for structural change in the way power is held and replicated in a truncated political system that reflects only the

transactional interests of the upper- and middle-class landlords, and because of which people are oppressed, their needs and wants unrepresented. Despite these hurdles, free(d) laborers like Veeru, Raju, Lali and the others have joined together and mobilized civil society networks and legal tools like habeas corpus writs to help others like them escape.

The backdrop of what both Veeru and Ghulam Husain articulate can be traced through the late 1970s and early 1980s when the dictatorship of General Zia-ul-Haq (in power 1977-1988) was making broad based changes in the Pakistani landscape. Military authoritarianism created a space where landlords were able to more boldly consolidate their hold over land and treat the peasants in truly abhorrent and violent ways. This treatment was utilized to control the Haris and extract labor from them that was nearly free and in fact created deeper indebtedness, such that they couldn't leave their work under any condition. As the oppression and persecution grew against organized labor,<sup>30</sup> organized students,<sup>31</sup> organized peasants,<sup>32</sup> religious minorities,<sup>33</sup> and women,<sup>34</sup> people became more and more disillusioned by organizing because doing so sent them to jails, or caused them to be flogged, and endure other forms of terror and torture from the state. On macro level student unions were banned and labor unions denotified, and many other hostile measures were taken against people who systematically organized to challenge the power that was concentrated within the hands of a few. Ghulam Husain's narrative is instructive in this regard as it speaks

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<sup>30</sup> See, for example, KA Ali 2005 and Kazmi 2017.

<sup>31</sup> On student organizing in Pakistan, see Aziz 1993; Kalra & Butt 2013; Malik 2013; Kalra 2018; Kazmi 2018.

<sup>32</sup> On peasant organizing in Pakistan, see NG Ali 2010, 2020; Rizvi 2019, 2020; Munir 2019; Sayeed & Haider 2010; Zahoor 2018; Mahesar & Mohyuddin 2015; and Khaskhelly et al. 2015.

<sup>33</sup> On discrimination against religious minorities in the 1970s and 1980s, see Rehman 2001; Saeed 2007; Ispahani 2017; Rais 2005; Begum 2012; and Bahadur 1998.

<sup>34</sup> On women's rights in the 1980s, Bhasin, Memon, & Khan 1998; Gardezi 1990; Jalal 1991; Kennedy 1990; Noor 2004; Toor 2007, 2011; Jamal 2005, 2006, 2009; S Khan 2003; Shaheed 2005, 2009; and A Khan 2018.

about Zia-ul-Haq gaining ascendancy around the same time as Hussain had started organizing with the peasants and workers. Even though they were organizing people against the local landlords, the military felt that they were organizing against them, revealing how the loyalties of the military was not with the public, but with the power holders.

### **Tools of the Resistance**

The fear of organized peasants, laborers, and students was a specter that haunted Zia-ul-Haq's military regime and the regimes that came before them.<sup>35</sup> Therefore, the heavy-handed clamp down and wholesale ban on activism represented, in many ways, a lesson to future governments about how repression could work as an important tool for curbing peoples' organizing power. The positionality or situated knowledge<sup>36</sup> through which one came to the movement was crucial, as Comrade Ghulam Husain notes:

We took part in this movement in the same way that an oppressed person would. We were ourselves a victim of bonded labor by the landowners, so we took part in this movement. And we just learnt moment by moment, got more awareness after reading books and worked even more on this.

Veeru and other women who have worked with her to help others escape share this positionality. In their struggle, they are in coalition with NGO activists, lawyers, journalists, and others. They have developed linkages, means and methods of resistance that we can learn from their testimonies. Veeru's comrade Kasturi shares:

I thought that if I'm facing this cruelty then other farmers must be facing it too, that their case must be of the same nature as mine, while some might be different from

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<sup>35</sup> Ayesha Siddiqi writes that under general Zia-ul-haq all forms of political resistance were banned including student and labor unions. She even argues that under military rule the Army acquired more and more land and over time started acting as Landlords themselves towards landless peasants (Siddiqi, 2017)

<sup>36</sup> On situated knowledge, see Haraway 2003; Stoetzler & Yuval-Davis 2002; Gherardi 2008; Smith 2004; Llewelyn 2007; Gago & Mason-Deese 2019.

mine...When we saw this oppression/cruelty being faced by other farmers, we decided that we'll fight against it.

Subject to extreme forms of gratuitous violence and threatened with a concocted, irredeemable, and ever-growing debt—that exists to keep them bonded, extract their labor, and create compliance—Hari women somehow manage to resist these oppressive carceral conditions. They protest, they escape, and they collude to free themselves. There are many elements that come together for enslaved families to escape the clutches of a landlord who had kept them in debt bondage. The different methods of control deployed by the landlords 'regime to keep the threat of revolt at bay, and to keep Haris enslaved, engendered a need for various means, methods, tools, and visions to combat the carceral agricultural regime and free themselves from bondage. The following testimonies reflect the freedom tools used by Hari women who escaped bondage and who now organize resources like money, transport, and legal help, in order to go on expeditions to free others from bondage.

I met Kasturi in Azad Nagar ('free town') on the edge of Hyderabad city in Sindh. Azad Nagar is a settlement set up by peasants and laborers collectively as a site where escaped bonded laborers could find homes. Kasturi is part of Veeru Kohli's crew who together go on expeditions to free other bonded Haris.

Veeru guided us and today we are with Veeru as well, if she gives us any order or if I find something out, we go out to help them. Even right now we are fighting against three landlords, who threaten and try to scare us. But as long as we're alive, we'll keep fighting. Right now there's an issue going on with the chamber district of Tando Allah Yar in which the feudal lord has inflicted a lot of violence on the farmers and we helped them and protested a lot but he has not been arrested... We sat with them in hunger strike for 23 days, during which my brother's wife passed away but I still didn't come back because I know that we have to fight against this oppression, and her death was just nature. Then we went in four Suzukis, ended that hunger strike and had a sit in.



Veeru's crew takes large risks to organize liberation expeditions and fundraisers from the community for this purpose, going from house to house collecting money, utensils, clothes, and anything else that a fleeing family may need to survive once they arrived at the camp. Kasturi's choice to forego her sister-in-law's funeral in favor of participating in a hunger strike for other bonded Haris is no small sacrifice, as social life in the village is built around family duties and honor. But, for her, the liberation of others takes precedence over a death that is, after all, 'just nature'.

Veeru Kohli herself is a free(d) Hari and the primary galvanizer of this crew of liberators. At the age of 16, she was living with her natal family in a village called Syed Alladino Shah, near Jhudo in Sindh. She was married into a family of farmers working a local landlord's land:

I was surprised to know that because of a loan, they were tied to him. From the way they would talk I could tell that he was not nice to them. I realized that they all could not even think of leaving that work. They were indebted to him and were helpless in the face of poverty and lack of opportunities to earn money. (Saeed & Kohli 2007)

They struggled and worked tirelessly for this landlord for seventeen years and finally made their way out of his farm to work for another landlord. They hoped that this would be a better situation in terms of being paid regularly and not having to be bonded. But much to their disappointment, this landlord turned out to be worse. At the new farm, guards always surrounded the women, threatened them, and physically beat up the men in front of their wives to instill fear. One day, when Veeru's son was getting married, the landlord passed by, and asked, "with whose permission were they getting married" and then started beating the bride and groom. Faced with his power and authority, Veeru felt helpless. Even though she cried and screamed, she was pushed away.

One day, they started beating Veeru's son and she retaliated, hitting the manager back. The manager did not take kindly to this and reported it to the landlord. Veeru told her son and daughter-in-law to run away, suspecting the wrath of the landlord and sure enough, the next day the landlord came over and demanded that Veeru hand over her daughter-in-law. She refused and said that they had left. He was livid. He asked his guards to bring Veeru to him the following day, in place of the daughter-in-law. Afraid for herself yet happy that she had managed to help her son and his wife escape, Veeru was preparing herself for abuse and torture when it occurred to her that she could also try to escape. The next day as the women left for work, she went with them but surreptitiously slipped away towards the road. She ran as far as she could and only stopped when she reached the safety of her brother's house. At her brother's house, she started to plot to get the rest of her family out. She collected the 60,000 rupees that was her putative debt and sent relatives to him to free the rest of the family. The landlord said that Veeru owed him Rs. 800,000, and that he was going to sell the women of her family to get that money back.

Devastated by this news, Veeru sought another solution. She heard about the camp of Haris who could possibly help. "These people ... were freed from similar prison-like circumstances that I had been living in. They referred to anyone who was fighting actively for justice as a 'comrade.' I told comrade Lali's mother what I was trying to do for my family ... She said 'We are all with you and will help you get the rest of your family liberated.' I felt relieved." (Saeed et al., 2007, p. 21). Veeru continued to stay in the camp while resources were gathered, and the Human Right Commission of Pakistan wrote a letter regarding her circumstances. She approached the police alone with the letter and had to wait for three consecutive days without food, afraid that since she was near the landlord's farms his people

could capture her at any time. Finally on the third day, she met with the officer in charge and gave him the letter, telling him her entire story. He agreed to go with her to free her family.

“The guards saw us coming from a distance and fled. I thought to myself that those who roamed around like lions, treating us brutally, are now running away like mice. I felt brave. I was thrilled to see my children and other family members. They were shocked and could not believe how I had brought such senior police officers with me. They could never imagine that I would be able to mobilize support, much less such high-level police support” (Saeed et al. 2007, 22).

Once freed, she and her family moved around from camp to camp and in that process, she decided that she would “contribute to somehow making this problem go away. She felt strongly that this kind of abuse of poor farming labor was too much” (Saeed et al. 2007, 23).

Veeru’s crew has a multi-pronged process. When someone reaches out to Veeru and her comrades to ask for help, the first action taken is that the crew files a writ of habeas corpus (491) in the Sindh High Court. A writ 491 is usually used in cases of detention or kidnapping, particularly if the police, intelligence agencies, or a powerful private party hold someone against their will. A habeas corpus writ compels the party holding the Hari to ‘bring the body before the court.’ Veeru and her comrades have contacts with lawyers who offer their services for filing these writ petitions and a successful petition results in a court order. A court order makes the police more amenable to raiding the landlords’ premises, as it carries the heft of the state behind it. Even so, to make sure that the order is abided by, and that the landlords do not interfere in the release, the free(d) Hari women take a police contingent from the city rather than the local constabulary. City police officials are more remote from the influence of the landlords than village and town level police because they are outside the immediate economy of patronage in the village. Raju narrates:

Seven of our generations ended while being imprisoned by these feudal lords. We were imprisoned in the town of Khipro (Sanghar) by the landlord from the Rajar tribe, and he was ruthless. We were the first to take this step to escape. At that time, we didn't know what 491 is either, we were scared that if we are not freed then we would have to spend an even worse life. But as soon as we escaped and started helping other people be free after a while, now we have no fear, and we help each other. If Veeru isn't here, then I go. We're each other's support like that. Where we're sitting right now, no one was up for living here. There was only my home. Now there are 150 homes and most of them were freed by me and my partners.

Wakeelan's route to freedom was similarly accomplished by filing a 491-writ petition in the High Court, filed by family members who had already escaped. She describes in vivid language the pain of having to wait as Punnu Bhil, the first person who escaped from her family, initiated the process through which she and her family could also escape. Wakeelan had heard stories of how others had escaped. Punnu had been tasked with contacting Shahu Bhil once he was free and, with Shahu Bhil's help, they arranged a lawyer to register a habeas corpus writ 491 in the Hyderabad High Court. Mohammad Qaimkhani, a local lawyer, agreed to aid in the process of the writ. Wakeelan did not know whether Punnu had been successful in his escape and lamented, "I cannot tell you how we suffered as we waited for Punnu. It was taking very long, and we were not sure what was happening. We found out later that the court case was being dragged."

When the Haris are liberated from the landlords' land, they flee to the Hari camps where the comrades who have arranged basic subsistence and housing for them greet and settle them in. However, the journey to the settlements is perilous because landlords activate their carceral network try to kidnap people back, and sometimes capture and intimidate the liberators as well. As Lali recalls,

Once I even went to Rahim Yar Khan [in Punjab] to free laborers. They escaped but the landlords kidnapped me and took me someplace where they beat me badly for five days continuously. They were saying bring our peasants back, but I said never. Thankfully my comrades came back for me and helped me escape. I was admitted to the hospital, since I was badly beaten, and I hadn't eaten for five days. They had

pulled out half a head of my hair. I did not lose my courage. We get a lot of threats when we go to free peasants. They point their guns at us, but after all the violence and oppression we have faced already it does not scare us.

Munoo Bheel and his family had escaped the landlord Marri's estate in Sanghar district of Sindh. They worked as free(d) laborers for some time, but "on 2 May 1998, landlord Abdur Rahman Marri and six other men abducted eight members of the Bheel family" and to this day these people have not been recovered.

The steps seem simple, yet the process behind them requires a herculean effort and a system of mutual aid. Veeru and her many colleagues created a robust network of mostly free(d) women buttressed by peasant activists, lawyers and other members of civil society. The testimonies of the women reveal that in every step of this process there were threats, hurdles and dangers attached. Their testimonies expose the interconnected roots of a structure whose nodes are people like Veeru who give dharas (support), and who boost the ability of people to free themselves and remain free.

### **Situating Bonded Labor**

There have been multiple views on bonded labor under the aegis of modes of production debates during the 1970s (Brass, 2008, 2012; Banaji, 1976, 2012; Nadkarni, 1991; Patnaik, 1990; Ramachandran, 1990; Das, 2020). One main thesis is the semi feudal thesis that considers bonded labor a pre-capitalist relation that would be replaced with free labor under capitalism (Banaji, 1977). Another thesis looks at bonded labor as congruent with capitalism in general, but also at times the relationship of choice leads to the deproletarianisation of the rural labor force (Brass & Bernstein, 1992). Deproletarianisation occurs "where agricultural workers, who earlier have personally commodified their own labor-power, subsequently become unfree (their labor-power either ceasing to be a

commodity, or being recommodified by someone other than themselves), what has occurred is a relational transformation that corresponds to deproletarianisation” (Brass, 2011). Jairus Banaji critiques both these positions, proposing instead that theorizing free and unfree labor helps to reify notions of individual freedom in a liberal system. This hides the exploitation of waged labor by making the conditions of unfree labor exceptional. Banaji further contends that the conditions of free labor cannot exist within capitalism because “free labor is a construct of liberal ideology, the lived experience of oppression under capitalism mystified as an ‘outcome of ordinary principles of freedom of contract’, and the only real freedom workers possess under capitalism or any system of domination is their power of resistance, that is, the capacity they have as individuals to act on the world, both individually and through the common action of groups” (Banaji, 2003, p. 91). Banaji argues further that bonded labor was constituted through capitalist relations of exploitation, even when the advanced modes of capitalist production were not present. He uses the example of Deccan, India, in the late eighteenth century where capitalists used advancing wages as debt, and interest on the debt, to extract surplus value from the labor. At this point, laborers had no capacity to regenerate the production process on their own from year to year. Banaji described this process as the formal subsumption of labor into capital, concluding that relations in colonized countries were in fact capitalist from the beginning (Banaji, 1977). For Banaji, the concurrence of bonded labor and capitalism explains why and how capitalists race to the bottom in terms of labor cost, and why bonded labor would increase over time. What is apparent is that over time as capitalism makes greater incursions through accumulating resources, and capitalists accrue more power, landlords seek to make slave labor a permanent type of labor relation. They find in the state an ally and use the state to legitimize and enforce their reign of extraction, continuously countering and sabotaging

attempts by Hariis to organize for livable conditions for labor. This is essentially what the Hari women described while they were in bondage—the regimes of sexual, emotional, and physical terror that they have been subjected to, coupled with the feeling of total helplessness that even the authorities and police will not help them. That which is generated from the accumulation of power and resources over historical time is nearly impossible to disaggregate from development, modernity and the expansion of capitalism from colonialism and slavery (Mignolo, 2002, 58; Quan, 2012). The state has been a prime support for this system. People who can afford to come into electoral politics have vested interests in protecting their class wealth and power. This is what I am naming as state sanctioned spaces of necropolitical control, which are ruptured when communities of struggle organize to take back control, even when structural conditions are not in their favor. Their ability to organize within the conditions and precarity of their lives points towards a kind of utopian thinking that Avery Gordon describes as a self-authorizing act to be free in the here and now, where oppression constitutes only one condition of the free(d) women’s existence. This utopian thinking is not about reaching a potentially elusive future, but it is a way to change the life one’s living in the here and now. As Gordon writes, it is the ongoing “building of alternative civilization, with its own reason, its own home, and its own value system.” (Gordon, 2004, 129).

### **The Legacy of British Colonial Land Laws in Sindh**

The circumstance of bonded labor was not a creation of the Pakistani state, but an inheritance of British colonialism. Colonialism and the inauguration of colonial capitalist modernity created markets in port cities so that raw material could be extracted and exported to the metropole (Metcalf, 2006). Production and taxation of agricultural goods was

controlled by designating certain castes to be land-owning and entirely separate castes of people who would till the land (ibid.). Caste structures predated colonialism; however, British categorization, documentation and legislation of castes and tribes led to the ossification of precolonial caste structures (Omvedt, 1994). The tillers or agricultural workers were in large part Dalits who were bonded to landowners (ibid.).

The British annexed Sindh frontier region in 1843 and the reasons behind this annexation range from Sindh's importance economically as the cradle of the Indus Valley to the fact that it was a lucrative trade route for opium's export to China (Wong, 1997; Markovits, 2009; Ansari, 1992; Sohar et al., 2015). The British mapped "India as a fabric of local communities held simultaneously within a structure of intellectual and administrative control, [in which] the British used census surveys and classifications of castes, tribes, languages, and religions to help to lay the foundations for their power" (Cohn, 1987, quoted in Gilmartin, 1994, pg. 1127). Land settlement was crucial to establishing British political and economic control, so the British doled out large land grants to members of the elite like zamindars (landowners), pirs and their family members in exchange for their support of British rule (Khan, 2007). British colonialism enforced a state-sanctioned legal regime of private property ownership that benefitted and rewarded people who would support their rule in terms of providing military and tax-paying support. This guaranteed an ossification of power of the landed people while trade, extraction of surplus value, and market-oriented setup ushered in capitalist relations. The concept of land "ownership," as in the right to sell or hold land was a concept from the west that did not exist in India before the arrival of the Europeans.

When Sindh came under British control in the winter of 1847-8 a British clerk came to take stock of the situation in Sindh and to make recommendations for future governance.



One of his most crucial recommendations was that “no use had been made of the traditional village authorities, the jagirdars and the zemindars, in administering the country... He argued that it would ensure the cooperation of this powerful class of the population and identify its interests with those of the government ..... The simplified revenue system in which settlements had been made with the zemindars and the jagirdars would allow the Collectors to take on additional duties” (Khuhro, 1965, p. 49). The structure that the British created made sure that the interests of the landed class were protected so that the revenue stream to the state would be uninterrupted. Along with revenue concerns “they needed collaborators in the countryside whose interests coincided with those of the British raj. As far as the question of land settlement in general was concerned, the authorities introduced the concept of private property and conferred this proprietary right on those individuals whom they wished to remain powerful” (Ansari, 1992, p. 37).

The peasant classes were stuck within their caste boundaries and classifications, which solidified (and naturalized) their landless status. Settlement was a crucial tool for British revenue-generation and the stability of British authority in a “frontier region. In Sind [...] the British viewed irrigation policy as critical to controlling the upper Sind frontier where, since [...] the 1840s, canal-building was seen as a ‘civilizing’ lever ‘to induce the roving predatory Baluch tribes [...] to take to peaceful agricultural pursuits” (Gilmartin, 1994, p. 1127). The institutions created, sustained and propagated by the British to consolidate their power had a lasting impact in terms of power, wealth, resource distribution and social division between the landed classes and the landless peasants.

The introduction of and reliance on private property was important for multiple purposes. “British state power was, in fact, tied to a legal structure in which the definition of property rights in land was central. But agricultural settlement was important in British eyes

not only for fixing Indians in a world of private property but also for locating them within a scientific political discourse” (Gilmartin, 1994, p. 1127). A colonial relationship of revenue collection built up the Empire by instituting land ownership and defining “custom” and “community” in terms that made local formations legible to the British imperial apparatus. Through this process “the British used the process of settlement to tie powerful local elites to the state” (Gilmartin, 1994, p. 1133). In this way, a legal relationship to land ownership and land settlement was cemented. This was undergirded by scientific empire-building—particularly through processes of irrigation and revenue—and was sold as more progressive and better than older ontologies of rural existence that relied, for instance, on seasonal irrigation. Subsequently, land ownership became critical for subsistence and even survival for peasant farmers, from whom communal forms of resource use had been divested by the new regime of private property. Before private property laws, peasants could settle and clear new land with or without a landlord’s help. But, when the British appropriated excess land as state land and tied “property and occupancy rights to law, a basis for the landlords to flout the custom which recognized multiplicity of rights in land and which had many ambiguities which, at times, could work to the benefit of the peasant” (Feroz, 1984, p. A-156).

These land control structures survived into modern-day Pakistan. After the creation of Pakistan in 1947, Sindh became one of the provinces of Pakistan with a large agricultural base, second only to Punjab. The Partition of India triggered the en masse migration to Sindh of Muslims from central Uttar Pradesh, Central Pradesh and other Muslim minority areas in India (Yacoobali-Zamindar, 2007). This caused a demographic shift in the Sindhi metropolis of Karachi and deep tensions within the existing nationalist and migrant ethnic communities in the province. The Sindhis, some of whom were Hindu, felt dominated by Punjabi settlers in Sindh and the Urdu-speaking migrants who had settled in major cities,

including Hyderabad and Karachi (Zaidi, 1991). Hamza Alavi describes this as sub nationalisms of sindhi nationalism being constructed as a threat to Pakistani nationalism. This is exemplified by the idea that the nation itself has been high jacked by “Punjabis who dominate the ruling bureaucracy and the military that has effectively been in power in Pakistan since its inception; in partnership, they might say, until the mid-seventies with Muhajirs who were relatively well represented in the Punjabi dominated state apparatus” (Alavi, 1989, p. 1527). These historical political processes that led to demographic shifts and centralization of power towards Punjab had deep structural, economic, political consequences, and social inequalities manifested in Pakistan’s other provinces. Feroz Ahmed (1996) describes this process from the point of view of Sindh (where Karachi as the main urban center) that attracted people from all ethnicities, Punjabi, Pashtun, and Seraiki, with refugees from Afghanistan and Biharis from Bangladesh, making a demographic shift, where Urdu-speaking migrants from India made up a large percentage of its population. Overall, the large-scale urbanization of Sindh, up to 43% according to the census of 1981, “carries with it an... ethnic dimension in that most of this growth, especially in Karachi, was among the “non-indigenous” groups whereas the Sindhi and Baloch “indigenous groups’ population together comprise a little more than one-tenth of the population” (F. Ahmed, 1996, p. 635). This movement further exacerbated the division between urban, Urdu-speaking people and rural Sindhis like the Hari, even though the urban centers were up to 15% Sindhi (ibid.) This also created inter-ethnic tensions in the region that would lead to a rise in Sindhi nationalism.

Set against the dominance of the Punjabis in politics and economics, there was an increase in ethnic nationalisms roused shortly after partition when strong Sindhi nationalist leader, GM Syed—who was responsible for passing a resolution in the Sindh assembly in

favor of ceding to Pakistan—was jailed and declared a traitor by those who resisted the One Unit<sup>37</sup> scheme setup by military dictators General Iskandar Mirza and General Ayub (Rajpar, 2021). Power was retained in the Punjabi dominated center in West Pakistan, rather than decentralized and devolved to the provinces, especially East Pakistan (now Bangladesh), which held the demographic majority, yet were totally under-represented in bureaucratic and military apparatuses. The Urdu-speaking migrants and the Punjabis were over-represented in the civil and military bureaucracies because Punjab was the province that saw the most settlement and ‘development’. As a consequence of a longer and more intense experience of coloniality under the British (Ali, 1988), the migrants had no political base when the two groups conspired to keep power centralized. As agro-capitalism developed in Punjab, developments in agriculture that started in the mid-fifties and culminated by the sixties, show a 6% increase per year (Alavi, 1976). This growth and the “impact of the so-called green revolution<sup>38</sup> on the different strata of the rural population has been quite uneven. Because it was mainly those who cultivate large landholdings who have benefited” (ibid., p. A31), the Punjabi elite came to dominate the political scene at the center. By the 1980s, the resentment in Sindh grew to a point of secessionism; the movement was quelled, however, by the largely Punjabi- and Pakhtun-dominated army. Since then, there has been a deployment of largely

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<sup>37</sup> The One Unit scheme refers to the reorganization of the administrative units of Pakistan in the 1960s by the government of Gen. Ayub Khan, under which Sindh, Balochistan, Punjab, the Northwest Frontier Province (now Khyber Pakhtunkhwa), were combined into a single administrative unit called West Pakistan, ostensibly for parity with East Pakistan (now Bangladesh). Along with an ideological battle about language (Urdu versus Bengali as the national language), this move precipitated the eventual dissolution of Pakistan, in a bloody war that created independent Bangladesh in 1971. See Jaffrelot 2004; Kazi 1988; Mushtaq 2009.

<sup>38</sup> The Green Revolution refers to the introduction of agricultural technology in the 1960s that included genetically modified, high yield seeds. It signaled the increases in the use of tractors and other technologies to increase crop outputs. On the Green Revolution, see Niazi 2004; Imtiaz et al. 2004; Murgai et al. 2001).

Punjabi troops through much of interior Sindh, coupled with land allotment to Punjabi army officers in Sindh (ibid.).

The political machinations at the center of the state and the rise of provincial nationalism in Sindh did nothing to upset the balance of land and power distribution in rural Sindh. If anything, it bolstered the power of the landlords and the *pirs*, as they claimed to represent and center the interest of Sindh. Rural Sindh remained largely dominated by Sindhi and Punjabi landowners who, over time, consolidated their social, economic and political power by dominating representative politics. Landed elite families monopolized power at different levels of electoral representation: at provincial and national levels, in the judiciary, in the police, and in other bureaucratic institutions of the state, leading to wavering government support for initiatives that would cut into their power. During Pakistan's turbulent oscillations between martial and civilian rule since 1947, the landed elite have acted as a lever of social control for the state, and their position has only grown stronger since the 1960s when Ayub implemented land reforms. The first land reforms were restricted to "holdings up to 500 acres of cultivated land, 1,000 acres of dry land, and 150 acres of orchards" ("Land reforms in Pakistan," 2010). Over 6,000 landowners exceeded the newly defined ceilings, owning 7.5 million acres of land. The landowners outsmarted the reforms by transferring the land in advance to relatives, so that ownership remained within the family but not in one person's name on whom the limits could apply. Thus, not much land was transferred to landless peasants. Later, during ZA Bhutto's tenure in the 1970s, there came the rousing promise of Islamic socialism in which the slogan was *roti, kapra aur makaan* (bread, clothes and housing for all). At this time peasants had organized, and many felt that they would be able to reclaim land from the landlords. However, this was not the case. Even

though Bhutto made a halfhearted attempt at land reform, “the most important and relevant change it made was that individual land holdings, including shares in *shamilat*<sup>39</sup>, if any, in excess of 100 acres of irrigated land or 200 acres of unirrigated land, or irrigated and unirrigated land the aggregate of which exceeded 100 acres of irrigated land.” Bhutto’s land reform program led only to negligible land distribution, and this marked the end of statutory attempts for land reforms. Later claims of limiting and land resources were targeted as un-Islamic. This was taken up by the Supreme Court in the Qazlbash waqf case where it declared that “1972 regulations and the 1977 act have seen their main provisions being struck down and the 1959 regulations have been repealed” (“Land reforms in Pakistan,” 2010).

The non-ownership of land has become “a key factor of poverty” in Sindh where “two-thirds of rural households [do not own] any land and just 0.4 percent of households [account] for nearly 24 percent of the total area” (Mumtaz & Noshirwani, 2006, p. 1). This was true of farmers as well as Haris or landless sharecroppers. Studies showed that “poor people’s access to land [was] restricted by the highly unequal distribution of land ownership on the one hand, and changes in land tenure arrangements on the other. The decreasing access to land has [had] negative implications for the poverty-reducing potential of agricultural growth, and therefore on rural poverty” (Gazdar et al., 2002, p. 41).

### **The Nexus of Power Between the State and the Landlords**

The institutional structures of the Pakistani state support the landowners abuses. For example, on paper the Pakistani state has legislated against bonded labor under the Bonded

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<sup>39</sup> ‘Shamilat’ are lands held in common.

Labor System (Abolition) Act 1992 [Pakistan], but implementation is lax or largely ineffective. This is because the landowners are representatives of the state operating in the executive, judicial and legislative branches of the provincial level. Similarly, the Sindh Tenancy Act 1950 mandates that peasants should be considered registered, permanent tenants if they till the same land for at least three or more years, and they should receive half of the produce they have tilled. This too is not implemented. Some theorists contend that the lack of democratic development in Pakistan, which has seen military dictatorship for half of its life, contributes to the state's failure to implement these laws. Others fault the lack of positive discrimination for disadvantaged groups, comparing the case to India which has legislated affirmative action for lower caste groups, including landless peasants (Martin, 2009, p. 39).

Though Pakistan shares the same class and caste structures as India, landless women peasants (Haris) represent a class, a caste, and a religious group exposed to state racism and necropolitical regimes that create the conditions possible for deprivation, discrimination and incarceration for the extraction of their labor power. The Pakistani state apparatus wants to expel them from a body politic that is constituted by the landed class; at the same time, they are required to subtend to the needs of that body politic by providing free labor. As Foucault has explained, for the modern state, racism is necessary for the emergence of biopower because within the population there are categories of people whose lives are considered more important and worth living, even at the cost of others' lives. This relationship is not based on war but constructed biological inferiority of a racial kind (Foucault, 2003). The British colonial state in Sindh sowed the seeds of state racism since "racism first develops with colonization, or in other words, with colonizing genocide" (Foucault, 2003, p. 257). This was the genesis of the modern state structure that used its normalizing imperatives to

make certain lives dispensable while other lives were more valuable. For India, and subsequently Pakistan, this corresponded to people who could help sustain and benefit the Raj.

After 1947, the imperatives for Pakistan remained similar, with the maintenance of an underclass of carceral laborers and their families whose rights, freedoms and existence were completely dispensable, but whose labor power was crucial in so far as it could support the hyper life of the landed elites. This need to create a situation of sub/non-humanness for an entire group of people and to treat them as if they have the inability to affect change in their own lives and circumstances, or to reduce them to bare life, is taken up by Achille Mbembe, who points out the kind of sovereignty exercised in these situations. The landed elites and their state colluders can be described in Mbembe's words as "[t]hose figures of sovereignty whose central project is not the struggle for autonomy but the generalized instrumentalization of human existence and the material destruction of human bodies and populations" (Mbembe, 2005, p. 14). Mbembe's framework connects biopolitics, racism, and the state of exception. It is pertinent to explaining the conditions which make carceral environments possible and the lives of women laborers dispensable. In Pakistan, one observes a similarity in the way townships functioned in South Africa, where processes of territorialized hierarchies' structure deep poverty and oppression on the basis of class and race: "terminating of land ownership by blacks except in reserved areas, the illegalization of black residence on white farms (except as servants in the employ of whites)" (Mbembe, 2005, p. 26). Landlords now proffer the same justifications once given by the colonizers during the years 1847 to 1947. These farms become spaces where law and legal order can be suspended and the state of exception can work in tandem to create "civilization" that can be



understood synonymously with capital accumulation by dispossession (Mbembe, 2005; Harvey, 2005). At the same time, these spaces are deeply legal, 'over-filled' with legal justifications, laws, customs, and religious edicts.

Yet Haris resist these state-sanctioned regimes of labor extraction and control. The acts of resistance and the freedom dreams that these women harbor and realize by risking death and punishment are testaments to the endurance of their impulse for freedom. The stories of the women sampled here demonstrate the urge for freedom, for a livable life, that motivates those enslaved in even the most dehumanizing conditions. Veeru Kohli is one example of many who not only helped free her family with the aid of civil society activists but continues to go on expeditions and collect resources for others who need to be freed. She won the Frederick Douglass Freedom Award for her work on behalf of the enslaved. She built a small brick home from the money she received that also functions as a school, although it is currently without a teacher. The landlords continue to threaten her, but she feels bolstered by community support and the work of her comrades. In the last few years, she contested an election against the big landlords of area and had to go to jail multiple times on trumped-up charges. She has a dream of the eradication of bonded labor and the freeing of all laborers. She saw a vision of freedom for the entire community and her vision garnered her national acclaim in Pakistan and 3000 votes in her constituency. While she did not make it to the office this time or the time before, she continues to struggle to have political representation for her community.

### **Conclusion**

This essay has sought to interrogate the regimes of carcerality, gendered violence, and the nexus of state and agro-capitalist interests as reflected in the lives and testimonies of

women who have suffered under and escaped from bondage. In rural Sindh, the local landed elite mobilize arms of the state apparatus and their own private economic, social, political, and policing resources to unleash regimes of carceral labor and terror that make the lives of the Hari women insecure, precarious, and subject to sexual violence and premature death. The oppressive conditions described by the women and the lives of precarity that they endure are the direct result of the “state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death” (Gilmore, 2007, p. 28) created by the nexus of state and capital. The parallel between the carceral conditions in US prisons described by Sudbury and the carceral conditions described by Hari women in bondage in Sindh are hard to miss. Like the testimonies in this chapter, Sudbury’s respondents, Black, gender-oppressed, anti-prison activists speak about how “it’s arbitrary power in [prison]. They can do virtually whatever it is they want unabated, unchecked, unquestioned. To your body, to your soul, to your spirit” (Sudbury, 2009, p. 17). This essay has shown that the conditions Hari women work under are arbitrarily meted out physical, economic, and sexual terror, an “intimate violence” (James, 2013, p. 125) that dovetails with state violence to operationalize the labor and life of Hari women in service of capital accumulation.

Khawaja Sira Life Struggles: Is Womanness Really a Loss?

This essay analyzes the life experiences of three Khawaja Sira Gurus. Their struggles and activism demonstrate a resistance to the historical gender regime (Moghadam, 2020; Walby, 2004), which I argue, dominantly frames womanness as a loss and femininity as a signal of loss. Using an LGBTQI pride event held by the US Embassy in Islamabad in 2011 as a historical marker of the expansion of public queer visibility, this essay also lays out the contours of the gender regime in Pakistan. This regime is socially and structurally organized to dehumanize the Khawaja Siras and other sexually diverse folks. The life stories of three Khawaja Sira Gurus<sup>40</sup> frame our understanding of this regime when they “name what is killing [them]” (Gómez, 2016, 211). They use their embodied knowledge and experiences to cut through systems of oppression. These stories access lifeworlds that have historically persisted in the face of state and societal ostracization and, in doing so, reject the imposed cissexist heteronormative patriarchal formations that frame gender. The life stories of the three Gurus in this essay shape my theoretical exposition on patriarchal formations that frame womanness as loss.

Let me be explicit in the language I use and the terms I have created in order to engage the complex stories the Khawaja Siras shared in interviews. The first argument surrounds the idea of loss. Cisgender (Aultman, 2014; Cava, 2016) women are reared from childhood in skills that will benefit only their husband’s family. All investment made in them by the natal family is framed as loss, because it is only the male child who will remain with

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<sup>40</sup> A new Khawaja Sira is taken into tutelage under a Guru, who is an elder, and thus they become the Guru’s chela, which is both disciple and daughter. Depending on what kind of household the Guru heads, the main mode of earning will vary between *badhai* (conferring congratulations and blessings on a happy occasion); *toli* (dispensing blessings and collecting alms in a group); *dbeengna* (begging); performing at functions; and sex work. In entering the discipleship of a Guru, one is entering the profession that is the signature of that family. Sometimes families will have more than one profession.

the family, carry on the family's name, tend to the family's property, and bring a wife into the home who will rear children and care for her husband's parents as they age. Their own daughters will leave and are thus not considered part of the future of their natal family the way sons are. Daughters also represent significant cost/burden to the family because the family is responsible for funding both her dowry and her wedding.

Considering the social standing one has upon the birth of a son—and the expectation that a male heir will maintain and manage the family's property, uphold the family name, and fiscally provide for his family—his birth is celebrated. Yet, when that 'son' exhibits tendencies that are traditionally female rather than male—in interests, dress, tasks, comportment, and identity—then that child, a Khawaja Sira, is also framed as a loss for her family. All the training she received in masculinity, with its concomitant privileges and expectations, was for naught. She is mourned because she no longer holds in her hands the family's dreams for the future. Indeed, in most cases she will not participate in the family's future. She will be exiled from her family and will find a new family and kinship with other Khawaja Siras. The reconstructed, chosen family is vital for her survival.

While people disrupt and re-make the hegemonic script of heteronormative gender in different ways, the heft of this structure is substantial and seemingly unyielding. Even while normative cis women are conceived of as a loss, those who tend towards womanness who were assigned male at birth are even more burdened by this rigid system. I use the term “womanness” to depict what one Khawaja Sira described to me as “having the spirit of a woman,” being interested in doing what is considered women's work such as domestic labor (cooking, cleaning etc.), the desire to dress and act like a woman, and having the gait and comportment of a woman. The reasons I use “womanness” and not femininity is that

femininity is created primarily from material markers (long hair, dress styles, makeup) and thus not able to capture the depth and complexity of what Khawaja Sira activists described. I employ the term womanness to describe how Khawaja Siras and other trans\* folks assigned male at birth embody being a woman and negotiate hegemonic scripts of both masculinity and femininity (Paechter, 2018; Schippers, 2007). In this understanding, womanness is available as ontic experience to trans\* and cis folks alike and can have a “stickiness” that conditions its adherence to some bodies, in some circumstances (Berggren, 2014).

Womanness is not only about looking like a woman and feeling drawn towards roles ascribed to women but reflects the spiritual aspect of feeling like a woman while existing in a male body and knowing intrinsically that you are living a life aligned with the divine creator’s plan for you. The loss by which her life is framed is inverted in the experiences of Khawaja Siras who inhabit their womanness as a spiritual gift rather than an affliction or aberration, adding a spiritual dimension to their ontic reality that can only be accessed through their embodiment.

The Khawaja Siras’ refusal (Benjamin, 2016) to abide by stilted gender formations—and the complexity and fullness of Khawaja Sira life—allows us to view the many possibilities of being and living, unconstrained by a parochial order that is invested in a cissexist heteronormative vision, and which functions on the oppression of women and queer folks. These stories carry the imagination of different worlds and point to a utopic impulse to freedom, “by which an unfree actor is changed in the here and now so that he or she vitally needs to free and acts on this need today” (Gordon, 2004, p. 124). This transformation or becoming a Khawaja Sira forms the instinctual basis for freedom (Nordmarken, 2014; Garner, 2014).

I argue that the gender regime that the Khawaja Siras resist marks womanness as a kind of loss for both cisgender women and trans\* women in different yet connected ways. Cis women are trained from childhood in docile femininity so that when the time comes, they can be exchanged into the marital home as part of familial wealth accumulation. Conversely, femininity is beaten and abused out of trans\* feminine people, until either the femininity or the person is expelled to the margins. For the gender regime to reproduce itself, each female and trans\*feminine child must submit to the imposition of the gender binary and see compulsory heterosexuality (Rich, 1980) as their only available and viable future. Cis girls are forced to submit to the same roles their mothers held: responsible for all emotional, domestic, and care labor, as well as for work outside the house to bring in an income. Families exchange women as they exchange owned property; as such, men are responsible for women, and men provide for the family. Coded into the heteronormative compulsion of the gender regime and embedded into the social fabric, these roles are seemingly preordained, fixed, and immutable. Yet, Khawaja Sira lives, survival, and persistence disrupt this coding, and open the space for other non-binary and sexually diverse folks' presence and futurities to enter the state and public imaginary (Muñoz, 2009; Ferguson, 2003).

### **Queerness**

I define queer as someone who inhabits what is socially marked as an unbearable difference, be it that their sexuality is not straight; their gender does not conform to that ascribed at birth but tends towards femininity; their marital status is unmarried; or they are divorced; or non-monogamous. Following Narain and Bhan, I am using queer as a broad umbrella for those who resist dominant gender and sexual norms as part of rejecting “the

assumption of compulsory heterosexuality—society’s firm yet unsaid belief that the world around (and everyone in it) is heterosexual until proven otherwise” (Narain & Bhan, 1991, p. 4). A queer existence is a challenge to multiple systems of domination, which occlude resistance and difference through organized “low intensity war” (Paradise, 2015) that reproduces a system in which queers “were never meant to survive” (Lorde, 1978). A queer existence is “off line” (Ahmed, 2006, loc. 1074) from compulsory heterosexuality and the binary gender regime, “disorientated” (ibid., loc. 317) by the ostracism, neglect, and violence perpetrated by dominant structures, and thus queerness finds itself in search of community and home. Beyond identity and ideology, queerness is a disruption to, and a critique of, the power relations necessary for the maintenance and prosperity of both compulsory heterosexuality (Rich, 1980) and the binary gender regime. “Queer politics... speaks therefore, of communities that name themselves (as gay or lesbian for example) as well as of those who do not, recognizing the space for same-sex desire and sexuality that cannot be captured in identities alone” (Narain & Bhan, 1991, p. 4).

Furthermore, because queer is that which is “offline” from the norm, queer politics is a politics aware of the intersection of forms of oppression other than those related to gender and sexuality. Extending Narain & Bhan’s argument, queer politics “speak of larger issues” that intersect with genders and sexualities, such as caste, class and religion, multiplying that which constitutes an individual in sometimes complimentary, sometimes contradictory identity formations (Crenshaw, 1991). The social, medical and legal ideological apparatuses of the state (Althusser, 1971) collude to make claims about the pathologization and illegality of queer lives. Queer identities are threatening to this structure because such identities do not seamlessly reinforce the family in its inherited understanding, nor its patriarchal heteronormative structure. Due to the lack of any impersonal institutions that would support



an individual who chooses to break out from the family, the individual remains entrenched within the social control and policing of the family. In some cases, this may lead to social ostracism, and/or mental and physical abuse. Though some families have mechanisms of acceptance and openness to queer difference that stretches heteronormative limits, there are many cases where acceptance is not forthcoming.

It is this finding and creating of ways to survive that, to my mind, identifies queer Pakistanis as people who “both live...sexual and gender variance” and mount “organized resistance” (Currier, 2011, p. 466). Currier’s account of sexual and gender dissidence in South Africa paints a picture of deliberate political action that dissents against the oppressive normativity in order to make space for the queer. In this essay, I am attempting to draw a similar picture in the case of Pakistan. I am naming those who do not fit or who misfit (S. Ahmed, 2019) the gender binary of compulsory heterosexuality, but are instead a matrix of a queer subjectivities (Menon, 2009). For this chapter, I will focus on folks who self-identify as TG (transgender), Khawaja Sira, and queer women.

### **The Gender Regime and Pakistani Patriarchy**

In the Pakistani gender hierarchy, maleness<sup>41</sup> is prized and privileged, womanness is framed as loss, and all gender diversity is made impossible by the strict imposition of the binary. Since non-binary people cannot be easily mapped onto a heterosexual futurity, those who do not fit into the heterosexual future embedded the family structure are the outcasts. For most cisgender heterosexual/bisexual women or even lesbian women, the choice is to accept themselves as the loss and be exchanged into the marital family. One’s ‘choices’ are to

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<sup>41</sup> Those people who are assigned male at birth. As they are trained into aggressive forms of cis-gendered heterosexual male superiority and control which concretized as their manness

submit to the wishes and desires of the marital family and your husband or stay single (which entails significant social stigma and approbation) or get divorced with or without children (garnering similar social dismay) in which case you are considered a failure and will now become a burden on the natal family. Men's role within the structure is being forced to inhabit a toxic masculinity that seeks control, and is responsible, for the economic wellbeing of the members of the family.

This chapter centers the Gurus' stories as a corrective to the imposed domination of the binary, and the forced privileging of maleness and patriarchal control. From these stories, it is evident that we have much to learn about ways in which Pakistani society views gender difference. This is especially true for those who tend towards femininity and were assigned male at birth, but also for those born in female bodies but who tend towards masculinity. For those whose gender identity does not match what they were assigned at birth, inhabiting their felt identity puts them in danger. The socially constructed loss to the family, in terms of losing the privilege of bearing a male heir, is heavy enough that the person must either be reformed or removed from the familial structure. For most queer and non-binary people, their gendered difference and the loss that is inflicted on them from an early age is something they carry through life. Over time, this loss becomes the basis for finding community, finding livelihoods that accept them, and learning resistance and resilience from other community members. Laila Ji's story discussed below illustrates this sense of community and the necessity of finding family outside of the natal family. Her love for her Guru is a testament to the significance of this relationship, and when her Guru died, she took on that role for her sisters/chelas.

There is a peculiar cultural understanding of being a woman in the context of Pakistan that attached social and cultural inscriptions that frame being a woman as a loss.

This hegemonic construction needs to be unpacked in order to understand a system that dehumanizes women, trans\* women, Khawaja Siras, and anyone who expresses feminine gender expression or bodiedness. A simple example of this is the incidence of femicide or killing of children assigned female at birth, in the largest city of Pakistan. In 2019 alone, “Edhi Foundation found 375 newborn bodies buried in various parts of Karachi, most of them girls” (I. Ali, 2020). The reasons stated in the news report were either that these were children out of wedlock or girls, mostly unwanted girls (Sattar, 2020).

The framing of womanness as loss has something incredibly old in it and yet with newer generations, this same ideology is recycled. This social, political, and economic structure makes women, gender, and sexually queer people the problem. Pakistani society reads womanness as loss, therefore actively trains women in docile femininity so that they adapt to a system that reads their very being as loss. In the Pakistani patriarchal order, society is organized to exchange women between families. When a woman is born, she is automatically considered someone else’s property, particularly the property of the family into which she will marry. In the vernacular languages of the land, women’s experiences of leaving the natal home for the marital home is always a lamentation for a fated, inevitable departure. An oft-sung wedding song is ‘sadda chirriyaan da chamba’, addressed sorrowfully to the bride’s father, telling him that he had made a nest of birds who are destined to fly away, referring to his daughters who will be married off. A commonly used phrase is ‘aurat tau paraya dhan hai’—a woman is a stranger’s wealth. This notion that a woman is someone else’s property reveals that women are thought of as property, but property that you must care for until it is redeemed by its rightful owner. “These songs of separation express a critique of the female predicament even though they offer no resolution to it” (Jeffery & Jeffery, 1996; Raheja & Gold, 1994). In popular culture, there is a tacit acceptance of this

condition as women's destiny. This makes the position of women in society that of permanent exile, a position with much uncertainty and precarity tied to it. In her work on gender and development in New Delhi, Amita Baviskar observes how many women feel like they have an easier time adapting to change than their male counterparts, because they have been trained since childhood to anticipate the displacement they would experience because of marriage. "[M]ost women have normalized a form of displacement as an inescapable part of being female" (Baviskar, 2008). A woman's fate is tied with the uncertainties of the marital family. If they are better financially situated than the natal family, then it is good for her and if they are worse off, then that is just her misfortune. This system perpetuates a notion that there is no intrinsic value to womanness and therefore a woman's education and wellbeing are seen as burdens on the natal family, almost as though they are holding her as a form of trust for the marital family. In most cases in the marital family itself, when women are married off, they are considered outsiders and are burdened with most of the domestic, care and emotional labor. In many cases they are required to cook, clean and look after emotional and care needs of the elders and children of the marital family.

In this system, personhood attaches to womanhood only through male relationality; so, she is her father's daughter, her brother's sister and once she is married, she is her husband's wife. Independent of the men in the family to whom she is attached, she does not have personhood of her own. An illustration of this is registration of citizens with the National Database and Registration Authority (NADRA). In order to acquire a national identity card, the primary identifying document in Pakistan a woman must name her father or husband. A woman's domicile is tied exclusively to the domicile of male relatives. A woman with an unknown father and no husband is not juridically possible.

In the same vein, then, a child assigned female at birth is seen as a failure of the mother. She has failed to produce a son. Depending on the number of daughters, this could be a reason for divorce, or for the man to marry a second woman. Regardless, the birth of the girl child means the responsibility to feed, clothe, and educate her, and crucially, to marry her off. The child is fundamentally not theirs; she will be sent to another man's family when she is of age. So, the natal family is investing in a member who does not belong to them but is their responsibility. She belongs not to herself nor to her birth family, but to the marital family.

This valuation of women is the basis of the heteropatriarchal 'joint family system', as it is commonly known: the multi-generational family household that centers around the male line. A girl born to one family is now a member that needs to be given away. This responsibility is a burden and a weakness that decreases the family's status and bargaining position in the marriage negotiations. The groom's family is better situated having succeeded in producing a man. The wedding celebrations are the responsibility of the bride's family, and she is to be sent to the marital family with a sizeable dowry (Makino, 2019; Anderson, 2007; Radhakrishnan, 2009). While this dowry is often capital that builds the marital home and its wealth, many natal families will use dowry as a replacement for the woman's share in the natal family's inheritance (Anderson, 2007; Holden & Chaudhary, 2013).

Thus, a girl is born into a home that is not her own, sent to another family meant to be her ‘real’<sup>42</sup> home, deprived of her share in the natal family’s inheritance<sup>43</sup>, and sent to the marital family with a dowry that functions as a bribe to incentivize them to keep her. That is to say, the marital family must be paid in terms of dowry in order to accept the burden of the girl, who is now expected to produce male children (Winkvist & Akhtar, 2000). Instead of investing in women’s education and health, families often choose to save money for collecting an adequate dowry for their daughters. This, they hope, will secure a match into a family that will take care of her.

Dowry has a basis in the traditions of northern India and does not have a justification in Hanafi Muslim jurisprudence, which is the dominant school in Pakistan. Hanafi Islam does have a conception of *mahr*, which is paid to the wife from the husband’s property for committing her sexual self to him (Mgamis, 2021). *Mahr* serves as a type of “pre-mortem inheritance...set up to protect property given to women” (Anderson, 2007, p. 170). Parents in rural Punjab report seeking safety and happiness of their daughters by securing a substantial dowry, “especially consisting of furniture, electronics, and kitchenware,” in order to raise their daughter’s status in the marital household (Makino,

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<sup>42</sup> The real is quotations as once women move to the marital homes, they are taunted constantly that this is not really their home, and they are treated as weak outsiders within the family structure that nonetheless is comfortable using their labor and sub-ordinating their will to the service of the marital family. Winkvist and Akhtar note from their interviews that bearing a son is considered a blessing whereas bearing a daughter is considered a curse since sons carry family name, earn money, and take care of aging parents in fact they even said that family homes stay as such if a family has sons but are sold if you only have daughters since they are married off and since natal families are burdened with dowry only rich people should bear daughters (Winkvist & Akhtar, 2000, p. 77). In studies on women’s reproductive health even attitudes towards contraception are determined by notions of male superiority and women’s inferiority (Mumtaz Z., Shahid U., & Levay A, 2013).

<sup>43</sup> In news report done by Fatima Razzak on women the paucity of Christian women receiving their share in inheritance she notes that according to done by the Punjab Bureau in the years of Statistics women aged 16 to 64 only on receive 8.8% share of their father’s inheritance whereas women who belong to minorities only receive 2.2 percent of the share in inheritance (Razzak, 2021)

2019, p. 791). However, *mahr* is a monetary amount set as the bride's "insurance in case of divorce or husband death" (Anderson, 2007, p. 162), and required to be set aside by law in Pakistan. Dowry is a mix of assets of use for the new household, monetary devices, and jewelry, an investment that "can impoverish the bridal family and dramatically affect the lives of unmarried women, who are increasingly considered burdensome economic liabilities" (Anderson, 2007, p. 170).

In Punjab, generational differences of age and position become crucially important. A woman who has birthed a son and raised him to adulthood through years of patriarchal control and making sacrifices, can now become the authority figure presiding over the household. She will train the young woman marrying her son into what I call subservient/docile femininity, a mode of ongoing sacrifice and conformity to the needs and strictures of the marital family, at the expense of the needs and desires of the woman herself. A woman's life only holds meaning if she is married and goes to her married house and makes all the sacrifices necessary to stay there, even if she is facing abuse: because that is her "real home." But the marital family, her 'real home', conceives of her as an outsider who can and will be burdened with most of the household chores and care work, cooking, and conforming to the rules and desires of the marital family.

This is the hegemonic script attached to womanness as a form of loss and maleness as a form of benefit, in a family structure that functions to exchange women. From the family's point of view, male preference begins every time a woman is pregnant. Ultrasounds to confirm the gender and sex-selective abortions are common (Bongaarts & Guilmo, 2015; George, 2006; Oomman & Ganatra, 2002). If a third, fourth, or fifth girl is birthed in the hope of a son, then wives can be kicked out, replaced or killed. From the time a boy is

born, there is a preference for him in everything from the protein available for him to eat, to the ability to be mobile and get an education, to a future owning and using the properties of the natal home (Purewal, 2010; Sathar et al., 2015; Agha, 2018). The benefits are too many to count, but along with it is the pressure to conform to a form of aggressive and toxic masculinity that necessarily de-values, protects and owns the women of the family. Each family takes this script and adapts it, but many accept it uncritically, and this has many consequences for women.

The dominant and hegemonic script of what womanness means is buttressed by the state and is supported by religious authorities who have severely misogynistic interpretations (Menon & Khan, 1994; Shahnaz, 2003; Shaheed, 2009; Toor, 2007; Toor, 2011; Aziz, 2011; Alavi, 1988). They seek to restrict womanness in order to extract women's labor, while women remain controlled, subservient, and enslaved to the will of the family. Despite these pressures of compulsory heterosexuality, family compliance, and societal disciplining, spaces of queerness exist. At many times and in certain spaces women do rebel against conformity by helping their daughters make the decisions that they themselves couldn't, by walking out or by making their own way. I have seen the women, trans\* women, Khawaja Sira and men who tend to womanness write their own stories in spite of all the dominant scripts that would write them out of history. This chapter documents the stories of the Khawaja Sira activists and their struggle to thrive in structure designed for their death. In that they were born male yet felt themselves to be women, they represent a double loss in many ways. They somehow live in the liminal space between womanness and manness when both boundaries are heavily policed. Cast out from natal families onto the streets, they seek refuge in others like themselves, and the gendered difference that is the basis of their discrimination and exclusion also becomes the source of their community building and strength.



## Outside the Binary

The Khawaja Sira community is a historically situated community of trans\* feminine individuals living in indigenous gender formations native to the Indian sub-continent. Known as Hijras throughout northern India, Pakistan, and Bangladesh, the Khawaja Siras gather in community in households' knowns as *deras*, around an elder Khawaja Sira, who is the Guru—mother/teacher—of the *dera*. The Khawaja Siras who live at the *dera* are the Guru's chelas (daughters/disciples), and the *dera* is often a place of crossing for community members, for taking refuge, or just passing through. Khawaja Sira households sometimes focus on one profession as their main labor and new chelas enter into that form of work upon initiation. A portion of chelas' earnings go to the Guru and the *dera* (Pamment, 2010).

The Guru-chela relationship is complex; it is supportive and can be extractive at the same time. As an alternative kinship formation that a young trans\* feminine person may come across, the Khawaja Sira family system provides aid, comfort, and refuge to trans\*feminine young people expelled from their homes, as it did to all three Gurus whose stories are below. There can be tensions between different Gurus, between Guru and chela, and between chelas, as internal politics, dissension, and disagreement circulate in any close-knit community. Disputes are adjudicated within the community, and the pressures and violence directed at the community from the outside is so immense that mainstream recourses to justice, such as the police, are not considered safe for the community.

Within the Khawaja Sira community, people may self-identify as Khawaja Sira, third gender, Hijra, TG, transgender, Zenana, women, or any combination thereof. For the purposes of this essay, I am using "Hijra" as the umbrella term for the historical indigenously constituted trans\* feminine community that has existed across south Asia since the eighteenth-century CE. I use "trans\*" to signal the many and multifold variations of people

who are assigned a gender at birth with which they do not align, or which sits aslant to their full of experience of being in the world. Following from this, I use trans\*feminine to refer to those who may be assigned male at birth, and who tend toward womanness.

My use of the term “Khawaja Sira” is guided by the movement for transgender rights that brought about the Supreme Court decision in 2009 and subsequent successes (see Movement for Transgender Rights in Pakistan Essay<sup>3</sup>). Khawaja Sira movement activists identify their ancestors as the trusted advisors in Mughal courts of the eighteenth and nineteenth century before the full British takeover of India. Movement activists have asserted, in the standardization of the term “Khawaja Sira,” the honor and dignity of the community and its pre-British and pre-Pakistan history in the land. While movement action has called for the use of ‘Khawaja Sira’, within the community, there are many designations and appellations that further identify folks’ relationships to each other. In our conversations, I found that the Gurus often used the term more than any other, to refer to themselves and their community members.

Thus, the now-standard term Khawaja Sira is the term I use in general to refer to the post-independence Hijra community. However, in the interviews I conducted, often folks referred to themselves as “TG” more than anything else, which is a shorthand for transgender. So, when I speak specifically of my conversations with the Gurus and their stories, I defer to their own usage and self-definition, and follow their use of “TG” wherever appropriate and natural.

## The Gurus' Stories

Neeli Rana, Ashi Jaan, and Laila Ji are senior Khawaja Sira Gurus and activists. I met Neeli in 2009 during a protest against the murder of Khawaja Siras in Lahore. Through Neeli, I met the others and have known them now for over a decade; we have all worked together in different capacities in movements. I have recorded their stories because their thought and their lives form a living archive (McKemmish et al., 2019) of queerness and trans\*ness forged on a path that flies in the face of the hegemonic gender. To see the lives and thought of Khawaja Sira Gurus as a living archive in no way negates the fact that a great price is extracted by the hegemonic order from Khawaja Siras individually and collectively for not abiding by the established rules of gender formations. They experience physical punishment, economic hardship and many struggles, as it is apparent from the interviews. In the interviews, they said this was not really a choice; that there was a spiritual element to how they experienced their gender, and they would not give that up for anyone, no matter what the cost. The Gurus' sense of themselves was greater than the pain caused by others, and, in many ways, it transcended the material plane. Neeli was proud to have forged her own path despite the hardships she faced; and she holds herself accountable not to other people, but a divine power.

What is common in the stories of Neeli, Ashi, and Laila is the pain of being kicked out of their natal families when their womanness showed itself. The withdrawal of family support means exile as the Pakistani state is not organized to provide basic support like food security, access to education, and health care to people who do not have the support of a normative family system, who are exiled from their natal families. Natal families are the primary and predominant source of financial, economic, social, emotional, physical, and psychological security. Families tend to rely on larger kinship networks called *biradaris*, that

are mirror casteist formations by maintaining *biradari* endogamy (Chaudhury et al., 2014; A. Ahmed, 2014). The larger *biradari* forms the familial structure of society. Expulsion from the family unit has many implications for trans\* feminine people: they lose the ability to get an education, therefore they cannot enter the formal job market; they lose access to generational wealth because they are cut off from family inheritance. But once a person joins the Khawaja Sira community, they come under the care and control of a different form of family which has its own requirements, job potentialities, and ways of being. These possibilities may be heavily circumscribed by class and gender, but induction into Khawaja Sira society provides an educational experience tailored to dealing with those circumscriptions.

### **Neeli Rana**

Neeli is a Khawaja Sira Guru living in Lahore, full of life and energy that is unparalleled in most activists that I have ever met. She talks about the hardest of times with a smile and it does not matter what time it is when her phone rings, she is on her feet and out the door if someone in the community is in trouble. Her story is the one that alerts me to the threads of a radical tradition of gender fluidity in Pakistan that runs as a subterranean current in society. These “radical lineages” (Quan, 2005, p.,45) of resistance and survival emerge from and are entwined around the Gurus’ stories, which give us the opportunity to “deploy resistance as an informant” (Quan, 2005, p. 45). It allows us to see the story of gender regime by centering the “ghost of counter-narratives, which official narrative seeks to conceal” (Quan, 2005, p. 49).

I met Neeli in 2009 during protests she and other TGs (a local colloquial used for trans\* feminine people) had organized against murder, torture, and ill-treatment of Khawaja

Sira and the trans\* feminine community. Neeli is one of the older Gurus who was known in the community as an activist and mobilizer, unafraid of speaking truth to power. Later, we would collaborate as a group of Khawaja Sira, trans\* feminine, and feminist activists to help pass the Transgender Persons (Protection of Rights Act) of 2018.

Neeli knew as a child that she was different: “I used to sit separately. My friends were different. My family also used to say that I am different. In fact, my father used to take my brothers and sisters out with him, but never me.” Neeli’s father was a well-respected landlord in their town near Lahore in Punjab. He was quite harsh and angry with her. He used to beat her regularly for playing with a little girl, Jiya, who was Neeli’s friend, telling Neeli that it was unacceptable to be friends with girls. The two children, Neeli and Jiya, would play together with dolls, dress them up, and pretend to have their weddings.

This difference is where the gender regime and imposition of the binary shows up. Neeli was assigned male at birth; so, her father’s expectation was that she would conform to the rules of masculinity. With that in mind, he disciplined her with beatings—“act like your brothers and hang around them!” His status in the town further intensified his need to make sure that Neeli conformed to expectations. Ownership of land and property descends through, and favors, the male line, furthering patriarchal control of wealth, and training men into aggressive and possessive masculinity. Since men own the property and the land, the household women are their responsibility and possession. It is a slippery slope between women of the house being the responsibility of the male members and the male members treating them like their possessions. For the women, their training into docile femininity is necessary since they will be sent to their marital family.

Neeli believed that she and Jiya were good friends and that they were both girls. But not only was Jiya a girl, but she was also from a “small home,”<sup>44</sup> as Neeli puts it, a family of lesser class privilege than Neeli’s landlord father. The family objected heavily to Neeli playing with her, not just because Neeli was a ‘boy’ to her family and Jiya was a girl, but also because Jiya’s family was not good enough to associate with Neeli’s. Jiya was also scolded and beaten for playing with Neeli, with the rhetorical rebuke, “Why are you playing with him? He’s not a girl like you!” The taunts noted above are common refrains that Neeli had to listen to, and they were accompanied by physical violence, all to force her to fit into the mold of masculinity. Neeli did not see anything wrong with herself until people in her family and outside started to point it out. She and her friend both playing with dolls did not really care much for other people’s understanding of how their friendship was untenable. In her friendship with Jiya, Neeli’s features, comportment, and embodiment of her womanness was accepted.

There was a school in front of Neeli’s home, to which her parents sent her other siblings, but Neeli did not get to have an education. People in her family used to taunt her and call her derogatory names used for transgender people. Neeli describes the verbal abuse meted out by her family and the alienation it engendered as:

‘You are not a boy, you’re a khusra!’<sup>45</sup> ... Slowly their words started making a deep impression on my mind. In childhood, I wasn’t really aware of what gender meant or what it meant to be a girl or a boy. But as the people in my family started taunting me, the people in my neighborhood started taunting me, following suit. Then I

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<sup>44</sup> The phrase “chotta ghar” or “small home” is a colloquial euphemism in both Urdu and Punjabi for working class and lower middle-class households.

<sup>45</sup> “Khusra” is a mangled version of “Khawaja Sira,” and is used as epithet against Khawaja Siras, as well as anyone displaying characteristics tending towards femininity.

started realizing myself that I have no place here. Maybe my place would be among people who were like me.

For her siblings, the doors of schooling were opening, while she was just being hidden from the view. Neeli narrates the slow process of alienation from her family, when her father left her home and took the other children out. Slowly the environment was made more and more hostile, and she felt like this hostility was attached to her being, because there was something about her that was not able to fit in. Her home did not really feel like a home at all.

Around the age of nine or ten, Neeli ran away from home. The running was not a spontaneous decision; it was long process of feeling more and more unsafe in her home. Her family would talk about getting rid of her. Hearing this, her mother was deeply concerned and told Neeli that she should run away. Neeli recalls her mother's distress: "They will kill you and I will cry and be sad for the rest of my life. If you run away, at least I'll know that you're still alive.

The threat to Neeli's life was for her womanness inhabited in a male body. There was no space for Neeli and so, fearing the worst, her mother asked her to escape to save her life. In this moment, Neeli's mother was able to save her child's life, even as she pushed her child away from any possibility of sanctuary in the natal home. Neeli ran from her natal village to Lahore and ended up spending the night in a public park. There, she met a sex worker named Nadia who took her to the *dera* of a local Khawaja Sira. The two counseled Neeli and offered her food and a place to stay. Once Nadia left, however, Neeli found she was uncomfortable and ran back to the park. There, she met Nadia again, who asked Neeli this time if she would be comfortable in a place where TGs live who dance and perform at functions. Neeli said that she would be comfortable there, so Nadia dropped her to the *dera*

where TGs were living together. At this *dera*, Neeli made friends mostly with older TGs whose work was to perform *badhai* together, the dispensing of good tidings and blessings at weddings, birthdays, and other functions to which Khawaja Siras are traditionally invited. Neeli recalls that they suffered a lot of abuse: “In those times there was too much violence. Men used to enter our *dera*, beat us, rape us, and put us through all forms of torture.” The violence and torture that Neeli faced did not deter her from living with her TG family as she continues to do so till this day.

This is Neeli’s journey to a community of people like herself where she can feel at home. She has been taken in by a family of strangers, but they have their womanness in common and she joins the structure where she has a Guru, and she is a chela. She joins their work and fits into their lives, and together they live in ‘communities of struggle’ adamantly present and alive as affirmation of the complex self, and destabilization of the gender regime that seeks to exterminate them (Télez, 2008; Cuninghame, 2016; Callahan, 2015; 2016a; 2016b; Ben Saad, 2019). Thus, like how Neeli’s father had acted, there are many men who try to rape and harass Khawaja Siras to try and reinforce the dominant structure of male supremacy against publicly visible womanness. In the public space, femininity is supposedly hidden into the home as the patriarchal bargain (Kandiyoti, 1988; Arieli, 2007; Yount, 2005), but womanness in the public domain must bear the brunt of male aggression.

Neeli marks the start of her activist journey as a night in 1997, at a time when she was doing night functions, gatherings where Khawaja Siras are paid to dance and entertain a largely male audience well into the night. Neeli and her fellow TGs were performing in Harbanspura, a small town near Lahore that has largely agricultural land holdings. A fight broke out between two drunk men, one wanting the TGs to play a Punjabi song and the other an Indian song. The Indian song was played, men became angry, and attacked the TGs



who were performing to the song. As the fight broke out, Neeli and the other performers tried to escape.

We ran to the women's section [of the function] and hid there. They came after us there, found us, pulled us out from there, and started beating us badly all night. Some TGs escaped, so they went after them and raped them. I was there all night being beaten on the road. I was so thirsty I cried out for water but no one gave me any... I can only say that night was like the night of Qayamat [Judgement Day]; in fact every second of that night was a Qayamat for us. Every time I think of that night, I feel immense pain. There was not a single part of my body that was not bruised. At least, Allah saved me and I was not raped and killed. Somehow, I managed to escape.

The incident that Neeli narrates is a most violent expression of domination and control of womanness in a male space where they were invited for a performance. The threat of violence does not stop Khawaja Siras from earning their keep or doing their work. Neeli likens this experience to the Day of Judgment in the Islamic tradition that is the day of divine accountability for your actions. Even as Neeli faces the most painful moments that feel equivalent to that last day she is grateful to God she survived. It acts as a balm for the meanness of society, the harshness of circumstance almost generates a deep softness that is filled with gratitude, love and the ability to forgive. Of course, it also leads to trauma and deep anger but these opposing forces nestle side by side.

Once Neeli escaped, she thought she must report this incident to the police. It took many hours of waiting to find transport to the station, as rickshaw drivers would not stop for her. At the police station, "the attitude of the police was completely horrible! They said, 'Grab these TGs and tie them up! They're sister-fuckers and without any respect!'" Neeli decided she must run away before the police arrest her, because if they do, there is no one who will come to bail her out. So, she ran again. After the encounter with aggressive masculinity at the venue they performed at, they now faced the same treatment from the functionaries of the state who were interested in upholding male domination and control

rather than upholding the rights of Khawaja Siras. In fact, how dare the Khawaja Siras even make a demand on the police!

After many weeks, she recovered from the ordeal and went for another night function. This time things started to go bad, and she was so scared, she jumped out of the second-floor window and broke her leg. She was confined to a bed for at least six months. In this time, she concluded, “We are all going to die one day. Why shouldn’t I fight against this injustice then?” This is when Neeli says her “fight started.” Sometimes she would go to the courts and sometimes she would meet with lawyers who could represent her community members, and she would accompany them to learn from them. Sometimes people would oblige her; other times, they would scold her away. In 2006, she found out about a non-governmental organization (NGO) in Kasur, a city near Lahore, that had classes in cosmetology for Khawaja Siras who did functions, and Neeli went to Kasur and enrolled in the course. Every day, without fail, she would go to Kasur to train at the beauty school, and at this time, she had stopped doing functions, so had little money, just enough to pay for the fare to Kasur. Neeli would go there and sit all day without food so she could get the training.

Through that NGO, Neeli developed a few links in government offices and, when one of her friends needed to get herself an official birth certificate, Neeli was able to help. In 1997, Neeli entered the Social Welfare Department for the first time, and there she met and argued with the officials so that her friend could get her birth certificate and national identity card (CNIC) issued to her. Neeli realized she had a knack for advocacy and began taking up more such struggles for her fellow TGs. In 2008, Neeli’s work introduced her to Qasim Iqbal who ran Naz Male Health Alliance, an NGO modeled after NAZ Foundation India that worked to prevent HIV spread among men who have sex with men (Kohli, 2014). Neeli started volunteering for Naz and introduced the organization to Khawaja Sira communities

across Pakistan. In 2012, she became the board of Naz, after which they started setting up community-based organizations (CBOs) in different parts of Pakistan. After some disagreement amongst the community members, Neeli was successful in getting Naz to set up CBO for the TG community. Neeli became the first supervisor in that CBO.

Over time, younger TGs joined the CBO who were better educated, and better able to navigate the demands of donor-based NGO-work such as report-writing and conducting research. Having been kept out of school from early childhood, Neeli found herself challenged in her authority and value. Neeli recalls feeling disrespect and dismissal from the younger members: “They must have thought, ‘who are these people?’ about us the older TGs.” She found that there was a disjuncture between what the younger TGs would say to her and what they would write down. Still, in her time at Naz, Neeli traveled across the province, across the country, and internationally to represent her community, a fact of which she is enormously proud—she likens this to the fact that someone plants a seed of a tree and other folks enjoy the shade from it.

But, over time, Neeli’s lack of education seemed to be a large barrier, even though her community work and the breadth of her networks were unparalleled. She ended her association with Naz in 2017, but activism to her is

like a part of her body. You do not just cut out a part of your body, that would be too painful. Therefore, my activism continues and now I work in the smaller cities of Punjab. Wherever there is a murder, rape or any violence, I try and reach and if I cannot, I coordinate with the people on the ground, even the police as well, so they take the matter seriously.

Neeli joined another community-based organization called Sathi and was employed as a community mobilizer there in 2017, after there had been a murder of a Khawaja Sira and call for protest had gone out. Many Khawaja Siras gathered on Mall Road in front of the

Provincial Assembly building in Lahore, raising signs with slogans. A group of them which included Neeli conducted successful talks with the police.

Neeli tells the story of a young acquaintance of hers, Salma, whom she saw at a police station once. Neeli had known Salma to be quite beautiful and witty. This young woman was badly bruised; she had scratches and abrasions all over her face and neck. “When I saw her at the station, I felt the ground beneath my feet pulled out.” They recognized each other, hugged, and cried for a while. Before Neeli had arrived there, Salma had been in another fight with someone in the station and felt like she was losing her mind. Salma had become homeless a while ago and was forced to spend the night in a rickshaw. A man saw her sleeping there and pushed her out, and she was so tired, she fell asleep on the sidewalk. Another man passing by wanted to have sex with her, but she refused, and he beat her badly. “She was in pain, beaten down, and hungry for days,” Neeli says sadly. Listening to Salma, Neeli suddenly felt the loneliness and helplessness she had experienced, all the pain she had experienced as a young TG. Telling me this story, Neeli reflects that

Activism is something that you do when you have gone through such injustice and deprivation. When you pass through such a process and you see others go through a similar process, you are transported back to that pain and suffering. So, every time I see someone inflict violence, inflict pain and suffering, I’m transported back to that night mentioned in the beginning. And then I get really angry. But the newer activists who haven’t gone through the suffering and pain, but call themselves activists, find it hard to relate it to material, physical and social conditions of survivors.

The last part of her story and her struggle for her community marks an important stage for Khawaja Sira visibility and political organizing to be able to challenge the violence and mistreatment socially.

## Laila Ji

Like Neeli, Laila Ji knew from a young age that she was not like her brothers. It's a common experience of Khawaja Siras:

like our brothers stand when they pee, but we sit. And like our sisters, we wear a dupatta<sup>46</sup> and sandals, and do household chores. So, we're different from the start and our families know that, but they do not say anything at the time. As we grow older, those same things become disagreeable to them.

In the joint family home, she grew up in with her uncles and cousins, Laila often found herself the focus of their anger. Her siblings and cousins would come home from school "screaming that I [she] should leave school, or they'll stop going." Her family would continuously put pressure on Laila's mother to stop her from going to school, but her mother fought back for her right to be educated.

There was a famous *dera* in her neighborhood, known as Taarha. She saw the Khawaja Siras from there leave for *badhai* in the morning, and she would watch them and feel like they were her own. Her family did not feel like her own, but the Khawaja Siras she saw from the window felt like kin. She would leave the house with an excuse like going to get candies from the store and go visit the *dera*. But the folks at the *dera* worried about Laila coming to them because Laila's family carried influence in the neighborhood. Worried about the effect a middle-class kid coming to the *dera* would have on them, they would ask, "Do you want use to get kicked out of the neighborhood?" Indeed, when her family saw her having fun with Khawaja Siras, dancing and singing like them, they got the neighborhood together and drove the people of Taarha *dera* out of the neighborhood.

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<sup>46</sup> A *dupatta* is a long loose cloth that is part of women's apparel. It covers the chest and, often, the head.

Laila searched for some sort of trace of the folks from the *dera* and learned they had left for Rawalpindi. Asking around, she found a phone number for one of them, found out where they were, and went to them. When she got there, the Guru said to her, “*Bacha* [Child], will you have us kicked out of here as well? What if your family comes after you?” Laila assured her that they would not, that her family was happier to be rid of her, that they always treated her as if she were possessed by an evil spirit. The folks at the *dera* relented and she became one of them.

She began going to night functions with her Guru and the others, performing at gatherings of men hosted by people with money and influence. At one such function, the men were quite drunk and by the end of the night, wanted Laila to stay with them. Laila’s Guru refused, saying that her Household only dances and entertains to earn its living, and does not do sex work. But the men were insistent, and Laila Ji was not quite sure what happened after they insisted, but “I [she] thought some firecrackers had gone off. But they had shot me [her] in the legs. I [She] looked down and saw a lot of blood, and suddenly fell down with a bang.” Her Guru and her sister chelas had run away, leaving her there. At the sound of the gunshots, the crowd at the well-attended function scattered and ran way, and there was no one to help her.

With bullet wounds in both her legs, she dragged herself out to the street to a bus stop where she could catch a rickshaw. She begged people to help her get to a hospital, “but no one listened to me[her]. People came, saw me[her] lying there, laughed, and moved past me. Then after what seemed like such a long time, a rickshaw passed me[her] and then came back.” She asked him to take her to a hospital, but the rickshaw driver feared the police case that would get lodged at the hospital and did not want to get involved. “I [she] begged him

to just throw me at the hospital. Just take me [her] there! By now it was 5 o'clock in the morning." He conceded and took her to Holy Family Hospital in Rawalpindi.

After reaching the hospital Laila ji had to literally drag herself inside like she had had to drag herself to the stop to catch the rickshaw. Inside, she was greeted with the same attitude of derision and judgment. "As if we are aliens, like we are not even human." She begged people, touching their feet to give them the utmost respect possible, and implored them to save her life. Not until 1 p.m. did a doctor see her, but she was kind and reprimanded the staff for being callous towards Laila ji. The doctor took Laila to the operation theater and removed the bullets from her legs while she was still conscious, all the time allaying Laila's fears about losing her legs. Laila Ji remembers the doctor with great affection and gratitude: "Allah bless her, wherever she is, may Allah grant her an honorable reputation."

The doctor bandaged Laila up and got her a change of clothes. But when it came time to take her to her bed in the hospital, the administration found itself unsure: which ward should they put Laila in? They first moved her to the women's ward, but the women in there said they were afraid of whoever shot Laila coming in there after her. So, they moved Laila to the men's ward. "There too, even the doctors, they were pulling my shirt to see, they were talking amongst themselves and whispering. I was woozy the whole time, but still I could make out what they were doing—they were making fun of me. They thought that I'm a fool, that I won't notice, but I felt everything. Anyway, they kept me there for a day." Later, a ward attendant came by to change her sheets and Laila sent a message with him to her Guru to come and take her from the hospital.

As Laila recuperated, she began to talk to her Guru about taking the matter to the police by lodging a First Information Report (FIR) in the nearest station house. Her Guru advised against it, cautioning that Laila would be in greater danger if she tried to prosecute her attackers. But Laila was adamant. The Guru sent three others of the community with her to the police station and Laila began narrating the story to the officers present. It became clear from the officers' attitude, however, that they had already been approached to shut the case down. The station house officer (SHO) dismissed Laila and her comrades, deriding their work as 'bad' and throwing them all out of the station house. The case never went further.

Laila's life with her Guru was difficult as she recuperated from her injuries. She became able to stand on her feet again, then walk, then dance. She started going to *toli* with her Guru and her sister chelas. *Toli* is the practice of going around the neighborhood in a group, collecting alms and dispensing blessings. "Of course I wasn't going to work in any bank since I was not educated." The household had found a place to live and an area in which to work in Rawalpindi. They also did night functions but stopped them after too many of them had encountered drunken men who demanded their time and work, while disrespecting them. After stopping night functions and switching to *Toli* work for safety purposes, a man still pursued Laila continuously goaded her for friendship. She refused, telling him that they only spread blessings and danced. But he persisted and asked her Guru for Laila's time. Laila's Guru responded that it was up to Laila: "If she does not want to talk to you, how can I force her?" One night soon after, the man forced his way to her room with his friend in the night, and poured petrol over her, set her on fire, and locked her inside.

I am truly an inspiration if you look at my bare bodies and the cruelty it has endured. One side of my body is completely burnt. From one side—I had started burning



from this side—this whole side—my nipple was also burnt. Again, I was in agony. For three months I couldn't wear clothes. I had a lawn<sup>47</sup> cloth on my body to keep the flies away. My legs were joined together, and I could barely get up to go to the bathroom. But the people of my neighborhood were kind. In the street where our dera is, neighbors collected donations and then I had a surgery, and my legs were finally separated. So, this trial too I passed, and Allah Mian helped me get through it, that testing time. But it haunted me. What am I? Who am I? How do I know who I am? Am I a 'she' or a 'he'? What is this world doing this to me? What have I done wrong?

Laila had lived with her Guru for about eight years when her Guru fell terribly ill. They discovered that she was HIV positive, but no one knew much about what to do. In that time, Laila continued *toli* and *badhayi* with them, earned some money and made a life for herself, something she credits to her Guru's support as much as to her own fortitude. Her Guru had given her food, shelter, a life, and belonging. Once her Guru was gone, she felt alone and untethered again. "But Allah willed it and my brothers called me."

Laila's brothers had asked around for her number and, once they connected, Laila got to talk to her mother for the first time in years. They cried together and her mother implored Laila to come home. Laila said, "How can I? My father will kill me!" But her father had already passed some time ago, and her mother insisted that she come to attend her brother's wedding. Laila wanted to, but was unsure how her extended family, her cousins and uncles, would react to seeing her. Her mother assured her that they all live separately now and it would be safe.

Reluctantly, Laila agreed to journey home. For her family's sake, she cut her hair for the wedding. "It's a very big sacrifice for a Khawaja Sira," she told me in the interview. "Most would rather be killed than have their hair cut." But she did it for her family, to save

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<sup>47</sup> *Lawn* is a light weave of cotton, worn in hot weather across Pakistan.

face for them at the wedding. When she went, she made sure to take gifts for everyone. But when she reached home, “they took all the gifts and everyone looked happy, but then they locked me in a room. It was my brother’s wedding, and I was looking from the window. If they only wanted gifts, why did they invite me? Why did they invite me? I cut my hair for them. When I was burnt, I had not called any of them. I was coping with my life, why did they disturb it?” When they came back from the wedding, she quietly asked for a rickshaw and they swiftly obliged. She left her natal home again.

In the joint family structure in which Laila was raised, where multiple generations live together with extended family members of patrilineal descent, there were more people who were there to discipline her and violently coerce her. Within the institution of the joint family, the expression of her individual gender difference was even more repressed. She found herself as the focus of anger and beating just for exhibiting womanness. It would be easier for families to accept gender fluidity in their children if the consequences of having male and female children were not so vastly different, and one so prized over the other. The societal privileges attached to having birthed a son are so many, that the son exhibiting ‘womanness’ incurs heavy punishment. The role of Laila’s mother is similar to Neeli’s in that she cares about her child and wants her child to go to school, but her will is broken by the patriarchy, and she must give in. Once Laila is stopped from going to school, she stays home with the rest of her sisters and does household chores.

They used to call me a *khusra*<sup>48</sup> (derogatory name for male bodied people who tend to femininity). “Yes, I was a *Khusra*, what was my fault in it? See, my family should have understood, no? My family at least should have understood that I had no fault in it, that I was also Allah’s creature. Just like their other normal children, I was also their child. If Allah had made me different than what was my fault in it?”

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<sup>48</sup> “*Khusra*” is a mangled version of “*Khawaja Sira*,” and is used as epithet against *Khawaja Siras*, as well as anyone displaying characteristics tending towards femininity.

This lament reveals how the workings of dominant gender formations are restricting the space of trans\* expression through verbal abuse, humiliation, violence and condemnation. The pain is also more acute when the space of understanding is absent even among family members. In the rupture from family Laila seeks refuge in divine creativity as her source as all worldly sources of support are either antagonistic or not forthcoming. The expression of being made this way by Allah is what many Khawaja Sira express as the divine nature of their gender experience as something that transcended the material plane. This other worldly experience led them to believe that the hardships they faced due to their gender expression were bearable, if they got to be themselves in community with others like them. They also expressed that they feel the struggle is bearable since Allah made them this way and so it is their family's fault or even society's fault for not letting them be.

Feeling used for her money and discarded, Laila felt she could not return to Rawalpindi either since the passing of her Guru. She introduced herself to Khawaja Siras in Lahore and bounced around between different homes, getting along with some and coming into conflict with others. To support herself, she began begging and over time gathered the resources to rent a small place for herself. She made a bed out of bags of cement she found abandoned outside. She asked people for help, and someone gave her a pillow and another a sheet, or a glass, or a cup. One day, while Laila was begging, she spotted a sign board for something called 'Pak Press'. Curious about what it was, she went to the address on the board and asked to see someone inside. The owner was at the office and agreed to meet, as Laila put it, "some Khawaja Sira who was begging outside." When she went in, she was offered water, and then tea. This was Shukria Gul's office, who is a philanthropist and works on HIV/AIDS. "You may have heard her name, she's a known philanthropist. She asked

me if I begged for a living and I said, '.Yes'She asked me, 'Why do you beg? You're so good looking! 'I started crying and told her my story, and she also started crying.'"

Shukria Gul suggested to Laila, after hearing her story, that she start her own organization to work for her community and herself. Shukria Gul herself was working with people with HIV/AIDS. This is how Laila realized that her Guru had died of HIV/AIDS. Laila was moved by Shukria Gul's encouragement to work for her community to prevent the spread of the disease, but Laila felt she was not educated enough to be able to register and run an organization. But together with Shukria, Laila got together several her comrades and formed SATHI Foundation in 1999.

Those people are Khawaja Sira who have lived through tough nights. Those who beg, who dance—so many people are working for Khawaja Sira. Still, I say that no one is really working for the Khawaja Sira. It is that same process, the educated Khawaja Sira have surpassed, and the uneducated ones are still where they were. Now those educated ones come and say that you are not educated. Imagine how many arrows pierce through my heart that those children for whom I worked so hard say that you are uneducated. They act like it is all about them. If Allah had made me responsible for this work, but I am uneducated then what is my fault in it? What have I done wrong that you use me and then throw me away? I am also a human and have a right to live too. Then I handed over the organization to them. They still used to come and take money from me; sometimes 38 thousand and sometimes 50 thousand, and I used to earn it by dancing and still, I gave it to them.

### **Ashi Jaan**

In the name of Allah, the most compassionate and merciful, I am Ashi Jaan and I'm an activist. I work for my Khawaja Sira community. I'm also a community mobilizer.

I first met Ashi Jaan in 2017 when feminist and Khawaja Sira activists were gathering to discuss a draft of the Transgender Rights bill that ultimately became law in 2018. Ashi Jaan was tireless in her efforts to help the group of activists reach community members. She was both gentle and forceful in her demeanor as she roused people to support the bill and

worked on outreach so that the most marginalized would hear about what was taking place and how it would impact them.

Like Neeli, Ashi Jaan came to realization of herself at an early age, in part when her classmates would bully her by calling her girls' names and hoot at her as she walked by. She would sometimes wear a *dupatta* (long scarf) to school, covering her head with it, but would take it off and put it away before she got to class. Her classmates found her out and told their teachers, who humiliated Ashi Jaan, saying "He's a zenana, he's a khusra!" and strictly forbidding her from ever wearing a *dupatta* again.

People think of it as something good or bad, but that's separate. Whoever someone is, that's who they are. I was who I was, and people could make fun of me for it or they could love me for it, but I was still a Khawaja Sira.

She laments that the teacher who was supposed to guide and teach her and the other children chose to humiliate her rather than try to understand her difference, and that led Ashi to be careful not to expect much better from others.

Her refuge was in others like herself, who lived in the neighborhood and went to the same school. She spent all her time with her Khawaja Sira friends, who "only used to find peace among each other. But when we [they] were among others, we [they] felt strange and uncomfortable, like we [they] were a different species from them altogether." Ashi's brothers heightened this feeling by complaining constantly to their father about Ashi's feminine clothing, demeanor, and the company she kept. "They would say, 'He's a fully developed man! Why does he act like this? Please tell him to fix himself!'"

The neighbors began to comment on Ashi's behavior as well, so her father forbade her from leaving the house to anywhere other than to school and back. She was dependent on her brothers to have any interaction with the world outside her house and school. She felt

her space to exist begin to decrease as her father's restrictions tightened. Her brothers beat her up regularly and the more she expressed her Khawaja Sira self, the angrier her father got.

Finally, my father, may Allah grant him a place in Heaven, said that either he will kill me or I will fix myself and be a proper man.

After being beaten many times, Ashi decided she did not want to live with her family anymore. But there was nowhere to go. She didn't know anything about the Khawaja Sira community at the time or where she might find them. And so, she left her house without anyone's address in her pocket, or any real knowledge of any community members. "I didn't even know *farsi*,<sup>49</sup> which is our secret language, because if you meet them and sit with the community, that's how you'll learn it. I didn't know anything about anyone."

She went from Gujarat to Gurjanwala on the train and heard that there was going to be a *mela* (festival) in Sheikhpura. She spent a night at the Gujranwala train station and met some people who were headed to Sheikhpura, where they were going to pay homage at a shrine by placing a *chadar* (decorated shawl) on the saint's grave. Ashi did not have any money, she was hungry, and there was no one else with her, so when they asked her if she wanted to join them at the *mela*, she decided to go with them. After all, she thought, Allah will make things better. So, she went with them to Sheikhpura, with the *chadars*. They put the *chadar* on the shrine, gave her some money, and fed her, too.

At the *mela*, her new acquaintances took her to a place where *maut ka kuaan* ('The Well of Death') was being performed. This 'Well of Death' was a tall purpose-built cylindrical arena in which a man on a motorbike amazed crowds sitting in bleachers, by

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<sup>49</sup> The word "*Farsi*" here refers to a language spoken among Khawaja Sira groups across the country that is only intelligible amongst themselves. It is not any more related to Persian Farsi as any other language in the region.

driving his motorbike fast up the sides of the 'well of death', reaching nearly to the top. At the base of the well, between motorbike shows, Ashi saw several women dancing for spectators. She did not know at the time they were Khawaja Sira; she saw them as women. "They are the ones who recognized me and started calling me over." She gathered her courage and joined them and after a while, they invited her to come along with them. "Is that what your heart wants? 'they asked. I said, 'Yes!'"

She did two or three festivals with them and did not see her family in almost three years. In that time, she missed her mother and her sisters dearly, and recalls even missing her brothers and father. She reflects now that her father did what he did because he thought that how she was being was wrong. "He was looking at it in a different way, being my father. He wasn't doing anything wrong with me. Their hands were tied, too." But that did not change the fact that her natal home was not and had never been a safe or comfortable place for her.

It seemed to me like I'm not in a home, I'm in a grave. I felt really suffocated. I would look at my brothers and get angry. I would look at my father and get angry. And my mother would just be like, it's okay, everything will be all right. She would comfort me, that everything will be all right, I'll talk to them, I'll do this, I'll do that. She would get insulted because of me a lot as well. Papa used to scold her a lot too. After three years, they caught me in Faisalabad and brought me back.

In Faisalabad, dancing at a festival, Ashi came across some men from her old neighborhood. The men did not recognize her because she was in make-up, but she missed home very badly, and could not resist going up to them and asking after her family. Although she was afraid that these men might go home and let her family know where they saw her, she thought, "at least I'll get to see my mother once." The men returned home and told her family that they had seen their 'son' dancing at a *mela* in Faisalabad.

Ashi's family wasted no time in coming to get her. Although she did not want to go home with them because she knew they would beat her, for the sake of her mother she went

home with them. At home, they gave her a cup of tea and she fell asleep immediately. When she woke up, she realized that her family had cut off all her hair. She realized also that her family had drugged her tea the previous night, but there was nothing she could do right then, as they would beat her. “I could only get angry with my mother. So, I asked her, ‘Are you happy now? Are you okay now? Now that they’ve cut my hair? Are you happy?’” Her mother protested that she had not known and if she had, she would have stopped her father and brothers. But Ashi muses now that her mother’s hands were tied, too. There was no way for her to go against Ashi’s father. “She would comfort me because she’s my mother, but the control was in my father’s hands.”

Ashi stayed with her family for three or four months, looking in newspapers every day for signs of a *mela* setting up nearby. She found one in Mansehra, took money from her mother, and left. After her three years in the community, she had many Khawaja Siras as her acquaintances. She spent the night at the *mela* but did not dance because she did not have a wig and her hair had been cut short still. At the next *mela*, she took a small loan from her friends, bought a wig, some new clothes and starting dancing again. She had community in the festival circuit and a mentor who did her makeup for her. Her mentor had named her Aaliyah, but Ashi did not like it and picked her own name, inspired by a song she used to listen to on the radio.

Ashi Jaan performed on the traveling *mela* circuit for many years. In the early 2000s, she had a close friendship with a Khawaja Sira who lived in Raiwind, a small town on the outskirts of Lahore. Her friend’s natal family was from Raiwind, and they were accepting of her living as a Khawaja Sira. Ashi’s friend would dance in a festival, then return home with her women’s clothes in a bag with her. Ashi did not have a home like that, so her friend took her along with her and sometimes Ashi would spend a few days at a time with her friend’s



family. Being a part of the community in Raiwind introduced Ashi Jaan to the Khawaja Sira community in Lahore, and after a while, Ashi moved there. At the time of my interview, she had spent over 15 years in Lahore.

Lahore brought Ashi into the circle of formal NGO-work<sup>50</sup> in Lahore. She enrolled in a sewing course at the Institute Training Center and then worked there for a year afterwards. Through her work at the Center, Ashi was recruited to the Khawaja Sira Society (KSS), an NGO in Lahore that is run by and serves Khawaja Siras. At KSS, she found herself working along Neeli Rana as together, they had helped some Khawaja Siras who had had grave run-ins with law enforcement. She marks the more formal start to her activism in 2006 when she joined forces with Neeli Rana, whose activism and commitment she had always admired. Neeli and Ashi shared a similar experience of being in exile from their natal families and deprived of proper schooling; and they found in each other the impulse to make family and community for themselves and others like them. The losses accrued to Khawaja Siras in terms of truncated education, loss of housing, loss of family support, narrowing of the means of making a living—for Ashi Jaan, these center around a fundamental dehumanization of Khawaja Siras. “It’s so bad, sometimes people won’t even offer you water because you’re a Khawaja Sira and just not human.” Coming together into a space of organizing with other Khawaja Siras means working for her community so that they work for her as well.

This feeling of being unsupported and aloneness, I shouldn’t feel it, you shouldn’t feel it, they shouldn’t feel it, Laila [below] shouldn’t feel it. What they should feel is that if something happens with me, these people will stand with me. If something bad happens, then they’re with me. If something good happens, then they’re with me

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<sup>50</sup> NGO stands for non-government organization. An NGO is a non-profit organization registered with the government, usually under the Societies Registration Act, 1860, as an entity geared towards the welfare of a particular community, demographic, or constituency. Working in the non-profit sector is one of the newer opportunities that have become available to Khawaja Siras in different cities.

too. Meaning, being happy for seeing people sitting around me or for getting them out of difficulties: these two things were in my mind which is why I started activism.

### **Becoming a Woman**

The discursive formations of the religious right and state functionaries have material effects of reducing space for women and gender diverse people. Furthermore, they buttress and feed off familial, state, societal, and institutional violence and repressions experienced by women, Khawaja Siras, and gender and sexually diverse folks in Pakistan every day. The reason I am highlighting the language used against women and the underlying construction of womanness as loss since against women and the treatment they are meted as their womanness is the visible target of hate and ridicule. Khawaja Sira and other gender and sexually diverse folks remain an absent presence within official Pakistani state discourse. Even at the UN level where historically they have voted against all protections for LGBT people and recently when issue of discrimination against LGBT rights was supposed to be addressed at the UN, Pakistan opposed it as a block with all other nations of the Organization for Islamic countries. Not only that, the letter from the Pakistani Ambassador and Permanent Representative to the UN is notable as he states that, “The OIC States are deeply concerned by the introduction in the Human Rights Council of controversial notions like “sexual orientation and gender identity. The OIC countries have been consistent in their opposition to the consideration of these controversial notions in the context of human rights.” In fact, Pakistan official stance remains that there are no LGBT people in Pakistan.

The text of the Prime Minister of Pakistan, Imran Khan, stating that reasons for the large increase in rape against women and *badkari* (ill actions) against children is due to the rise of *fabashi* (vulgarity/obscenity) in the society. He claims that the corrective for this is *pardab* (veiling) (“PM Khan’s Rape Remarks,” 2021). This trope of women covering up is

linked to larger patriarchal notions of women remaining hidden within the home under the protection of the male members of the family. This also means women who step outside must be covered to protect themselves, as if that would control men's appetite for domination and control through violent sex. Meanwhile, even though Khawaja Sira and other trans\*feminine people who are on the streets face excessive sexual violence, the state is unable to account for this as they are not even legible. Even as they are not included in the public statements, yet represent the subtext as their womanness is in public view but without *pardah* thereby it can be construed as obscene.

The general livelihood categories that Khawaja Sira and other trans\*feminine people engage in are considered *Fahash* (obscene) and this kind of argumentation has a direct impact on Khawaja Sira and trans\*feminine peoples' safety. These kinds of statements have a long history where in the recent past Gen. Pervez Musharraf, former dictator and President of Pakistan, had said in an interview to *Washington Post*, "You must understand the environment in Pakistan ... This has become a money-making concern. A lot of people say if you want to go abroad and get a visa for Canada or citizenship and be a millionaire, get yourself raped," (M. Hussain, 2006). He was referring to the high-profile case of the gang rape case of the retributive Muhkaran Mai, who has fought for many years in local courts to get justice. Mai recently retorted: "people who claimed that I would leave the country are in fact abroad themselves," referring to Musharraf in self-exile. She continues to appeal courts for justice, since most of the accused were acquitted except the one who was given a life sentence. Because of what she experienced Mai has worked on making women aware about their rights, their education and shelter for women who are abused in her area. In a recent interview she says that

I thought that only *uneducated people usurp women's rights, as they are not aware of human rights*. That's why I started working on educating the villagers. At the same time, my

legal struggle continued. I spoke on various forums, where I had to recall and relive my ordeal. It was extremely painful. It is true that I also gained recognition for my work and struggle, but I also had to suffer immensely. *I am doing this for the future generations.* I do not want any woman to go through what I've been through. I launched an awareness campaign in my Mirwala town hoping that there won't be another Mukhtaran Mai ever. At one point, even my family did not support me. *They would tell me that raising the gang-rape issue would bring shame to them. It is a strange argument that those who committed such crimes are not condemned, but the victims.* So all my initiatives and projects are aimed at *changing this environment.* I cannot say that there has been a big change, but *I can say that women are now demanding their rights. Whether they will get their rights or not is another issue.* Things have definitely changed in my town though. The West, as well as the Pakistani government, must ensure that there are pro-women laws in the country. *And not only that; the laws should be implemented also.* There are laws in Pakistan but there's no implementation. (Shams, 2019, emphases mine)

In her interview, Mai highlights several crucial insights: firstly, that she thought that only uneducated people usurped women's rights and therefore she started an awareness campaign in the areas around her village. Compare this to the Prime Minister's statement that usurping women's rights is the edifice upon which society rests; that is why the blame for rape can easily fall on what the victim was wearing rather than opening social space so that women and gender diverse people can inhabit it safely. Unearned power and privilege of men and social institutions make sure that women and gender diverse people always feel threatened and are easily controllable.

Secondly, her family thought that her talking about the gang rape would bring shame to the family. This attitude that rape causes the problem and loss of status/honor to one who is raped and to their family is common, since women are supposed to uphold family honor. Therefore, their rape is an insult to the family despite that Mai has continued her work and shifted her family's thinking. She theorizes eloquently how strange it is that the people who commit the crime, are able to walk freely without shame but those who have experienced violence must feel shame. Therefore, she feels she needed to change the *environment.* The violations against Khawaja Sira and other trans\* feminine people are not even recognized as a crime so they cannot even go to court seeking justice. Yet Khawaja Sira

and queer folks are fighting to change this framing. Lastly, she points to the fact that even if there are laws, they are not implemented, and this is how the state is directly responsible for rape. In fact, rape is an instrument of enforcing male supremacy and domination. The state, by using apologia like what was the woman wearing works to deflect its own complicity and responsibility towards women, while Khawaja Siras and other queer people remain an absent presence in these discourses since they are never overtly mentioned but embody womanhood or maybe assigned female at birth. The framed sub humanity and objectification of women is the fulcrum that creates the allowability for the dehumanization of Khawaja Sira and other queer and trans\*folks.

### **The Pathologizing of Queerness**

There is extraordinarily little scholarship addressing queerness and its specific manifestations in Pakistan. The discourse around same gender sexual activity in Pakistan is framed in the pages of medical journals and policy papers exclusively as masculine behavior practiced by MSMs (‘men who have sex with men’). Medical discourse concerns itself with pathologies, particularly regarding the spread of HIV/AIDS in Pakistan. Legal discourse criminalizes sexual acts that are “against the order of nature” (PPC § 377), declares God to be the sovereign of Pakistan (Preamble, Constitution of Pakistan), abrogates any law that is “repugnant” to the Qur’an and Sunnah (Art. 227, Constitution of Pakistan), yet grants “eunuchs” the rights of citizenship (“Eunuchs Enjoy Equal Rights,” 2012) and has given explicit sanction to petitioners to undergo sex reassignment surgery. Discourse emanating from the non-profit groups takes its cue from both the medical and the legal arena, advocating primarily for greater access to healthcare as well as the recognition of the

fundamental constitutional and human rights of MSMs and Khawaja Siras and, as a broad undifferentiated category, women.

The medical discourse highlights the behaviors of MSMs only in relation to the rising incidence of sexually transmitted disease and the HIV and Hepatitis B and C epidemics (Altaf et al., 2008; Rehan, 2011). The discourse is focused on increase or decrease of infections, and the unchecked nature of disease as a result of same-gender sexual activity, serving to sanitize ideas of homosexuality and transgenderism as MSM, devoid of their complexities and reduced to sexual activity that causes an epidemiological crisis. With Hijras in particular, the discourse is also focused on biological oddity and abnormality (Rehan, 2011) by reducing the complexities of sexuality and gender to hormones and genitals. In this way, the discourse makes same-gender sexual activity and gender non-conformity themselves either pathological or requiring pity.

Even though homosexuality was removed from the Diagnostic and Statistical Manual of Mental Disorders (DSM) in the 1970s, within the mental health community, notions about same-gender sexual activity and love remain disparaged because of attitudes towards homosexuality that are shaped by parochial religious interpretations (A. M. Khan, 2012). Even though clinical understandings of homosexuality ought not to be shaped by cultural or religious prejudices, these biases percolate through the fabric of mental health service providers (*ibid.*). There is a gap in the literature attesting to or examining this phenomenon.

Marriage is the only legitimate relationship in the eyes of the law, and all sexual activity outside of this institution is criminalized. Through law and legal institutions, the state polices gender and enforces heteronormativity, thus gives legal weight to social norms, traditions and cultural practices that stigmatize and marginalize same-sex relationships, and

gender and sexual dissidents (Currier & Thomann, 2016; Chojnicka, 2015). The ideological apparatus of the Pakistani state is steeped in Islam as is reflected by the Objectives Resolution (Annex to the Constitution, 1949, 1985) and the incorporation of Article 227 of the Constitution, which states that all law must be brought in conformity with the Qur'an and Sunnah. The state's coercive project also includes colonial legislation codified in the Pakistan Penal Code (PPC): for example, §294, obscene dance and songs; and §295, anti-blasphemy laws. In the 1980s, under Islamization, a project enacted by military dictator Zia-ul-Haq, further criminal offences were put in place to add to inherited discriminatory colonial laws, called the Hudood Ordinances. Collectively, these laws serve ideological and actual threats to lives of sexual and gender dissidents. They also empower state functionaries to act with impunity towards these communities, as their very existence is contrary to the laws.

Section §377 of the Pakistan Penal Code in particular criminalizes “carnal intercourse against the order of nature”<sup>51</sup> and is understood to apply to sodomy and bestiality in its strict legal terms. However, because sodomy implies homosexuality, in fact §377 is used as a weapon against all same-sex relationships because they are all understood by the court as being against the order of nature. Thus, §377 serves as a continuous ideological and physical threat in the lives of all sexual and gender dissidents and queer people because it criminalizes all those who deviate from the gender-static and heterosexual norms put forward by the entire body of Pakistani law and upheld by society. Using the larger framework of

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<sup>51</sup>The full text reads: “Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine” (PPC §377).

heterosexual marriage, then, as the foundational institution of society, the law exceptionalizes and marginalizes all who do not conform to its definitions of normal.

### **Conclusion**

In most of the life stories I have heard from trans\* comrades over the years, and not just the stories of the Gurus in this essay, I have found that even though trans\* children will find some level of love and respect from their mother figure, frequently, mothers do not have sufficient political capital in the home to protect their children from the patriarchal violence that is headed their way. We see from these stories that mothers find themselves in a compromised position, subject to patriarchal control, trained into a docile femininity that views womanness as loss, and finding another sort of failure in having produced a transgender child. This is crucial: if the father threatened the child with death, then even though the mother loves the child, it is extremely hard for her to leave the marital home for the sake of the child. There is nowhere to go, but into precarity—the social structure has not allowed her to be independent, to have all the education or means to fend for herself that could have been made available to her. These are the losses attached to womanness, the conditions that deny trans\* folks and cisgender women alike the space to take charge of their lives outside of male and familial control.



The Movement for Transgender Legal Rights in Pakistan

This essay traces the criminalization and planned elimination (Hinchy, 2019) of the Khawaja Sira community during the colonial era and situates it as the backdrop for the community's current marginalization and social exclusion in Pakistan. It then shifts to the recent history of significant legal precedents and legislative action that the Pakistani state has used to discipline, erase and re-construct trans\* identities. More specifically, this essay examines the language of court cases that generate legal discourses that impact both trans\* feminine and trans\* masculine people, in order to explore the dialectic between state control and community/activist mobilization in the context of the court verdicts.

Since the eighteenth century, the state has consistently, without pause or quarter, been brutal towards gender diverse people, especially the Hijra community. Despite this overt aggression, criminalization and incarceration of the Hijra community, they have continued to engage in the legal forum to tactically gain socio-legal space. Even though the gender binary of male/female remains the main legible gender formations in Pakistan, the Khawaja Sira community has survived, nonetheless. The intentional erasure of Khawaja Sira's embodiment, and the violent disciplining of trans\* bodies, places trans\*ness as always and already suspect in legal structures. This historical continuity from the colonial times onwards has situated trans\*feminine embodiment as a marker of inherent criminality and moral aberrance, which was subject to the Criminal Tribes 'Act of 1871 till a year after Pakistan's creation in 1948. The British referred to Hijra's as men, this was their way to erase the gender fluid Hijra identity. The colonists classified them as a signifier of failed masculinity therefore they were seen as threat to constructed ideas of Indian masculinity and corruption of the public spaces (Hinchy, 2104).

The groundwork laid by the colonial state on the imposition of the gender binary, the criminality and moral panic around the presence of Hijras, was the basis on which the

Pakistani state and society developed their attitude and treatment of gender diversity. They further reinforced unquestioningly notions of binaristic thinking and male supremacy inflected through the lens now of Islamized notions of gender in Pakistan. The socio-legal engineering that led to stigmatization of gender diversity was inherited along with the suspicions and biases of the colonial era, and thus the Pakistani state has had an uneasy, primarily violent relationship with trans\* people. Despite endemic state violence against them by the police and other state agencies, as well as their natal families, over time Khawaja Sira activists have developed different strategies and tactics to survive, resist, and thrive under harsh conditions. These experiences helped various community groups to build strategies and tactics into a meaning making processes that guided their activisms.

This essay analyzes how the law is used as one space among many to contest the state's gender regimes and its heavy policing of regressive biologically/medically mediated gender binaries. These binaries, reproduced and surveilled by the state, create and normalize gender/sex as a fixed category that can solely be determined by a doctor's examination of an individual's body. This system relies on physiological characteristics to determine gender, rather than how a trans\* person identifies their gender. The juridical understanding stems from patriarchal, religious and state domination, as well as an insufficiency of judicial imagination regarding gender identity and a limited, uninterested, and negligent understanding of trans\*ness.

This is revealed through the language that judges employ, as well as, at times, the language with which the petitioners use to argue for legal recognition on the behalf of trans\* people. On one hand, this language reveals a disconnect between legal advocates and trans\* people, who, despite advocating on their behalf, continue to characterize and perceive trans\*ness as a form of social, political, and economic lack or loss. This loss, which is both

juridically and socially constructed, requires a benevolent and paternalistic state remedy in order to become marginally more acceptable. That is to say, the loss constructed by the state is so seemingly pervasive that even the bare minimum of gains in legal rights are portrayed as great gains in human rights. In this way, the state makes certain forms of trans\*ness acceptable for certain purposes, but never accepts the full humanity of trans\* people. After the Pakistan's Supreme Court decision that reinforces the rights of Khawaja Siras as equal citizens of the Pakistani polity, this language began to shift. This change in language and juridical standing is a direct consequence of—and indeed was only possible because of—the political and social organizing efforts of the Khawaja Sira community and other trans\* activists.

From the perspective of the state, the conceptions, prescription, and judgement of transgender people moved from criminality and erasure to the medicalization of their 'disorder/disease'. This shift in conception happens from colonial to post-colonial times when the vocabulary of 'transgender' was re-introduced from a western identarian lexicon. This has had an impact on language within the trans\* community itself, and in their process of community formation such that younger tran\* folks who have been able to stay within their natal families due to familial acceptance or their ability to hide their gender difference been able to receive an education and partially enter the formal job market. Many such younger more upwardly mobile trans\* folks choose not to enter the Khawaja Sira community but use the language of transgender instead. This differences between older and newer identities also affects the possibility of spaces and projects for survival, liberation, and thriving of the trans\* community. Traditional Khawaja Sira households, known as *deras*, are a part of a centuries-old tradition in South Asia, and trace their history back to the court

eunuchs of the Mughal empire (Khuhro, 1965; Pamment, 2010). Initiation into the Khawaja Sira system requires entering the tutelage and parentage of a Guru, a senior Khawaja Sira. Once one becomes a chela (disciple and daughter) to a Guru, one is affiliated with, protected by, and responsible to her and the Guru's *dera*, and is thus part of the larger community of Khawaja Siras. However, with the contemporary global LGBTQI rights movement arrived the terminology of 'transgender' and the concept of an open gender identity that was not necessarily entwined with a long history. In the current movement of queer rights in Pakistan, some younger trans\* people are choosing to identify as trans\* women and trans\* men rather than join the Khawaja Sira system. As my interlocutors below attest, this difference in outlook coincides with a difference in education, access to international discourses, and, ultimately, class.

The legal strategies for people who identify with a trans\* identity outside of the Khawaja Sira system western model of trans\* identity<sup>52</sup> also differ in that they appeal to the court to accept their gender identity as a disorder. In doing so they advocate to legally be allowed to transition. This language is more often used by trans\* men who were assigned female at birth as they do not have access to Khawaja Sira identity in the same way someone who is trans\* feminine would, they also are usually faced with many restrictions at home.

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<sup>52</sup> Surya Munro posits that there are three main formations of gender and sexuality in India: "nonclassified sexual activity, hijras and koti, and the Western model" (Milanovic, 2017, p.70) The first category is described in terms of sexual activity so 'MSM' means "men who have sex with men" and is a common terminology of NGO-speak in the region of South Asia. The second category can be paralleled for Pakistan as 'hijras and zananas', to account for a difference of language. The third is the western model, which "includes identity categories produced by Western culture— gay, lesbian, transgender, transexual, bisexual identity[.]According to the anthropologist Suparna Bhaskaran, the appearance of these identities and emerging communities around them in India is the result of intersecting the social processes of modernization, politics of development, economic liberalization, trans/national activism and development of the NGO sector" (Milanovic, 2017, p.70). In Pakistan the terminologies of western model enter around the same time even though economic liberalization and modernizing trends had started earlier though stemmed by military and right leaning regimes.

Trans\* men<sup>53</sup> have used the legal institution of marriage, whereas Khawaja Sira self-authorize as Khawaja Sira and do not seek any state recognition or acceptance of their relationship since their romantic relationality was criminalized under the British under section §377, which was termed as

Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which [shall not be less than two years nor more than] ten years, and shall also be liable to fine.

They also were viewed with great moral approbation as “habitual sodomites” (Hussain, 2019) and as learning from having dealt with a violent state apparatus the Khawaja Sira do not bring their private matters for the approval of the state and do not try to fit into the heterosexual matrix of marriage.

In movement spaces, Khawaja Sira, trans\*, feminist, and human rights activists come together to organize a vibrant social movement for trans\* life and dignity. State institutions are pushed towards less belligerence by coalitions of communities that struggle together to bring about this change. They remain vigilant in making sure that trans\* people’s life worlds are not further encroached upon. When trans\* people expand space both with families in the public, they are showing us a future where gender categories are not determinative of life opportunities.

### **Traces of the Past**

The attitudes, behaviors, and treatments of Khawaja Siras in present day Pakistan have an odd historical character to it that one cannot quite grasp without considering the

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<sup>53</sup> I use trans\*masculine to signal all those gender expressions that tend towards masculinity but may be assigned female at birth.

rigidity of gender binaries, the imposition of compulsory heterosexuality and the disapprobation attached to gender diversity of the colonial era. The project of “gradual extirpation of the *hijra*” (Hinchy, 2019, p. 93) embarked upon under colonization rose from a strong British discomfort with the state land and monies secured as continuous grants to court eunuchs in the Mughal era.<sup>54</sup> By suspending privileges granted under previous monarchs and principalities, the British orchestrated a complex campaign of crowding out the spaces for Hijra survival. Hijra presence in the public space was linked to a notion of public indecency, obscenity, and danger to children. Jessica Hinchy has shown that a widespread moral panic is in evidence among British colonial officials in India in the late nineteenth century British India centered around the notion that Hijras added to their numbers by kidnapping and castrating young boys (Hinchy, 2019). Simultaneously, Hijras were also made subject to criminal legislation under the Criminal Tribes Act (1871) and later, under the colonial penal code with sections around “obscene song and dance” (IPC §294) and prohibitions on “carnal intercourse against the order of nature” (IPC §377).

The preamble of the Criminal Tribes Act (1871) legislated “for the registration, surveillance and control of certain criminal tribes and eunuchs.” Under the Act, the local government had to register the names and residence of all eunuchs residing in that area as well as their properties. They were suspected of kidnapping or castrating children.

Additionally, the Act criminalized any Hijras who had anybody under the age of sixteen living with them at their *dera*, mandating a punishment of imprisonment of up to two years,

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<sup>54</sup> The term ‘*hijra*’ is used widely across south Asia to refer to the historical community that I refer to as Khawaja Sira in this paper. In India and Bangladesh, the word Hijra is used within the community and is regarded with respect. In Pakistan, however, Khawaja Sira activism has, in the past decade, changed the public parlance so the Hijra is now a term that is used within the community, but Khawaja Sira is the term of respect the community prefers to Hijra, as it recalls an illustrious history of Khawaja Siras in the Mughal court. See Pamment 2010.

or a fine. Once registered, the Hijras were penalized when they appeared in public dressed or ornamented like women, danced or played music to earn money. Such persons could also be arrested without warrant and sentenced to imprisonment of up to two years fined or both. The Act also denuded the registered eunuchs of their civil rights by prohibiting them from acting as guardians to minors, from making a gift, deed or a will, or from adopting a son. Overall, the act functioned to criminalize how the Hijra community reproduced itself and survived. Through criminalizing their ways of being and the ways in which people would join the community (adoption) or wealth and resources (gift, will or deed) would be transmitted in through the community much harder (Hinchy, 2019).

These new laws were applied to criminalize Khawaja Siras as a class, as well as attack their limited forms of income, which could include, but was not limited to, dispensing blessings, dancing, public performances, and sex work. The Criminal Tribes Act made it compulsory for the “registration, surveillance, and control of all eunuchs, defined as ‘persons of the male sex who admit themselves, or on medical inspection, clearly appear to be impotent’” (Pamment, 2010, p. 35). This peculiar wording revealed how the state engaged in medical examinations of Hijras to determine what was ‘unacceptable’—being male-bodied yet impotent. But if you further explore the directive of the state, it reveals:

Any eunuch so registered who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place, or who dances or plays music, or takes part in any public exhibition, in any public street or place or for hire in a private house, may be arrested without warrant. (British Library 1871 qtd Pamment 2010, p. 35).

Here, living is grounds for arrest, such that dressing in woman’s clothing in any public space or engaging in any public performance—or just existing—constitutes legal grounds for their arrest. This also starkly marks the attempts of the state to punish male-bodied people whose gender expression tended towards femininity, and whose professions



and presence in public spaces were grounds for arrest simply because their way of being in the world was considered an abomination. Furthermore, the British view of Hijra was that Hijras—or ‘eunuchs’ in colonial parlance—were ‘habitual sodomites’, beggars, kidnappers and castrators of children. They were marked as an obscene presence for public space, a threat that must be erased from view. This form of broad-based criminalization based on association to a historically situated gender formation revealed how the British wanted to bleach out heterogeneity and carve out a binary that was easier for them to control (Hinchy 2019). At its very core, the colonial state’s hatred and mistrust of diverse gender expression, particularly when that community of people was organized, reads as eugenicist project, aiming to eliminate them from public presence because they found hijra community to be ungovernable. This ungovernability of the hijra presence in the public space challenged the authority of the colonial project itself. The project of racializing and categorizing various Indian people was undertaken through a rule of colonial difference<sup>55</sup> (P. Chatterjee, 1993, p. 16-18), and allowed for the categorization of a Hijra as “criminal tribes.” The Hijras they were of course not a tribe, but a community organized around gender fluidity, and based on the strength of the Guru-chela tie, the community’s sexual and gender expression, and the work in which they engaged.

Hinchy traces this project to the Northwest Province in 1865, when the British government declared its aim to ‘reduce’ the number of ‘eunuchs’ and thus ‘gradually lead to

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<sup>55</sup> The rule of colonial difference is a British-born ideology, marked by Partha Chatterjee as operant in British governance of India and debated heavily in the run-up to Indian independence from Britain. By this rule, Europeans and Indians are understood as fundamentally different in their governability. Indians, it was claimed, were prone to “loyal homage” to a king and unsuited to impersonal democracy (Ibid.). To introduce democracy to Indians would be to disturb “contentment” and render Indian ungovernable, bringing peril to those who would seek to govern (P. Chatterjee 1993, 17).

their extermination” (Hinchy, 2019, p. 2). The state had therefore initiated an active project to surveil, discipline, punish and disappear Hijras from public existence altogether. For colonial officials, the justification for exterminating Hijras was that they were “a criminal and sexually immoral collective” (Hinchy, 2019, p. 7). The colonial government never equivocated about its eugenicist, genocidal project. Since the legal and cultural “civilizational codes” (Wynter, 2003, p. 263) codified that simply in being a member of the community of Hijras one became a criminal and must be exterminated. The intention to disappear the community through policing, surveillance, and incarceration reveals how the control of domestic space—and gender and sexuality more broadly—was a form of colonial control exercised through the state (Hinchy, 2019, p. 7) that even regulated limits of acceptable masculinity, femininity and down to familial codes. This is the historical institutionalization of discriminatory attitudes towards Hijra community, and an inculcation of state suspicion based on a need to control, discipline and exorcise Hijras altogether. To further understand their impact, one must interrogate the colonial gender regime and how it was upheld juridically.

### **Legal Complex in Pakistan, and Definition of Gender and Citizenship**

Gayle Rubin describes the sex/gender system as a set of arrangements by which a society transforms biological sexuality into products of human activity, and in which these transformed sexual needs are satisfied (Rubin, 1975). The sex/gender system instituted by the British Raj was primarily hetero-patriarchal in that gender was defined as a binary, and the only legal relations are those between a married heterosexual couple. “The construction was part of a wider colonial grid in which the colonizers conceptualized the colonies as what Anne McClintock has called the ‘porno-tropics’, or ‘a fantastic magic lantern of the mind

onto which Europe projected its forbidden sexual desires and fears.” (Bacchetta, 1999, p. 147) Evidence of this can be gleaned by work done on the Indian Penal Code, which was instituted by the British in 1857. The British legal system in India, governed by the Indian Penal Code (IPC), outlawed sodomy, and thus same-sex acts among men. Here it is important to recall that Hijras were framed as habitual sodomites by the colonial state; once sodomy was outlawed among Indians across the whole of British-held subcontinental territory via IPC section §377, it “mark[ed] the supplanting of local time/spaces of queer acceptance... with generalized male homosexual repression” (Bacchetta, 1999, p. 146-7).

The repression and criminalization were not just for homosexuals, but also for the diverse gender expression encapsulated in North India by the Hijra community. Female same-sex love was not legally sanctioned nor included in the law because the general conception about women in the Victorian era was “[that they were] considered passionless and sexually passive in the dominant Victorian grid and thus without sexual subjectivity” (Bacchetta, 1999, p. 147). In other words, the same sex sexuality of women was not a similar cause for moral panic in the halls of government because female sexuality was understood as successfully subjugated to male rule. The colonial imagination about family arrangements was that they should be patriarchal, following the male line, with property held and exchanged predominantly by male hands. The extension of women as property was also a part of family economy. By paying analytic attention to the way private property arrangements between men were introduced during this era, this pattern then becomes amply clear. The British Raj’s legal system privileged heterosexual maleness and heterosexual marriage.

## The State after Independence

Post-1947, the fledgling Pakistani state inherited most of this legislation wholesale from the colonial administrative system, along with the civil servants who had run that system up until 1947. They also inherited the attendant colonial attitude towards its Khawaja Sira subjects. Over the life of Pakistan, legal modifications have developed as statutory law, particularly around Islamic legal prohibitions around sexual misbehavior. These additions had the effect of further ossifying the gender binary within the legal imagination and sanctifying sexual relations *only* within the realm of marriage. It culminated in the criminalization of extra- and pre-marital sex under the notorious Hudood Laws (Lau, 2007).

One important operation of control, as Judith Butler shows, is that people are regulated by gender, and that this medical-state regulation operates at a level of juridical-cultural production as a condition for cultural intelligibility for any person under colonization (Butler, 2004). Simultaneously, these regulatory structures and discourses are socially engineered into society to privilege and consolidate patriarchal maleness, while also attempting to exterminate gender diversity, such as the Hijras. To veer from the gender norm is to be an aberrant example that regulatory powers (medical, psychiatric, and legal, to name a few) may quickly exploit to shore up rationale for their own continuing regulatory zeal (*ibid.*).

The cultural intelligibility of Khawaja Siras was seriously affected by the legal norms that criminalized their gender expression, work and lives. The statutes against sex work, song and dance, and public appearance at once criminalized them and stripped them of recognition as citizens, closing out the space for their relationships, and eventually their existence. It did not afford them basic constitutional protections and rights, such as protections from violence and the right to vote and inherit property. Therefore, Khawaja

Siras became illegible to the state and written outside of the law. Nonetheless, they were liberally policed; their livelihood was criminalized, as well as their very existence within the public sphere. They were never on the map of 'citizenship,' and as outliers they marked the constructed boundaries of civility, morality, and legal existence. They therefore did not receive attendant privileges and protections afforded to those with true citizenship. This further aggravated their social exclusion and lack of access to vital resources.

Khawaja Siras remained visible and working, constantly destabilizing the legal binary by embodying transgressive gender norms. Yet with visibility came the cost of facing both interpersonal and institutional violence and discrimination. One of the consequences of the systemic and systematic discrimination that Khawaja Siras face has been growing political organizing within the community. In the 1990's, prominent Khawaja Siras started key organizations and protested harassment by state institutions, specifically the police. These include Gender Interactive Alliance (GIA) in Karachi, run by Bindiya Rana; the All Pakistan Eunuch Association (APEA), run by Almas Bobby, (an organization that has chapters across the country and works for the welfare of Khawaja Siras); Saathi Foundation started in Lahore in 1999 by Laila Ji, Ruh-e-Khalid by Neeli Rana (see *Khawaja Sira Life Stories: Is womanness really a loss* or Essay 1); and the Murat International Society (MIS), in Karachi. These groups and independent Khawaja Sira activists would protest vocally when the police or other state or non-state institutions target members of their community. For example, it is the president of the APEA, Almas Bobby, who spearheaded the Supreme Court case that brought about a change in gender markers on identity documents.<sup>56</sup> Another activist, Bindiya

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<sup>56</sup> The assignment of sex/gender happens at birth, usually the legal document being the birth certificate, once that determination has been made there is no legal way to change one's sex/gender. After that, all legal documents require the declaration of one's sex/gender and the basis of this

Rana, called for judicial review in the Sindh provincial court of those government departments that were disregarding the Supreme Court order and refusing to issue Computerized National Identity Cards (CNICs) to Khawaja Siras or discriminating against them, in spite of the Supreme Court's directives (Mujahid, 2010). At the same time, another prominent spokesperson, Sarah Gill, filed a case in the provincial court in Sindh seeking to change her sex on her CNIC.

Multi-pronged legal action has been part of a broader political strategy that Khawaja Sira groups have employed. They do this in order to complicate their visibility, attain space in public discourse, and gain rights for their collective identity within the realm of citizenship. Their strategy is to make gender a site for protection and recognition. They seek to claim citizenship and its attendant privileges, not as individuals but as members of a marginalized, yet vocal group. This gives Khawaja Siras a usable language with which to argue for recognition. They also demarcate pre-colonial continuities and activate Islamic categories that existed at the time of the Prophet Muhammad, where the *mukbannisun* were transgender keepers of the Ka'aba, the Muslim holy shrine in Mecca, Saudi Arabia. While this is a useful strategy to gain them political recognition, it also legally displaces the gender binary to accommodate their complex gender expression. It is, more importantly, predicated on a historical understanding of gender variability and embedded in the idiom of a spiritual lineage.

It is useful, here, to think about citizenship as Evelyn Nakano Glenn defines it: "citizenship refers to full membership in the community in which one lives." Membership,

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becomes the birth certificate. One of the main documents used for identification by the state is the Computerized National Identity Card (CNIC) that has your sex on. It is given by the National Database and Registration Authority which is responsible for verification of all the information before they make your identity card.

as Glenn explains, “implies certain rights in and reciprocal duties toward the community” (Glenn 2002, 19). Even though the Khawaja Sira community aims to achieve full participation in the polity, Khawaja Sira activists are aware that the fight must be taken on from multiple angles, bringing all available resources to bear. This is especially true in their objective to build solidarity between organizations and cross-identity coalitions. Khawaja Sira’s efforts to gain citizenship/full membership is refracted through the lens of group identity and centuries of history lend gravitas to demands made to the state. Making demands on the state on the basis of the community—not just for and as individuals—contrasts strongly with how Trans\* men engage the state for rights over their individual bodies.

Below I analyze the incidents that led trans\* folks to engage the court system to extend juridical oversight on the discriminatory and violent excesses law enforcement agencies have committed against the Khawaja Sira communities. Specifically, I will review the petition presented to the judiciary, and some of the preliminary decisions that were given by the court that make up the context of their legal analysis. I will also focus on news reports pertaining to the issue of adding a third gender category to the CNIC, the primary identifying document for adult Pakistani citizens. The subsequent contestation between the Supreme Court and the Khawaja Sira groups over the requirement of medical tests as a prerequisite for being designated as a third gender reveals both the medico-legal presumptions of the state regarding gender binaries, and the versatility of trans\* movement actors in navigating the state’s presumptions.

The social, cultural and legal climate of Pakistan either denies, or is hostile towards, diverse sexualities, gender identities, and gender expressions (IGLHRC 2014), and given this situation, it was surprising that, in 2009, the Supreme Court took up the cause of Police

harassment of Khawaja Sira and the violation of their rights overall and gave it legitimacy. The Chief Justice at the time, Justice Iftikhar Chaudhry, had a complicated relationship with the executive branch of government. Chaudhry had become somewhat of a populist judge after he had been unceremoniously removed from office in 2007 by the dictator General Musharraf. Musharraf had seized power from a democratically elected government and, finding the Chief Justice insufficiently cooperative, he demanded that Chaudhry resign so that the general could appoint the judiciary of his choosing. Chaudhry refused to hand in his resignation and the general did not take it well. In response, Musharraf suspended Chaudhry as Chief Justice and hastily appointed the second most senior judge as acting Chief Justice. This catalyzed a lawyers' movement that lasted almost two years, eventually ending in 2009 when General Musharraf was forced to concede to the lawyers' demands and reinstated Chaudhry as Chief Justice. There had been protests all over the country against executive overreach and excesses; once Chaudhry was reinstated, he was looked at as a people's judge (Phelps, 2009; "The Pakistan Lawyers' Movement," 2010). Therefore, when the three-judge bench took up this petition, the court was for the first time, willing to listen to the pain that the Khawaja Sira community lived with on a day-to-day basis ("Govt proposals sought," 2009; Iqbal, 2009). At the same time, the Khawaja Sira groups that took up the legal system as part of their political strategy seemed to be successful in engaging the state and negotiating for collective recognition on the basis of gender. The extensive media coverage because of the Supreme Court involvement helped to create broad-based support for the Khawaja Sira community, specifically politicizing the community to further vocalize its demands.



## The Supreme Court Judgment, 2009

On 23 January 2009 in Taxila, Pakistan, local police raided a wedding party and arrested many of the participants, among them five Khawaja Siras who were working there as dancers. (Pamment, 2019; Zehra, 2010). This incident was unremarkable in that police officers typically employ state power, physical as well as ideological threats to reign in the Khawaja Siras. As established throughout this analysis, police enforce socio-legal biases by regularly mistreating Khawaja Siras because they represent a weak and vulnerable stratum of the society. What was unusual in this instance was the resistance that these arrests sparked. Under the auspices of the APE, people gathered in protest outside the police station (Pamment, 2010). The president of the APEA, Almas Bobby, called for the release of their colleagues who she insisted had done nothing wrong by dancing and collecting money. The protest was supposed to be peaceful. It turned violent when the police baton-charged the gathering (Pamment, 2019).

The protest was congruent with the political strategy of Khawaja Sira groups that agitated against their systematic maltreatment by the police. But this time, instead of just protesting outside the police station, Almas Bobby, with the help of lawyer Aslam Khaki (Islamabad-based lawyer who was a well-known advocate and Islamist campaigner for human rights) decided to take this incident of organized and targeted police violence to the Supreme Court. She used this case to highlight the harassment that Khawaja Siras faced from the police and from society at large. Aslam Khaki often used the *fiqb* to make arguments for human rights and dignity. When Almas Bobby approached him to take this case, he reportedly researched the plight of the Khawaja Siras, and then decided to represent them by petitioning the Supreme Court (Walsh, 2010).

The petition Khaki filed in the Supreme Court argued that the case represented the infringement of the fundamental rights of “Eunuch’s [sic] or people of the middle sex (also called as She males).” He described the incident at the wedding party in Taxila as a “case of molestation, humiliation and arresting the most vulnerable the most oppressed section of the society” (Constitutional Petition no. 63/2009). The petition also elaborates that their families, who reject them and send them to the ‘Gurus,’ collectively violate the rights of this community. It further sought to demonstrate that the government utilizes a coercive apparatus to threaten, maltreat and harasses the Khawaja Siras, and that society in general marginalizes, discriminates and shuns them, and thereby contributes to institutional violence. The petition states these actions constitute a violation of “the right of dignity enshrined by Quran as well as Article 14 of the Constitution,”<sup>57</sup> and gives further description of where these violations occur: the denial of the right of Islamic inheritance to the “Shemales” by parents; lack of educational opportunities; lack of respect; little or no employment opportunities; restriction of movement by the “Guru’s [sic].” As a consequence of the intersecting oppressions that the community of Khawaja Siras face, the petition appeals to the court to consider the following suggestions: First, that strong action be taken against the Taxila police officials who were responsible for this particular incident of harassment and humiliation; second, that the government and civil society attempt to understand the issues facing these people and protect their rights; And third, that the federal and provincial governments enact legislation that will protect the fundamental rights of this community.

The petition was written in English and given that there are no culturally translatable terms that can linguistically express the socio-historic specificity of the Khawaja Sira identity,

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<sup>57</sup> Article 14 of the Constitution of the Islamic Republic of Pakistan 1973 states that “the dignity of man and, subject to law, the privacy of the home, shall be inviolable.”

the petitioners use terms like “Shemales,” Middle sex and Eunuch. It must be stated these terms do not capture the socially, politically, and historically constituted community of the Khawaja Siras. However, the term Eunuch is recognizable to the state from colonial times and is often employed descriptively. After this judgment, and the movement galvanizations around it, the terms “transgender” and “Khawaja Sira” have come to be the language of dignity that the community and their allies employ.

The petitioners made certain specific, fundamental claims as the basis of their argument: that Khawaja Siras are *human*, and that Khawaja Siras are citizens of the Pakistani state. Therefore, their rights ought to be guaranteed against violations from their families, state officials, and society at large. The language of the petition used fundamental rights that are enshrined in the Constitution of Pakistan (1973), specifically in Article 25, equality of citizens;<sup>58</sup> Article 26, Non-discrimination in respect to access to public places;<sup>59</sup> Article 27, Safeguard against discrimination in services;<sup>60</sup> and Article 38, Promotion of social and

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<sup>58</sup> Article 25. Equality of citizens. (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex alone. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children (Constitution of Pakistan 1973).

<sup>59</sup> Article 26 Non-discrimination in respect of access to public places. (1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth. (2) Nothing in clause (1) shall prevent the State from making any special provision for women and children. (Constitution of Pakistan 1973)

<sup>60</sup> Article 27. Safeguard against discrimination in services. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth. Provided that, for a period not exceeding [16][forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan: Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex. (2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority,

economic well-being of the people.<sup>61</sup> In conjunction with the constitutional argument, the petition alludes to the Qur'anic principals of the dignity of humans. This claim is important, as it employs the group identity of Khawaja Siras by invoking Islamic idiom to connect the constitutionality of the dignity of humans vis-a-vis the state to other non-state institutions like the family, civil society and the Khawaja Sira community elders. Their collective identity and determination to live safe and legible lives becomes the prism through which the court was asked to look at the violence and marginalization they face. Couched in a language that was completely legible to the court, the argument and evidence were effective.

In response to the petitioners' arguments, the court directed the Secretaries of the Social Welfare Department through the Additional Advocate General to conduct surveys of the population to determine their numbers, their conditions, and the facilities available to them. The Supreme Court also required that individual members of the community be registered with the government. The purpose of registration was ostensibly to determine whether each Khawaja Sira lives with her Guru voluntarily or under duress, reviving the ghost of the eighteenth-century moral panic that marked Hijras as kidnappers of young boys

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<sup>61</sup> Article 38. Promotion of social and economic well-being of the people. The State shall: (a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants; (b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure; (c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means; (d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment; (e) reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan; (f) eliminate riba as early as possible (g) the shares of the Provinces in all federal services, including autonomous bodies and corporations established by, or under the control of, the Federal Government, shall be secured and any omission in the allocation of the shares of the Provinces in the past shall be rectified. (Constitution of Pakistan 1973)

(Hinchy, 2019). Regardless of how the individual joined the Khawaja Siras, the petition still held the parents of those individuals responsible for child abandonment (Aslam Khaki and another v. SSP Rawalpindi and others, 2009). A second provisional judgment was also passed whereby the judges ordered that income support should be provided to this community from the Bait-ul-maal (the State's treasury of alms collected from the citizenry) and the various government-run income support programs. The law enforcement agencies were directed to protect "Shemales" from harassment by different criminal elements, without specifying who those elements might be or how the protection should be enacted. The social welfare departments were directed to come up with projects to support the community and provide lists of registered "Shemales" for the next hearing (Aslam Khaki and another v. SSP Rawalpindi and others, 2009).

The Supreme Court also directed the National Database and Registration Authority (NADRA) to give Khawaja Siras Computerized National Identity Cards a third gender category, although the court required that there be medical testing to determine whether someone is a Khawaja Sira or not (Sherazee, 2010). The medical testing generally relies on using anatomical, physio-biological and chromosomal markers to determine gender rather than self-determination. The Supreme Court also directed that government jobs be given to Khawaja Siras. It also mandated that the government ensure Khawaja Siras receive equal educational opportunities and their rightful share of inheritance ("NADRA to give jobs," 2010).

The social, cultural and legal climate of Pakistan typically either denies or is hostile towards diverse sexualities and gender identities and expressions. This can be evidenced by the normalization of everyday violence "(both physical and psychological) has legitimacy in

Pakistan's patriarchal society" (Kanwal 2020, p. 1). There are countless news reports of rape, murder, extortion and expulsion from homes in newspapers and yet no systematic information collected by the government about the violence that Khawaja Sira and other trans\*feminine people experience as the accounting for trans\*feminine lives is not even on the government radar. Given this, it is noteworthy that the Supreme Court took up the cause and mandated the above-noted changes. Although this decision provided necessary legal recognition, it did not automatically equate to legitimacy in society. The petition was a bold step that addressed the denial of Khawaja Sira humanity and upheld the fundamental rights of Khawaja Siras as citizens. It brought to the fore issues that were previously ignored, marginalized, and openly perpetuated, and highlighted and discussed them in open court. In this, the Khawaja Sira groups that have taken up the legal route as part of their political strategy to engage the state and negotiate collective recognition on the basis of gender seem to be successful. The extensive media coverage as a consequence of the Supreme Court involvement has also helped create a broad-based discussion about the Khawaja Sira community, specifically politicizing the community further to vocalize its demands.

Like many legal and political changes, the language of the petition and judgment have the potential to create a situation in which state actors may try and dismantle the alternative system that the Khawaja Siras have developed. For example, in the petition Advocate Aslam Khaki states that rights of the Khawaja Sira are violated as "Their right to respect have been also violated as they are forced to dance and also for begging by the "Gurus' and rights to movement are violated as they are enslaved by their Guru's" (Constitutional Petition no. 63/2009). Even though there is a potentiality of abuse within the Guru/chela structure without changing the structural conditions of Khawaja Sira and

trans\*feminine community just laying criticism and censure on their internal structure leads to further control and criminalization. The political power of Khawaja Sira groups now due to a history of community organizing, it still leaves some groups that are not as politically organized or as close to the locus of political power within the community vulnerable such as more individualized trans\* identities.

Since the 2009 Supreme Court decision, the Department of Social Welfare has been entrusted with conducting surveys and coming up with programs that uplift different communities. These efforts have been, at best, inadequate and at worst completely ineffectual. Many of the Khawaja Siras were skeptical of the Social Welfare Department's effort to enumerate the community and, in some provinces, the Khawaja Siras were reluctant to be surveyed as they felt increased visibility to the state meant increased vulnerability to the state. Since 2009, however, the political and social momentum of Khawaja Sira activism and societal awareness has led to increased protests against police violence and rapes and murders targeting the community. This has created an ongoing dialogue between the Khawaja Siras and the Supreme Court, as well provincial High Courts where Khawaja Siras appeal for oversight over executive action. They also employ non legal means like public protests to get their message across.

In terms of state actors, it is also important to remember that the majority of the harassment and violence that Khawaja Siras face once they join the community is from law enforcement agencies. To suddenly expect the same state structures to protect Khawaja Siras is counter intuitive. Specifically, giving law enforcement oversight and access to the community, to challenge the community's internal structure, may compound the community's problems as police abuse of Khawaja Siras is common (IGLHRC 2014).

Despite the court's insistence that this should happen, the executive agencies are not fully under the control of the superior judiciary. In fact, they are far more beholden to provincial politics and patronage networks than to the judiciary.

Despite the 2009 ruling, outstanding legal issues around the ability of Khawaja Siras to be recognized as full and equal citizens in terms of substantive citizenship rights by the state are far from being achieved. Acceptance from families and society at large is also pivotal and equally hard to achieve. These and other larger changes in social attitudes cannot be addressed through legal channels. Instead, a broader social movement, which is slowly being developed with alliances with other minorities groups, holds a lot of promise. As Nivedita Menon insightfully notes, in the long run, culture is not altered without individual and collective action “from below” (Menon, 2004, p. 3)

Although the Supreme Court has taken initiatives to recognize a third gender—thereby expanding the gender binary and simultaneously offering state sanctioned recognition and acceptance of their communal identity—this step was fraught with many tensions because the Supreme Court concurrently kept the precondition of medical confirmation stating that “registration sheets previously had columns for only male or female, they were now to include a column for eunuchs, whose status was to be confirmed through unspecified medical tests” (ICJ, 2009) after this confirmation with the Social Welfare departments, then NADRA could issue National Identity Cards. The Khawaja Sira and transgender political group opposed and held country wide protests as a result of which within a couple of months the Supreme Court changed its decision and allowed for registration without the requirement of medical testing. It also mandated the NADRA to expedite the process so that Khawaja Siras could also be registered to vote (“Transgender’s



sex not to be verified,” 2011; A Khan, 2011). Negotiations taking place between the Supreme Court and the Khawaja Sira groups intended to accommodate the needs of these communities and mediated by their representatives who are sensitive to the vulnerabilities of their own communities.

The Supreme Court’s approach also assumes that the executive branch recognizes the legitimacy of the decision and will follow the Court’s orders. By saying that Khawaja Siras should be treated better, given jobs, education, inheritance rights, and voting privileges, the courts are mandating action of the government. Action that the government is not wholly committed to taking.

In fact, due to systematic and systemic oppression faced by these individuals over a prolonged period of time, any substantive amelioration of conditions in Khawaja Sira communities requires affirmative action to be instituted for their benefit. But such provisioning must primarily be undertaken by the Parliament. Although the Court may bring this issue to Parliament’s attention and the Parliament can legislate quotas in educational institutions and workplaces (both private and public), this does not guarantee implementation.

After the Supreme Court judgment there was a certain confidence in the Khawaja Sira community. In order to survive the oppression of the British state, they had intentionally remained hidden and underground. Now, after seven decades under the Pakistani state where they also experienced profound violence and discrimination, the collective Khawaja Sira political power had finally become strong enough to engage in multi-pronged legal strategies for their recognition as equal citizens. Yet within the community there was also a lot of trepidation about the legal strategy, because government recognition and legibility are not uncomplicated and comes with its own potential costs. Many Gurus

were wary in 2009 and remain so today. The reason for this is that the ghost of homosexuality haunts trans\* expression. As I noted earlier the British labeled Hijras ‘habitual sodomites’ within contemporary Pakistani society where Trans\*people have existed on the periphery, but the same sex love is completely out of bounds as it is considered “un-islamic.” Many Gurus point to the concerns that too much scrutiny and state can bring attention to their private lives, and this will be detrimental. An example of this pushback is how the head of Jamiat Ahle Hadith, an Islamic political party, encouraged Khawaja Siras to adhere to Allah’s will and “conform to the behaviors of men or women, giving up ‘abnormal activities’ that he links to homosexuality, officially illegal in Pakistan” (Pamment, 2019, p. 299). There is some sympathy for the plight of Khawaja Sira but the specter of homosexuality and conformity to the binary are used as tools of discipline and control Khawaja Sira community that has mounted over a century of opposition to the onslaughts of the state and society alike.

### **The 2009 Judgement Tested: Mian Asia, 2016**

Based on the Supreme Court precedent, a Khawaja Sira by the name of Mian Asia petitioned the Lahore High court after NADRA refused to renew her CNIC, a citizen’s primary identification document because her CNIC listed Mian Asia’s Guru as her father (WP No. 31581/2016). As discussed in the chapter Khawaja Sira life struggles in greater depth, one of the primary node along which citizens of Pakistan are categorized is the paternal line of descent,<sup>62</sup> which determines the larger kinship group of the individual as well as their geographic belonging. One’s tie and entitlement to land, property, and family is

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<sup>62</sup> The third major vector is religious affiliation.

determined directly by the paternal line and codified in the state identification process. In this regard, the state of Pakistan has continued the British colonial priority reflected first in the Criminal Tribes Act of 1871 (CTA), of ordering, counting, making legible, and subduing the vast diversity of “ungovernable” (Quan, 2012, p. 10) Indian peoples and their ontologies.

When Mian Asia went to NADRA in 2016 to renew her CNIC, NADRA refused her, on the grounds that her Guru could not be her father. Asia was told that she must list her biological father instead. Asia challenged the constitutionality of the government department’s refusal to issue her a new CNIC with her Guru as her parent. In the judgment, Justice Abid Aziz Sheikh, summarizes the problem as described by the Mian Asia’s counsel:

Petitioner submits that petitioner and many other transgenders have been abandoned by their families are not aware about their parentage, therefore, on this ground alone, they cannot be deprived of their fundamental rights to be citizen of Pakistan and issuance of their CNICs. Learned counsel further submits that petitioner and many other transgenders were brought up by their “GURUS,” therefore, their names instead of unknown parents should be included in CNIC. On the other hand, initially the stance taken by the respondents was that because petitioner and many other transgenders/eunuchs cannot provide name of their parents, therefore, they cannot be issued CNIC (WP No. 31581/2016).<sup>63</sup>

Justice Abid Aziz Sheikh successfully identifies the fundamental problem Khawaja Siras are confronted with as legal subjects, which is that citizenship depends on parentage, and biological parentage can be exceedingly difficult for transgender people to establish. Furthermore, the judgment recognizes the de facto parental relationship between Gurus and chelas, granting the relationship an official parental standing. Most notably, the judge situated his ruling on the history of the Criminal Tribes Act, which was introduced “at the time of British Colonial rule...to declare eunuchs (transgenders), a criminal tribe” (WP No. 31581/2016). He notes that although the CTA was repealed in 1949, just two years into the

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<sup>63</sup> This petition was heard on 26/9/2017.

life of Pakistan, the damage to the reputation, social and economic standing of the Khawaja Sira community was already done. They were conscribed to the margins of society, forced into begging for and other “questionable professions” (ibid.). The judge’s moral approbation of the ‘questionable professions’ of Khawaja Siras notwithstanding, the judgment ties historical systemic marginalization to the current precarious circumstance of the Khawaja Sira community, and returns a favorable decision. Referencing the Supreme Court judgment of 2009, Justice Abid Aziz Sheikh continues:

The apex Court noted that transgenders have been neglected on account of gender disorders in their bodies. They have been denied the right of inheritance as they were neither sons nor daughters who could inherit under Islamic Law and sometime even families intentionally disinherit transgender children. To eliminate this gender based ill-treated discrimination against transgenders, the august Supreme Court in *Dr. Muhammad Aslam Khaki and another v. Senior Superintendent of Police (Operation), Rawalpindi and others* (2013 SCMR 187) directed Provincial and Federal Governments to protect transgenders identification, right to inherit property, right to education and right to life which include employment and quality of life (WP No. 31581/2016 emphasis added).

To “recognize the dignity,” and yet to understand the Khawaja Sira as fundamentally disordered reveals a contradiction in the language of the judgment. Notions of the inherent criminality of the Khawaja Sira that Pakistan inherited from the British colonial era is shifting now, yet the ‘progress’ continues to pathologize them, not as criminals, but as disordered. Here, the judge notes that on account of the disorder in their bodies, a legal remedy is necessary. This ultimately reinforces binary gender as normative, and any deviation from that is pathology. For Khawaja Sira, however, this is not a disorder, but a way of being and knowing the world, and a way of being in communal family. It is not curable, manageable, or treatable because it is not experienced as a problem.

The judge reiterates that NADRA was directed by the Supreme Court ruling to provide CNICs to Khawaja Siras and it is NADRA’s responsibility to do so. Finally, the

judge forcefully re-states the full citizenship of Khawaja Siras and importance of gender identity. Accordingly:

Gender identity is one of the most fundamental aspect of life which refer to a person intrinsic sense of being male, female or transgender. *Everyone is entitled to enjoy all human rights without discrimination on the basis of gender identity.* Everyone has the right to recognition everywhere as a person before the law. This is high time to change mindset of the society and to realize that a person of diverse gender identity shall also enjoy legal capacity in all aspects of life. The transgenders/eunuchs are as respectable and dignified citizens of this country as any other person and they are also entitled for all fundamental rights including right of education, property and right of life which include quality of life and livelihood. (WP No. 31581/2016 emphasis added)

The judgement in Mian Asia case after the Supreme Court judgement reflects a change in judicial language that accepts the humanity of trans\* people even as trans\*experience is viewed through the lens of a gender disorder (medicalized problem). What is noteworthy is the Judge dose a historical accounting of the marginalization and criminalization of the Hijra identity and pronounces that it is high time now that society treats Khawaja Siras as full legal capacity as in full citizenship rights. Even though the ambit of the case required only the renewal of an identity card based on the Guru as the parent of Asia the scale of the judicial message is larger and addressing all society. The judge wants the inclusion of the Khawaja Sira in all walks including right to education, right to property, and right to quality of life. Although such pronouncements are necessary, they do not have a legal bearing per se and the judicial branch can rarely assure executive follow through. Despite the changing language in addressing Khawaja Sira and their experience of marginalization is important shift showing that strategy to use court for rights-based ligation in favor Khawaja Sira has been fruitful.

## **An Accounting for Trans\* Men**

The Khawaja Sira community has been successful in advocating for positive rights with the Pakistani state as a result of two otherwise disparate facts: first, the community is a historically rooted formation all across south Asia, and therefore Khawaja Siras have always been legible to governing power in some fashion; second, their lives and practices are largely hidden from the public due to the sustained campaign of impoverishment since colonial times. This invisibility is mediated by Khawaja Siras in their political analysis, collective legal strategizing, and the plethora of tactics used to disarm aggressors, achieve safety, earn a living, and find joy. Faris A. Khan calls this a strategy of “remaining hazy to the state” by inhabiting a “translucent citizenship, a form of national belonging that demanded the provision of rights and state recognition but precluded absolute sociopolitical integration” (F. A. Khan, 2019, p. 15).

A similar translucence is in evidence in case law that has arisen around trans\* men and their relationships with cisgender women. In these cases, it is an individualized identarian discourse of citizenship that comes to the fore as a strategy. I theorize in “Khawaja Sira life stories: Is womanness really a loss,” that a hegemonic societal framing of loss has been attached to people assigned female at birth. There is a profoundly differential treatment based on gender in Pakistan. Female-bodied people have trouble accessing public spaces, opportunities for education, public transport, employment.<sup>64</sup> According to gender parity report, life opportunities generally are circumscribed for those born in a woman’s body as Pakistan was ranked the 4th worst country in the world for women. This is why

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<sup>64</sup> Pakistan is one of the worst ranked countries on the gender parity index scoring “Pakistan at 150 in economic participation and opportunity, 143 in educational attainment, 149 in health and survival and 93 in political empowerment.” (Ahmed, 2019.)

there is a stickiness to womanness: the quality of being assigned female at birth hard to change because the entire structure of patriarchy is premised on the use and exchange of a woman's body. To step out of womanness altogether is incomprehensible to the state. In the court, a trans\* man who marries a woman is considered suspect and is in fact almost always understood as a woman marrying a woman.

Shifting the focus, a little from Khawaja Sira to Trans\* men, some cases that define the terrain of legal developments. I begin in 2007 with Shahzina and Shumail, whose ordeal with the Pakistani legal system marks a flashpoint in time after which trans\*ness<sup>65</sup> entered more openly into the legal terrain. Another important precedent is Muhammad Ahmad Abdullah's petition to the Lahore High Court for permission to change his gender. Activists working on the ground, like Nighat Saeed Khan of ASR,<sup>66</sup> who took up defending Shahzina and Shumaile by helping them hire a lawyer to galvanize community support, center the courts as an arena where the absence of rights can be deliberated and challenged. The Supreme Court judgment discussed above came just two years later, in 2009, while Shahzina and Shumaile's case was still in the courts.

The basis for this analysis is an understanding that trans\* bodies threaten the ossification and naturalization of the compulsory heterosexual family as the hegemonic norm. Trans\* embodiment, by its very existence, acts as a disruption to the heteronormative system that requires a gender binary whose aim is reproduction. Gender in Pakistan is heavily policed at all levels of society and the state, and countless and varying disciplining

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<sup>65</sup> Here, I am using 'trans\*ness' to encapsulate the diversity of expression and lives of people who live outside of the gender binary.

<sup>66</sup> Applied Socioeconomic Research (ASR) was established by Nighat Saeed Khan in 1983 and has served as a resource center and publishing house for feminist writing and knowledge production three decades.

tactics are employed to regulate it. The legal imagination of sex as a discrete binary is determined at birth on the orders of the doctor attendant at the birth of a child. That doctor authorizes the birth certificate that later becomes the basis for a national identity card (CNIC),<sup>67</sup> a passport and most other legal documentation required for basic functioning in society. Each document requires that one's sex be disclosed as a form of identification. A trans\* body by its very existence displaces and challenges the fixity of these boundaries and creates conflict.

The determining and policing the boundaries of sex is important to the Court because these boundaries form the basis of heteronormative institutions of marriage, inheritance, wealth transmission, as well as the structures of social, economic, religious, and political reproduction of a particular notion of nation. The entire apparatus of wealth and kinship is tied to the institution of marriage, which is then determined by strict gender roles. They legislate differential treatment on the basis of sex. For example, a man is entitled to inherit twice his sister's share from their parents under the commonly followed Hanafi law.

Under the Qanun-e-Shahdat<sup>68</sup> (law of testimony) a woman's testimony is considered half

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<sup>67</sup> 'CNIC' stands for computerized national identity card, issued by the NADRA, the National Database and Registration Authority. The CNIC is the primary identity document for all citizens of Pakistan.

<sup>68</sup> The Qanoon-e-Shahadat 1984 was one of the set of laws passed by Zia-ul-Haq to circumscribe and diminish particularly the position of women and religious minorities in society. The text of law reads as follows:

Article 17. Competence and number of witnesses. (1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah. (2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law, (a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly: and (b) in all other matters, the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant. ("Pakistan - the Qanun e Shahdat" n.d.)



that of a man in financial matters, while men have the unanimous right of divorce and can have multiple wives. These are just a few examples where of man's privileged position.

By the logic of the state, if sex is seen to be natural, discrete, and immutable, then the societal imbalance against women is also natural and immutable. Here, the disadvantages, loss, and deep insecurity that a female body is socialized into is quite important. Gender is understood as the social roles that are assigned to a particular sex, and legally as the differential rights that are granted to it. This reveals even more starkly the motivations behind the Court's desire to police boundaries and emphasize a determinative role of gatekeepers including doctors, public official and judges themselves. The courts defend the idea that there is something inherent, biological, and immutable with regards to sex. Allowing for gender fluidity would challenge the edifices of society itself.

The collapse of gender categories into gender roles, and the rights accorded on the basis of those roles, inevitably has meaning for transgender bodies and their self-determinative capacity. Transgender bodies are conscribed within their birth sex to maintain the gender hierarchy and power structures that are in place. Therefore, if you are labeled female at birth, you remained legally female. Because women must be kept in their proscribed roles and male superiority must be upheld, the binary is kept in place at your cost of disappearing trans\*ness. At the same time, Womanness is a sticky category, beaten out of a trans\* feminine body, and latching onto a trans\* masculine one. The Courts form a part of the coercive apparatus of the state that supports this stickiness, that threatens and marginalizes people whose existence challenges the heteronormative bedrock. At the same time, the space of the Courts can be used to challenge, contradict, and open up space for the legibility of trans\* and gender non-conforming people by the sheer effort of trans\* people themselves. Even as the hegemonic scripts of heteronormativity are being continuously

reproduced in the court system, challenges to cis-normative determination of gender arise continuously. They also have their own force and flows that are in contradistinction to the state.

In 2007, there was no instrument or process that would legally recognize gender transition. While gender diversity has existed and been historically acknowledged in South Asia for centuries (Reddy 2005; Hinchy 2019; Hussain 2019), the functioning of the modern nation-state is founded on a male-female reproductive binary. Trans\* people have navigated the governance of cissexism and heteronormativity and have always found ways to exist and bargain with the powerful in society. It is when Trans\*ness as a juridical possibility became legible to the courts in 2007, that formal and national reckoning between the state and trans\*ness began. This becomes amply clear in the case of Shumaile Raj.

### **Shumaile Raj and Shahzina Tariq, 2007**

Shumaile Raj was assigned female at birth. As an adult, he underwent multiple surgeries so that his body aligned with his gender, and he could live as a man. He did so for twelve years. Shumaile had a national identity card (CNIC) which showed his sex as male; he owned property as a male; he conducted business as a male; and he was regarded as a male member of society. In 2005, Shumaile married Shahzina Tariq, who was his cousin.

Shahzina's family, however, refused to accept their union and constantly harassed them, even threatening to use the police and have them arrested. The harassment reached such a point that Shumaile and Shahzina feared for their lives. The couple sought police protection from Shahzina's family and filed a writ petition [WP No. 4144/2007] in the Lahore High Court alleging the infringement of their fundamental rights. In court, Shahzina's father

alleged that Shumaile was in fact a woman and that his marriage to Shahzina was thus illegitimate. The court asked Shumaile if he was born male or female, and Shumaile asserted that he was born male. The court, however, ordered that there be an expert medical determination as to the sex of Shumaile Raj.

It is clear that Shumaile Raj was socially accepted as a man and that he lived with the attendant privileges. To acquire these privileges, Shumaile had certain class-based resources which allowed him to get the requisite surgeries to make his body conform to his self-defined gender. He had access to medical care, and the cooperation of a surgeon. For a period of time, Shumaile lived the life of a Pakistani man of a certain class/socioeconomic standing. However, when he tried to contract marriage and join the heteropatriarchal order, he came into conflict with his own larger family group, whose resources were greater and better consolidated than his. Shahzina's family staked a claim on her as their daughter, while simultaneously casting Shumaile as a fraud. Shumaile used his resources to acquire the legal gender status he identified with, but the resources he had as an individual could not outweigh the collective resources his larger family utilized to uphold the dominant idea about gender, sexuality and rights.

The issue of Shumaile's sex was raised in court by Shahzina's father. In response to this question, the court ordered a medical examination of Shumaile. The testimony of Shumaile's father-in-law, the family patriarch, takes precedence over Shumaile's own claim to be male. In the judgement, the official power of the state aligns with the de facto power of the heterosexual family patriarch, and the autonomy of both Shumaile and Shahzina was overridden in order to determine the 'truth' of their relationship. Even though the couple had turned to the courts to be protected from Shahzina's family, the question before the

court now became the validity of Shumaile's gender presentation and the couple's marriage. Their safety from their family was secondary and, it became clear, was contingent on their cisgender and heterosexual bona fides.

Justice Khawaja Muhammad Sharif's order for the medical examination of Shumaile Raj demonstrates how the Court assumes an inquisitorial role in service of a social and cultural protectionism. Once the issue of sex was raised, it made their heterosexual coupling suspect. Protection would only be afforded to them if they were deemed to be a 'real' heterosexual couple. In such ways the Court reveals its historical and contemporary function as a coercive force that seeks to uphold and control sex and gender, as well as maintain a heteronormative and static social, religious, and political order.

Localizing a federal and constitutional decision, the ruling directed a local government hospital to constitute a special board of medical professionals to physically examine Shumaile and determine his sex. The findings of the special medical board noted in the patient history that although he was born biologically female and studied in an all-girls school, post-puberty he underwent surgical procedures to remove his breasts and uterus. The patient history is brief and presents a cold chronology of events, as if the doctors were not interested in the reasons why the events took place, the reason why Shumaile made the choices and decisions that he did. If any reasons were recorded, they were scant and incomplete, such as "uterus was removed because she was bothered by periods." In the antiseptic language of science, the medical report concluded that,

On examination ... well-built muscular person with moustache and beard. He is also having hoarse voice. There are also transverse scar marks on the front of the chest for removal of breasts and another suprapubic scar for hysterectomy. Female external genital and hair distribution of female and vagina admits two fingers, no Phallus, testes are not palpable in the inguinal regions. On rectal examination

prostate is not palpable. History and examination goes in favor of female sex except hirsutism and deep voice.

Based on these findings the judge concluded, “the said report is on file...indicates that Shamaile Raj was a girl and still is a girl, so the matter is adjourned to [9 May 2007].”

The invasive medical examination, the clinical language, and the endorsement of both in the language of the judgment, attempt to diagnose, justify, and force a reverse transition upon Shumaile. The medical evidence is central in this matter and should indeed be characterized as the weaponization of medicine for social control. Doctors are complicit in this reversal and denial of Shumaile’s gender since they fail to cite factors such as gender identity disorder or gender dysphoria, both acknowledged medical conditions in the DSM of the time (Cohen-Kettenis & Pfäfflin, 2010), and closely tied to transgender issues. Nor did they consider Shumaile’s motivations for transitioning. Instead, they poke and prod, invade and evaluate, conclude and judge his body so that anatomical findings become determinative. This then led to a prescription to conduct tests that would at best confirm chromosomal and hormonal sex. Medicine, in collusion with the law and family, serves to control, restrict and order the sex of a person according to what is conventionally deemed natural, constant and factually biological.

Once the sex of Shumaile was determined to be female, all pretenses of the heterosexual privilege of a couple seeking protection from the court disappeared, and there was a juridical fall from grace, if you will, into the right-less realm of homosexuality, illegality, and deviance. Shumaile’s national identity card was invalidated, as was the Nikah Nama (marriage certificate), and he and his wife were subject to penal consequences for defrauding the State.

For each of the state-empowered actors who made this determination upon Shumaile Raj, the fact that he had chosen another sex than the one he was born and reared in; that he lived as if he belonged to that sex, called himself by a name attached to that sex and had even undergone surgeries to make himself look like that—were all acts that constituted deception. His “real” sex is female. For the courts, the biological is determined medically, and the medical determines the truth. The judge then reveals how he directly questioned Shumaile:

I had asked Shamaile Raj that when he/she appeared before M.S. [medical superintendent] Service Hospitals, Lahore he/she himself/herself told that she was born a girl and why she made a false statement before this court, she stated that her friends were sitting in court and she was feeling embarrassed. (Criminal Misc No. 589/M/0)

This made sense to the judge: Shumaile would lie about his sex to save himself embarrassment from the world where he had lived this lie on a daily basis. In the judgment, it is clear that the judge is proceeding saw an opportunity in open court to publicly shame Shumaile by exposing the lie that he believes Shumaile has been perpetuating. By using the medical evidence as proof against him, the judge insisted in front of everyone present, and the domestic and international media that circulated the news, that Shumaile must abide by, and has no choice but to accept his biological sex as determined by the special medical board. The lie that he believed himself to be a man, a lie that Shahzina is complicit in the telling of, must be punished and made an example. Such deviance and outright brazenness are unfathomable, and they were both sentenced to jail for this crime.

Their behavior attracts both section §377 (“unnatural acts”) and section §193 (perjury) of the Pakistan Penal Code. Section §377 criminalizes penetrative anal sex and bestiality, grouped under “crimes against the order of nature” (PPC §377). Both sections are

highly punitive in nature, especially section §377, the maximum punishment for which is life imprisonment. This is a legacy of the colonial criminal statute that criminalizes non-procreative penetrative sex, whether anal or bestial. Section §193 on the other hand, that criminalizes perjury, is applicable because the court itself selected Shumaile's sex and gender, enforced his sex assigned at birth, then determined that Shumaile had perjured himself about his gender, regardless of what he himself chose or any of the evidence he and Shahzina presented.

The medical finding led the judge to retract the application of §377 as “no case is made out under the said offence against both the ladies/accused.” The phallocentric understanding of §377 works ultimately in favor of the couple, as this legal reasoning condemns sodomy as a broad category of non-procreative sex. By phallocentric understanding I mean that the legal imagination is centered on the human phallus as the central agent of sexual intercourse; the absence of a phallus disallows the use of §377, which requires penetration by a penis to be proven in order to convict. However, it is also indicative of the legal understanding of what constitutes sexual relations between two people: sexual intercourse is penetration using a penis. In one broad sweep, based on hostile medical examinations, their entire existence is repudiated and recast in a way that made them not only religiously and socially immoral, but illegal and criminal.

The marriage between the said girls is declared to be unlawful and against the injunctions of Islam. As far as, the question of penal consequences of the said marriage is concerned...Shamaile Raj should be examined by Psychiatrist.

The Court's refusal to acknowledge Shumaile's gender goes hand in hand with its inability to prosecute under §377. Because both presuppose heterosexual penetrative intercourse as the natural norm, and any deviation from this norm as aberration, this

interpretation ultimately results in some leniency for Shumaile Raj and Shahzina Tariq. However, it is evident that the state, through the courts, is instrumental in policing gender and sexuality norms, and can therefore exert control over the bodies of individual citizens. This becomes amply clear when Shumaile can no longer access the powers, rights, or privileges attendant upon a married heterosexual man whose in-laws were troublesome. Having fallen from cisgender heterosexual grace, Shumaile is, in the eyes of the law, as good as, or worse than, a woman.

Shahzina and Shumaile were sentenced to three years rigorous imprisonment in the women's wards of two separate jails, and a fine of Rupees 10,000 each. On appeal, the case was sent to the Supreme Court in 2008, and the couple has been released on bail since 2008 through the efforts of a number of local activists as well as some regional and transnational mobilization. In 2012, the charges against them were dropped by the Supreme Court, which recognized that Shumaile and Shahzina had tried to withdraw their petition numerous times during the proceedings of the Lahore High Court. The Court then ordered that a criminal petition be registered against them. As per the order of the Supreme Court, if the High Court had allowed the withdrawal of Shumaile and Shahzina's original petition, there would have been no need for the criminal petition to move forward. Based on this understanding, the court declared:

In exercise of our jurisdiction under Article 187(1) of the Constitution the Islamic Republic Pakistan, 1973 and in order to do complete justice in the matter we allow the above-mentioned request of the appellants regarding the withdrawal of their writ petition from the Lahore High Court, Lahore and the said writ petition is ordered to be disposed off as withdrawn [Criminal Appeal no.179 of 2007]

Shumaile's case was the harbinger for change. The silence around Trans\* masculine identities was shattered, and for many people who were assigned female at birth but were



living as men, harder times were ahead. As a consequence of Shumaile's case, doctors suddenly began refusing to perform sexual reassignment surgeries, which they had been willing to perform informally before. At the same time, the case galvanized movement and further litigation as activists started talking about trans\*, and particularly trans\* masculine, embodiment and possible methods and modes of organizing that could be used to achieve greater protections.

If we look at Shumaile's life before and after this case, he is still living in Pakistan and leading his life with Shahzina, despite state sanction. Shuaile and Shahzina's case galvanized a whole community of activists to organize around issues facing trans\* individuals, with many of these activists identifying as trans\* themselves.

In this confrontation with trans\* life, the decision handed to Shumaile and Shahzina demonstrated the State's view of sex, and the boundaries, determination, and representation of sex it would allow. At that time there was no law existed that would legally recognize the process of "transition." The only reason that this issue even came to light in Court was that Shumaile and Shahzina trusted the Court to protect them from harassment and the threat to their lives. Yet they ended up jailed for that trust.

What this case demonstrates most clearly is that the legal imagination of sex is a discrete binary determined at birth on a doctor's orders, when one is granted a birth certificate that later becomes the basis for an identity card, a passport and most other legal documentation that requires one's sex to be disclosed as a form of identification. A trans\* body by its very existence displaces and challenges the fixity of these boundaries and creates conflict. Determining and policing the boundaries of sex is important to the Court because this form the basis of heteronormative institutions in society like marriage and inheritance.

The entire apparatus of wealth and kinship are tied to the institution of marriage and determined entirely by strict gender roles. They also reinforce the differential treatment that is accorded on the basis of sex as, for example, women are only entitled to half a share in their parents' wealth, whereas men receive a full share. If sex is seen to be natural, discrete and immutable it confirms that the societal biases that exist against the female sex are also natural and immutable. Since gender is understood societally as the role that is assigned to a particular sex and legally as the differential rights that granted to it, this reveals even more starkly the motivations behind the Court's desire to police boundaries and emphasize the determinative role of nature and medicine.

The collapse of gender categories into gender roles, where rights are accorded on the basis of gender, has meaning for transgender bodies and their self-determinative capacity. People are conscribed within their birth sex/gender to maintain the gender hierarchy and power structures that are in place. In the Pakistani patriarchal regime, being male affords one many special powers, rights, and privileges. For many, this hierarchy is a fact of nature, divinely ordained. A transgender man cannot access these powers, rights or privileges because in the eyes of the law, he is as good as or worse than a woman. So, if you are born female you must remain female; the binary is kept in place at your cost because women must be kept in their place and must take up the role ascribed to them. The Court is thus a part of the coercive apparatus of the State. It threatens and marginalizes people whose very existence challenges the heteronormative society that is the bedrock upon which the State itself stands.

### **Muhammed Ahmad Abdullah, 2009**

As a consequence of the Shumaile Raj precedent, when “Naureen Aslam alias Muhammad Ahmad Abdullah” (as the case file states) wanted sexual reassignment surgery, his doctors demanded that he acquire legal permission. Muhammad Abdullah approached the Lahore High Court invoking its writ jurisdiction under Article 199 of the Constitution, which holds that Court has the right to “impress upon state employees to perform their legal duties, to wit, provide medical treatment.” The petition states at the age of eight or nine, Abdullah felt “physical changes in her voice, hairs, physique, etc. just like males” (Noreen Aslam v. the state of Pakistan) Her parents took her to different doctors and their view was that she was suffering from “Gender Identity Case” (Noreen Aslam v. the state of Pakistan) which could be treated through surgery.

From the outset it is clear that the petition itself treats the petitioner as a female with a medical problem that can be “fixed” through medical intervention. Medical diagnosis makes the petitioner intelligible to the court because disorders can be cured, whereas independent determination of one’s own gender can find no space in the legal system. To the Court not performing according to one’s biological sex means that there is something medically wrong. The petition goes on to describe how Abdullah goes from doctor to doctor trying to get the requisite treatment and then “after painful hectic protracted efforts, finally date of operation was given to petitioner.” When the time for surgery arrived, however, the surgeon

all of a sudden refused to operate/provide required medical treatment to the petitioner on the plea that Learned Hon’ble Lahore High Court, Lahore had passed judgment in the case of Shumaile Raj.

Shumaile and Shahzina are described in Muhammad Abdullah's petition as "two females contract[ing] marriage" and receiving punishment for "misstatement before the court." Citing that "action was taken against the doctors," the petition narrates that Abdullah's doctor insisted on the permission of the Lahore High Court before performing the surgery. As a consequence of the Shumaile Raj precedent, Abdullah is moved to protect himself from being tried for perjury.

There is no deviation in the petition from what the judge decided in the case of Shumaile Raj or what the media represented when they called Shumaile and Shahzina a "she-couple." Quite to the contrary, there is an avowal of that assertion and a clear distancing of Muhammad Abdullah from Shumaile Raj by elaborating that the former is suffering from gender identity disorder and that "a simple surgery/operation" can "cure" this condition. In the language of the petition, Abdullah's case has "no nexus with the case of Shumaile Raj" and is in fact an issue of the fundamental right to medical treatment (sex reassignment surgery) of an illness (gender identity disorder) being denied by medical practitioners. In this case the partitioner's acceptance that he suffers from a disorder and needs permission of the state to be treatment assumed a bio-medical understanding of gender and this contrasts with Khawaja Sira stance of demanding to be recognized as full citizens based on their collective identity and self-authorization that they are Khawaja Sira.

Interestingly, even while asserting this lack of nexus with Shumaile Raj, the petition also asserts that the judge in the case did not forbid treatment for this disorder, thus tacitly acknowledging that Shumaile and Muhammad Abdullah are two of a kind. It is the Shumaile Raj precedent that has forced Muhammad Abdullah to take his situation to Court. Up until this point, Shumaile Raj was the only publicly known transgender man. Both cases are

evidence that it is possible for transgender/transsexual men to live and pass as men in everyday social interaction, and many of them even have been undergoing various surgeries to reflect their chosen gender. But the treatment of Shumaile Raj and his doctors, and the publicity the case has attracted, has shaken the confidence of the medical community that had willingly (and privately) provided these services before.

Additionally, since there had been an omission in the law regarding the change of one's gender, people had been using informal mechanisms to find ways to make their body reflect their identity. But now that the issue has come to Court and the Court has handed a perverse decision, the situation of other transsexuals and transgender people has been jeopardized. As a result, in Muhammad Abdullah's petition, great pains were taken to differentiate it from Shumaile Raj, who was painted as the lesbian who lied about being a man, whereas here "Noreen" is only asking to be treated for a medical disorder as is "her" right.

To drive home the point that this is a case of fundamental rights denied, the petition avers that

the petitioner is/was also ready to bear/pay expenses of government hospitals even then doctors/functionaries of respondents refused to provide medical facilities in spite of the fact that no law of the land create any hindrance or prohibits for the same, hence refusal of the functionaries of respondents without any legal justification is illegal without lawful authority. (Noreen Aslam v. the state of Pakistan)

Because money is the final possible grounds for refusal of medical treatment, the petition clarifies that the State is not being asked to foot the bill for Muhammad Abdullah's "cure." Rather, the petitioner is citing Articles 25 and 38 of the Constitution, under which every citizen is

entitled that equal medical facilities be provided to her as are being provided to other citizens"; especially when petitioner is ready to pay expenditure of government

hospitals/expenditure of hospitals owned and run by federation of Pakistan as well as of province of Punjab and owned and run by government of Punjab.

Justice Muhammad Ahsan Bhoon delivered a concise judgment confirming that “medical treatment is the fundamental right of each and every citizen” and went on to base his judgement on the comments of Dr. Nadeem Hassan, Director of General Health, Government of Pakistan, that “the petitioner [is] a patient of Gender Identity Disorder” (Noreen Aslam v. the state of Pakistan). Justice Bhoon ordered that treatment be provided to Muhammad Abdullah and that treatment is “gender re- assignment.” This order thus recognizes the medicalization of gender diversity as a medical disorder that needs treatment. This marks the shift from criminalization of gender diversity that happened under the British, which gets re-introduced through the language of medicalization and disorder that can be treated to be fixed back into the binary.

### **The Transgender Persons (Protection of Rights) Act, 2018**

The 2009 Supreme Court judgment mandated the government legislate for the rights of Transgender people. In February of 2017, Babur Awan, a parliamentarian from the Pakistan People’s Party<sup>69</sup>, presented a copy of an Indian bill that had been under heated discussion in the Indian press (Redding, 2017). The context for this bill was a large number of violent deaths of Khawaja Siras, particularly in Khyber Pakhtunkhwa province of Pakistan. There were two catalyzing incidents, the first where Khawaja Sira who were working in Saudi Arabia disguised as men got found out and were murdered and secondly the case of Alisha was a young Khawaja Sira who was shot multiple times in Peshawar, after

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<sup>69</sup> Pakistan People’s Party (PPP) is historically the center-left party, emerging from Sindh in the 1970s around Zulfikar Ali Bhutto, and producing Pakistan’s first woman Prime Minister, Benazir Bhutto.

which she was taken to the Lady Redding Hospital. At the hospital, the medical staff delayed her treatment and keep asking her inappropriate questions such as “if she danced only and how much she charged whereas the blood laboratory guy asked them if her blood was HIV positive or not” (Akbar 2016). Then the officials could not decide whether she should be placed in the female or male wards. This delay and indecision ultimately led to her to bleed to death.

Alisha and other such cases led to increased lobbying by civil society and Khawaja Sira groups, and eventually Awan put forward a private member bill in the Senate entitled “The Transgender Persons (Protection of Rights) Bill 2017” (Wasif, 2017). The language of the bill was largely that of its Indian predecessor, with little alteration made for the Pakistani context. The Indian bill had a number of problematic provisions highlighted by a senior lawyer Ruqai Samee. Firstly, it was presented as a federal bill in Pakistan, which after the eighteenth amendment in the Pakistani Constitution meant “education, health and social welfare subjects have been devolved to the federating units. But the draft bill does not cover the obligation to the provincial governments” (Wasif, 2017) Secondly, the bill provisions against discrimination were too general, too closely mirroring fundamental rights already present in the Pakistani constitution under chapter on principals and policy to be effective. Most importantly, it included a screening committee to determine if someone is Khawaja Sira or not (Wasif, 2017; “Pakistan’s transgender rights bill,” 2017).

There was strong opposition within the Khawaja Sira community to the government enacting a law that may further the violence and marginalization of transgender people by setting up screening committee to determine who was or was not a Khawaja Sira. The community had already resisted this kind of testing when the Supreme Court had passed a provincial order for medical screening to determine who is or is not a Khawaja Sira.

As this news spread among the community, it was taken up by the National Human Rights Commission (NCHR), an independent human rights commission setup by the government in 2012 that reported directly to the parliament involved the United Nations Development Programme, and a few community NGOs including, Blue Veins, based in Peshawar. These organizations convened a multi-stakeholder consultation in upscale hotels and finalized a version of the bill without any grassroots community representation present. Meanwhile, in Lahore, members of the Feminist Collective, a radical leftist feminist formation that began in 2015, held a meeting and called on other trans\* and feminist activists to come together and discuss the bill. Together, the group of trans\*, feminist, and Khawaja Sira activists researched, discussed, and decided to draft an alternative bill, in consultation with community members, in attempt to get it to Parliament for consideration.<sup>70</sup> The team self-funded a tour of Khawaja Sira *deras* and neighborhoods in Lahore and Raiwind. The Khawaja Sira Gurus in the group reached out to Khawaja Sira groups in Islamabad, and Rawalpindi, taking the draft bill to where the community was located, rather than to places where their access was barred due to class or gender expression, or where they did not have the resources to attend. This method allowed for community input into a process that directly affected their lives. Even though the team was unable to travel themselves, Khawaja Sira Gurus in Lahore contacted Gurus in other cities to build understanding and spread the news about the bill. With the consensus of the broader Khawaja Sira and transgender community in the main cities, most notably Lahore, the team collated suggestions and came up with provisions that should be included in the final draft. The next challenge was getting this draft to lawmakers who would put it forward.

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<sup>70</sup> This team included Ashi Jaan, Mehlab Jameel, Jannat Ali, Mani AQ, Sabahat Rizvi, and me.



The support of Farhatullah Babar, senator from Peshawar, a stalwart of the PPP, and a strong advocate for democratic participation and human rights, helped the activists move the bill forward. Babar brought the activists into the task force set up by the Federal Ombudsman called the Task Force on the Rights of Transgender People (Murtaza, 2017).<sup>71</sup> The atmosphere in the task force meetings—made up of Senators, bipartisan members of Parliament, Bureaucrats, Ulema and Civil society representatives and the team of trans\*and Khawaja Sira activists—was tense. The ideas put forth in the draft bill by the activist team was met with resistance from the other members of the task force, particularly the assertion that transgender people should have a right to self-determination of their gender, and that the state should extend positive discrimination to transgender people in access to education, health, and government jobs, in order to compensate for the historical oppression of the community. The draft also sought to broaden the ambit of current criminal provision of rape and harassment to include transgender victims, rather than only female victims. These seemed unreasonable to the other drafters. In task-force meetings that lasted almost a year, there was much discussion about this version of the bill, and how a team of activists for transgender rights somehow maneuvered their way into governmentalized, bureaucratic spaces to get their version of the bill accepted as the primary draft for consideration. Predictably, the officials, senators, and some civil society members were not willing to budge from their positions.

Over the course of the year, and after many consultative meetings presided over by Task Force Chairperson Syeda Viqar-un-Nisa and Senator Rubina Khalid from Peshawar, the members of the task force accepted the bill in July 2018. Yet there were many disagreements from the official task force members on what they felt were provisions that

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<sup>71</sup> The Task Force was presided over by Syeda Viqar-un-Nisa and Senator Rubina Khalid.

would not pass the Parliament. These included a provision for 3%-5% quotas for trans\* people in all government departments. They did not agree that amendments to the criminal code should be added to the act but thought they should be put in a separate bill. Many of the task force members were adamant about adding a provision against enforced begging, making anyone that forced a trans\* person subject to legal penalty. In the end, at the insistence of the majority of the task force members, the bill was watered down such that the quotas and criminal amendments were negotiated out, while the enforced begging sections were included. Despite these changes, the most crucial part was retained: the bill recognized the gender sovereignty of trans\* people, with an expansive definition of transgender people that included Khawaja Sira, trans\* feminine, trans\* masculine, non-binary and Intersex identities. The bill was passed into law as the Transgender Persons (Protection of Rights) Act of 2018.

This first article of the Act defines someone who is transgender as:

- (i) intersex (khusra) with mixture of male and female genitalia features or congenital ambiguities: or
  - (ii) eunuch assigned male at birth, but undergoes genital excision or castration; or
  - (iii) a transgender man, transgender woman, Khawaja Sira or any person whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.
- [Transgender Persons (Protection of Rights) Act, 2018]

It is important to note that this definition uses the category of transgender to include many people who would have been left out of a conventional USian medical model definition <sup>72</sup>of transgender, since it included people on the sex spectrum who would be

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<sup>72</sup> Since the 1980's in the U.S. a medicalized model of the Trans identity was established through the Diagnostic and Statistical Manual (III) that recognized Gender Identity Disorder, over time the language of was shifted from disorder to variance to dysphoria. This structure tries to capture Trans people difference from the assigned sex at birth as a psychiatric issue. (Johnson, A. H, 2015, p. 803). As oppose to this model the definition used in the act includes Intersex folks, Khawaja Sira, Hijra, Zenana and Trans feminine and Trans\* masculine folks

considered intersex, trans\* masculine people, trans\* feminine people and local identities like hijra, Khawaja Sira, khusra and zenanas. The reason for the capaciousness is that, as reviled and ostracized as it is, Trans\*ness is the only visible and tolerable form of queer existence in the Pakistani public sphere, in that same-sex relationships or intercourse are still illegal. The activists had a deeply held belief that one's gender is what one perceives; it is felt in the heart, mind and soul, and it not about what is between your legs, your hormones, or your chromosomes. Although the definitions mention genital ambiguities, that broader definition was meant to protect people who were Khawaja Sira, Trans\*, Intersex, Zenana, and other local formations. This definition anticipates and short-circuits the call for medical checks and verifications of Trans\*ness by privileging the autonomous self-determination of the citizen. Ultimately, the capacious category of transgender, and the right to self-determination of gender status, were hard won provisions that had lot of intra-community debates before being distilled into the final law.

The law as it stands is an affirmative federal law that makes self-determination the basis of gender recognition. This is a crucial progressive improvement in the legal position of both Trans\* and Intersex individuals in Pakistan since it recognizes the sovereignty of the person in terms of determining their own gender identity and expression and is in line with Yogyakarta principals (The Yogyakarta Principles, 2006). Based on this provision, a Trans\* person has the right to have all their official documents changed in line with their self-determined gender. The Act also prohibits discrimination against transgender people and imposes a responsibility on the government to take positive steps to sensitize government departments and set up facilities for transgender people. It reinforces the right to education, health, inheritance, employment, voting, and assembly, as well as the right to access to public spaces and hold public office.

## **Neha and Akash, 2020**

In September 2018, shortly after the passing of the Transgender Rights Act, Prime Minister Nawaz Sharif of the Pakistan Muslim League (Nawaz) lost the general election and Pakistan Tehreek-e-Insaf's Imran Khan came to power. The new administration has not put the Transgender Rights Act on the agenda as yet and therefore the rules of the new Act have not yet been drafted to facilitate its implementation. In spite of this, the Act was tested for the first time in 2020, when another Trans\*-queer couple, Neha and Akash, were brought to the Courts. Many of the facts of the case echo Shumaile and Shahzina's case from 2007. However, due to the passing of the law and the activist alliances that were built on the ground, the result in this case was quite different.

Akash, a trans\* man, was a paying guest in Neha's house. They fell in love and decided to get married but did not tell Neha's family. Neha was 16 at the time and was considered an adult under the law who could contract marriage from her own free will. Her father and brothers discovered her marriage to Akash and would not let her be with him. In July 2020, Akash went to court to get custody of his wife from the wife's family using a habeas corpus writ. Based on this writ Neha was called to court, where she testified that she was of sound mind and a legal adult and had willingly contracted marriage with Akash. Based on her testimony the judge ruled "her custody with her parents [was] improper and illegal, therefore, she is allowed to go with petitioner, her husband. This petition is accepted accordingly."

Neha's father retaliated with great anger in response to this decision and filed a counter habeas corpus writ [1421/2020] in the Lahore high court for the recovery of his

daughter, merely a week after the decision given by the judge in favor of Neha and Akash. In his petition it is claimed that Akash trapped Neha and developed illicit relations with her, and that these were same sex relations. He alleges that Akash committed fraud by only changing his name from Asma Bibi to Akash to continue the illicit same sex relations with Neha. The petition further contends that marriage between Neha and Akash is a same sex union and is thus considered a sin in Islam. Therefore, the order passed by the earlier judge to return Neha to Akash should be vacated, she should be handed over to her father, and criminal proceedings should be initiated against Akash.

Yet the court handed down a judgment that respected the rights of a sui juris woman to make her own choices and the rights of a person to choose their own gender based on the provisions of the Protection of Transgender Rights Act 2018.

Mst. Neha Ali, respondent No. 6 submits that she being sui juris had contracted the marriage of her own free will and consent with Ali Akash, respondent No.1, believing him to be of male gender however since then divorce has been pronounced and finalized between the former spouses and now, she has no relationship with Ali Akash alias Asima Bibi, respondent No. I. Neha Ali, respondent No. 6 further submits that the marriage between her and Ali Akash, respondent No.1 stands dissolved. (Syed Amjad Hussain Shah vs. Ali Akash alias Asima Bibi and five other)

The habeas corpus filed by the father deemed the marriage to be illegitimate, as it was between two women. As an activist strategy so that the court would not have to deliberate on the issue of a purported same sex union, Akash and Neha promptly got divorced. The court surmised therefore that since the dissolution of the marriage had taken place, the question of marriage was irrelevant. The activists who worked with the couple purposefully decided on a legal strategy that would keep both Neha and Akash safe. This also ensured that the court did not deliberate on the issue of marriage between a Trans\* man and a woman, because if this were a lesbian marriage, they would have expressly ruled against it. The gravest threat women face in exercising their agency from the family is

matters of contracting marriage, leaving a marriage, or choosing to study instead of getting married. This can lead to life threatening violence from families who do not wish for their daughters to exercise autonomy, or who fear losing family honor (Venkat Gull, 2009). Once the divorce was final then the issue of Neha's custody returned, and the judge surmised:

She further submits that she being sui juris, wants to reside at a place of her own choice and continue with her studies. She submits that she is facing clear and present danger to her life at the hands of her father and brothers, hence she has no desire to live with them rather seeks protection in this regard. (Syed Amjad Hussain Shah vs. Ali Akash alias Asima Bibi and five others)

The court recognizes that, as an adult, Neha can decide to leave her family home and live with whomever she wishes. This may seem intuitive, but there are cases where sui juris women have been handed over to parents even when they had voiced clear and present danger from their families. A seminal case establishing precedent on this point was Saima Waheed in 1997, in which the Lahore High court set an important precedent that sui juris Muslims can marry from their own free will. Saima Waheed married out of her own volition, contrary to her father's wishes. Her father sought the court's help in invalidating the marriage since it had taken place without his permission, and he asked that custody of his daughter remain with him. The majority of the judges deemed that "Ms. Saima Waheed had been validly married" (Editors Yearbook of Islamic and Middle East, 1996). Despite this majority judgment, the minority opinion was quite regressive, and the majority even expressed concerns over women marrying without consulting their families. For Neha's case the judge voiced apprehensions about how habeas corpus was misused in the Saima Waheed case, and therefore he wanted to make sure to express that she was free to stay wherever she wanted to and therefore the court could not force her to stay at the Dar-ul-Aman (government shelter) and nor could it force her to go with her natal family.

The judge clarified that, under a habeas corpus writ, it is not in his jurisdiction to adjudicate upon the veracity of the marriage between Akasha and Neha. If the petitioner wanted such an adjudication, they would need to consult the family courts. Finally, and most importantly, the judge stated that as far as issue of Akash's gender is concerned, it must be determined under the Protection of Transgender Rights Act 2018. This was a substantial win for activists and the Transgender community who strove for self-sovereignty in gender recognition and was the result of over a decade of intersectional, coalitional organizing, and trans\* self-advocacy.

### **Conclusion**

This essay comes from a longer trajectory of an activist strategy to monitor judgements for precedent that impact the trans\* community. It comes from the political work of O Pakistan where we were trying to organize folks of diverse sexuality and genders so that our lives would be happier and safer together as we monitored closely the states interventions into our lives both collective and individual. Through the work of the collective these legal cases were collected, that I have been able to use for this essay. Along with the cases I have also tried to trace activist responses to judicial and legislative interventions.

The difference in litigation around the Khawaja Sira identity and that of trans\* men necessitated a historicization of colonial regimes attempts at extirpation of the Hijras and their survival through that period. This revealed the ruptures and discontinuities brought about by British colonial rule that led to the impoverishment of Khawaja Sira community, and which continue to harm our understanding of ourselves. Indigenous, pre-colonial ways of knowing have been mangled by the British taxonomical project so that the moral panic

and revulsion with which the British viewed the Khawaja Sira found new life in the public imagination post-independence. Modern forms of revisionist Islamism further constricted the diverse ways of being and thinking that persisted, resisted and continued under colonization and now under the Pakistani state. Therefore, the Khawaja Sira community remained wary of the state because the newly established Pakistani government perpetuated the aggressive and violent attitudes of the colonizers, and widespread societal attitudes and behaviors continued to decry their way of life. The specter of being a habitual sodomizer still haunts the Khawaja Sira, but the community has developed effective strategies to protect themselves, as every time the government try to impose a medicalization of their identity, they have successfully been able to reject them. Khawaja Sira activists drew on the history of the Hijra community and its social belonging to argue for full citizenship based on their fundamental humanity. Trans\* men, on the other hand, found themselves in danger of delegitimization by the state and so turned to the language of medicalization and pathologization to argue that when someone is afflicted with gender dysphoria or gender identity disorder, it is incumbent upon the state to make sure their right to treatment is not barred. Shumaile Raj's case was extensively covered in national and international media and brought trans\* men into the attention and awareness of society. Up until then trans\* men had been functioning as ordinary men. While this was an act of self-authorization, they did not have the kind of institutional support that was available to a community with a long history such as the Khawaja Siras. Whereas the existence of Khawaja Siras de facto is never contested in the courts, the existence of trans\* men needed to be proved medically in order to acquire juridical validity. These different streams of activism came together in the work of activists from different communities in supporting the 'Trans\* Rights Act.



The definition of the transgender in the Protection of Transgender Rights Act is a point where the communities came together to say that all must be protected by this definition even as the impetus for the bill came from the violence experienced by the Khawaja Sira community. The coming together of multiple communities of struggle including the Khawaja Sira, trans\* women, trans\* men and feminist marks an important learning about doing solidarity work and creating spaces for discussion and learning about each other lives. Even as our identities are placed next to each other in the LGBTQI, that does not necessarily mean that the communities know each other's conditions of existence or are in sync with regards to their political positions.

Conclusion: Architects of Rebellion

This project has three primary stories that have many micro stories within them. The story that the first essay, “Beyond Bondage: Hari Women’s Communities of Struggle,” sought to bring attention to the Hari women who are poor and landless dalit Hindu’s laboring for bare survival and subject to the excesses of the monopolized private power of Landlords and their partner in violence, the state. They constitute a potent movement to free bonded laborers across their province, using all the resources that are at their disposal. Hari women’s struggles demonstrate political change in collectivity, in terms of how they organize, gather community resources, and articulate freedom dreams for themselves and their communities. Constantly under attack from the forces of state and capital, these movements must be documented and amplified, connected to other struggles, and supported and amplified. It is necessary to archive movement knowledge because it shows us a way out from ways of relating and existing that are purely accumulative and extractive. Communities of struggle like the free(d) Hari women I interviewed for this project do not have very much, and despite few resources, they are able to accomplish a lot through self-organizing and mutual aid.

I was recently in communication with my comrades in Hyderabad and learned that the Supreme Court of Pakistan had declared an anti-encroachment operation in a low-income neighborhood, which meant Hari homes were set to be demolished. The night before the Irrigation Department workers were expected to arrive, we strategized together over WhatsApp. They sent out a community call and gathered four thousand people to protest and block the road so that the government workers could not access their houses and thus their homes would not be destroyed. When, earlier, Irrigation Department workers had visited and marked their homes for demolition, the department official had not even bothered to show the residents the court order that authorized the demolition, not

considering the Haris worthy enough to even engage in negotiation. They showed a blatant contempt and disregard for Veeru and her comrades. Even though she is an internationally and nationally recognized freedom fighter, to the officials she was just a poor dalit Hindu woman. The next day when Veeru and her comrades galvanized people, and they had collectively raised an outcry using social media outlets by tagging high ranking government officials and international contacts, the Irrigation Department beat a hasty retreat (Nasir 2021).

The second essay, “Khawaja Sira Struggles: Is Womanness Really a Loss?” describes the dominant understanding of womanness that is framed as a loss in Punjab, and how the domination of the gender regime that positions women this way, also does not allow space for queerness. Yet queerness exists, persists, and thrives through the lives of trans\* feminine people as they struggle to be accorded safety, fundamental rights, opportunity, and dignity in public space and to simply live their lives. Khawaja Sira and trans\* folks’ perseverance and resistance are a testament to the broad repertoire of knowledge, practices and inclusive community that opens up to them as a consequence of their gendered being—a being that both transcends the binary and affirms it, that inhabits both a third space and the space of womanness. The derision and violence they experience for inhabiting womanness actually provides them with tools to creatively re-make the world through their own sense of community and by living their truths.

Finally, “The Movement for Transgender Legal Rights in Pakistan” engaged a close reading of judicial judgments that try to make sense of trans\* lives, and which, frankly, fail miserably time and again, until trans\* people instruct them all over again. Over time, this engagement with the state has provided limited relief, but the arena cannot be vacated for fear of regressive rulings and laws, always a specter always haunting the community. The

attitude of state and society continues to be hostile towards the LGBTQ community as a whole and trans\* people more specifically for being so visible in the public sphere. This essay evaluated the court cases regarding trans\* and Khawaja Sira rights that got media attention and looked closely at the language of the judgements. It also tried to trace how the judgments set up the legal sphere as a space for the contestation of rights. Through consistent, relentless activist engagement, the courts have been producing better judgments and subsequently, the Transgender Persons (Protection of Rights) Act of 2018 has become law. Recently an activist friend alerted me to a recent petition in the Federal Shariat Court which claims that section one of the law that allows transgender people to have self-sovereignty over deciding their gender is un-Islamic. The petition seeks to rein in decades of the trans\* community's progress by using rhetoric from parochially interpreted verses of the Quran. At the time of writing April of 2021, the Supreme Court has not yet taken up this petition.

This project is just a beginning, and in many ways barely scratches the surface of the spaces of alterity that trans\* feminine folks in Pakistan inhabit outside of the hetero-patriarchal matrix where a woman marries and continues a man's joint family home and line. People who were assigned male at birth but express a gendered embodiment that conforms more to womanness, resist being framed within the story of the gender binary as it is used to reinforce heterosexual marriage. The fuzziness and illegibility they embody is seen as threatening to their families, and they often experience violence and expulsion from the natal home. As embodied gender fuzziness that both collapses the binary and affirms it (but not in the way that is acceptable to society from the margins), Khawaja Siras inhabit public space as a reminder and an assertion of difference, and survival.

In a communication with Neeli, I learned that Neeli has recently been part of a documentary<sup>73</sup> being made on workers' struggles in Lahore (Naked Punch Review, 2021). For this where she was interviewed by Baba Jan, a former political prisoner from Hunza. Baba Jan was imprisoned for ten years (from 2011 to 2021) under the Anti-Terrorism Act ("Baba Jan's Release", 2020) for organizing climate refugees when a glacial landslide submerged entire villages and formed Attabad Lake. He organized people as a part of a movement to make demands on the government to help provide funds for alternative housing. This campaign met with significant opposition, and the state imprisoned him and many of his comrades (Naviwala, 2012). Baba Jan and Neeli coming together shows how different movements for justice and struggles for dignity are slowly coming together to shape Pakistan's democratic landscape. Years of military rule, overt repression, and tacit state support of repressive and controlling ideologies, coupled with parochial and literalist armed Islamist groups have shrunk spaces for difference, movement building, and a true expression of people's collective democratic will. The most significant takeaway from "Khawaja Sira Life Stories: Is Womanness Really a Loss?" is that, despite the heft of the repression, the networks of care and mutual aid set up for centuries in Khawaja Sira communities are the skeletal structure of queer survival. Guru Ashi Jaan told me recently that she is setting up a free water well outside her home in Raiwind, so that passersby can have access to water in the summer months. These networks, these acts of care, and these circulating struggles make the future a complex terrain with possibilities with possibilities for solidarity across movements.

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<sup>73</sup> This documentary was being made under the banner of Naked Punch, a review of works on contemporary art and thought and brings together artists and thinkers of different stripes to reflect on philosophical, social and political as well as artistic concerns. (Naked Punch Review, 2021)

The purpose of my research, and my intention in gathering these stories was to learn from communities in struggle how to organize against what seem like insurmountable odds. These stories take as their starting point people, especially women, who live lives outside the structures of upper and middle class, heterosexual matrices, or from religions outside of Islam. Taking my Khawaja Sira and Hari comrades' voices and stories seriously means connecting the struggles in history as well as the present. This project has sought to bring together life stories, grassroots struggles, and legal battles of people marginalized from mainstream Pakistani life to demonstrate that being marked with womanness is treated as a debility, but such marking creates its own opposition in trying to define and co-opt people in service of capital and the state.

This research also forces us to engage fully the knowledges that are generated through struggle, and the ways social movements and spaces open us to expression, creativity and liberation. In "Beyond Bondage: Hari Women's Communities of Struggle," Lali narrates the story of liberating a family stuck in bondage in Rahim Yar Khan, a location well outside of Sindh, in southern Punjab. For her, getting the family out of bondage was more important than the daunting venture outside her homelands. Veeru in her interview noted that there were Muslim and Hindu families together in bondage, and they celebrated both Hindu and Muslim festivals and ate together frequently. These are solidarity bonds invisible in the histories of the country, invisible in public conversation, and only imagined as images of pre-partition conviviality between Hindus, Sikhs, and Muslims. Surfacing such bonds and the circumstances that condition their possibility, and their continuance, has been my aim here.

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