

Gendered Negotiations for Inheritance between the State and Islam in Bangladesh

By

Maliha Mohsin

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Supervisor: Dr. Nadia Jones-Gailani

Second Reader: Dr. Vlad Naumescu

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Abstract

In this thesis, I explore the nexus of religion, gender and citizenship in Bangladesh, as legal traditions and reforms for the inheritance of property along familial lineages materialize for gendered peoples through discourses of Islam, kinship, employability and gender. In my research, I use a decolonial and intersectional approach to chalk out assemblages of discourses and embodiments of gender, as they materialize through and with Islamic discourses and practice, while acknowledging their negotiations in a political reality where the rights, legalities and policies concerning gendered peoples in Bangladesh are affected by the state and its own productive tensions with religious orthodoxy. To do so, I explore the productive tensions between religion, gender and citizenship on issues of family inheritance in Bangladesh, where the laws of succession are governed by family laws determined by the respective religion of the citizen. I study three different but interconnected discourses in Bangladesh: (i) secular feminist advocacies for family law reforms who seek equal inheritance between men and women, regardless of religion; (ii) discourses of recognition and inheritance rights of the peoples largely identified as “third gender”, who are socially marginalized and dispossessed of kinship and succession but are currently being granted protection and rights to claim family inheritance; and (iii) the case study of Cynthia Bhuiyan, a transgender activist and entrepreneur who is also the heir of a Sufi saint in Dhaka. In doing so, I demonstrate how different meanings, embodiments and subjectivities of gender and faith are in productive tensions with each other. With decolonial feminist theories, I conclude, that some subjectivities emerge as better approximations of modernity than others, via a corrosion of alternative subjectivities embedded in economies of care and spirituality, where gender and Islam also constitute different meanings that the modern nation state fails to accommodate.

Declaration

I hereby declare that this thesis is the result of original research; it contains no materials accepted for any other degree in any other institution and no materials previously written and/or published by another person, except where appropriate acknowledgment is made in the form of bibliographical reference.

I further declare that the following word count for this thesis are accurate:

Body of thesis (all chapters excluding notes, references, appendices, etc.): 33,607 words

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Signed: Maliha Mohsin

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I begin by expressing my gratitude towards Nadia – my teacher, mentor and friend. I could not have produced this work if it were not for her unwavering faith in me and my work. Sometimes, I wonder if she simply coddles me. But then I remember how sharply, honestly and strongly she has guided me again and again. For every time she has stared right through me to make a point or put me in place, I am grateful. I know I am tough, and I seek a tough and honest teacher as well. Thank you, Nadia.

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I am indebted to my friends, kin and communities in Dhaka, where I moved ten years ago as a wide-eyed teen-ager and came of age. I found my politics and sense-of-self in this city with the knowledge and guidance of all of these people. I hope that this thesis is able to reflect that. I am immensely grateful for the time and energy of every one who participated in and guided this study with their knowledge and labor. I am aware of all the trust they have put in me. I hope I do it justice.

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List of Abbreviations

AIDS	Acquired Immunodeficiency Virus
BAL	Bangladesh Awami League
BJI	Bangladesh Jamaat-E-Islami
BLAST	Bangladesh Legal Aid and Services Trust
BNP	Bangladesh Nationalist Party
BSWS	Bandhu Social Welfare Society
CBO	Community-based Organization
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGS	Centre for Governance
DSA	Digital Security Act 2019
HI	Hefazot-e-Islam
HIV	Human Immunodeficiency Virus
ICT	International Crimes Tribunal
LGBTH+	Lesbians, Gays, Bisexuals, Transgender, Hijra and other gender & sexually diverse people
MSM	Men who have sex with men
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission of Bangladesh
PIL	Public Interest Litigation
SNS	Somporker Noya Setu

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Chapter 1

Introduction

I was advised by my supervisors to begin with a vignette that will prepare the reader for what is to follow in this thesis. So, I decided to start with the story of the first secret queer party I got the chance to DJ when I returned to Dhaka, Bangladesh, in the winter of 2022. I was very excited because it was to be hosted by Cynthia Bhuiyan, on the rooftop of her seven-storied building that is the talk of the town. She is a transgender entrepreneur and activist, and she is the owner of this building where she runs a factory to produce ready-to-wear clothes for the most well-known Bangladeshi fashion and lifestyle brand, Aarong. I had met her a few times before, and I had decided already that she would be an important subject of this thesis. But I had not yet had the chance to party with her. My work as a queer, femme DJ who performs for parties of the larger queer community in Dhaka drives my social relationships here. Being an academic, instead, is no fun.

The night was unlike anything I had seen before. I had organized a few queer parties before but none like this. Attendants, dressed scantily and gorgeously, were all kinds of queer: gay, lesbian, non-binary, bisexual, Hijra, transgender, asexual. Now, I consider myself a people's DJ. And I am good at what I do. The dance floor was on fire. In fact, it got so full and hot, literally, that we had to stop the music for a little while so that the crowd could be managed better. It is amusing that we called this a secret party. We were on the rooftop, playing loud music till the end of the night. You could see all of Khilgaon from her rooftop. The organizers went through strong security protocols while organizing the party and inviting people, because everyone is always worried about getting caught. If you didn't know: being gay is not the most acceptable thing in Bangladesh. But the security that Cynthia managed to

provide us in the actual venue itself blew my mind. There were, in fact, police-men sat at the gate during the entire night for our security. These are same police-men who could otherwise arrest us all, which did not happen on the night because Cynthia has her ways with local politicians and police. The police were also fed and taken care of by her. But do you know what else? The police were stationed at a table that was set up in the parking area on the ground floor of the building, just inside the main gate. And right there, next to the table, was her father's *darbar*. You see, her father is an important, renowned Sufi saint. This *darbar* is where he used to sit, meditate, worship and address his followers and devotees. His photos, clothes, prayer mats and musical instruments are kept there all the time. This is where prayer gatherings of his followers take place every week.

Cynthia, a transgender woman, inherited this building from her father, a Sufi saint. Right next to this building is another large building that is still under construction. This is also a factory building and some of her production has moved there already. This is also her familial property. Just before I returned to Vienna, some of us got together with her and other prominent transgender and Hijra activists (all of whom are interviewed for this study) to organize a larger event. Cynthia allowed us to host this party on the rooftop of this new building, which spanned a whopping 4,500 square feet. Six hundred people attended this party. It was also a 'secret', but we danced until it was time for the call of *Fajr* prayer during sunrise. The ruckus outside was reasonable for this size of a crowd. But the local police, bouncers, and some say even local muscle-men, managed this crowd who queued outside in their special outfits and caused some traffic. Khilgaon is, after all, an older part of the city where the roads are narrow and the urban planning is dense. Neighbors gawked and whispered, but we did not get 'caught' that night. I have never seen anything like this in my lifetime.

Simultaneously, there have been talks on TV channels and in policy briefs for years now about the rights and recognition of the ‘third gender’ people – that is, everyone who does not fit into normative male and female identities, such as Hijra, intersex, and now, transgender people. There are big talks about how something must be done, because they are a marginalized people and are historically excluded from their families. They are deprived from family inheritances because of their gender identities. In Muslim-majority Bangladesh, where inheritance is guided by religious family laws, how this can be accommodated is a tricky matter. For years, women’s rights organizations have demanded equal inheritance laws on the grounds of secular values. And today, the Prime Minister of Bangladesh and several policy makers are working to grant transgender people their inheritance rights based on Islamic law.

But how does this happen? How do all of these realities co-exist at the same time? In popular feminist discourse, Islamic law is unprogressive because it bars women from equal inheritance. And this law is also the legal precedent upon which the inheritance rights of the third gender people will be protected now. Meanwhile, there is someone like Cynthia Bhuiyan, who is Muslim and transgender, and whose fame and success as an entrepreneur is built upon this property that she inherited.

For this thesis, I explore this very nexus of religion, gender and citizenship in Bangladesh, as legal traditions and reforms for the inheritance of property along familial lineages materialize for gendered peoples through discourses of Islam, kinship, employability and gender. This study is foregrounded by the non-governmental organization (NGO)-led, transnational, secular and human-rights based approaches to feminist and queer activism that have historically been and are currently the dominant feminist discourse in Bangladesh, a

postcolonial Muslim-majority nation state. A secular state is taken for granted in urban feminist and queer discourses in Bangladesh, wherein the liberation of gendered people and Islamist assertion are polarized against each other. However, such discourses are grounded in modern, Western frameworks of feminist emancipation and empowerment that are built upon very fixed and unchanging definitions of gender and Islam, where an idea of a ‘real’ text-based Islam (as yielded by political Islamic entities) is deemed to be the anti-thesis. This erases the myriad of complexities through which the lived experiences of gender and faith are entangled in negotiations for agency and subjectivity. In my research, I use a decolonial and intersectional approach to chalk out assemblages of discourses and embodiments of gender, as they materialize through and with Islamic discourses and practice, while acknowledging their negotiations in a political reality where the rights, legalities and policies concerning gendered peoples in Bangladesh are affected by the state and its own productive tensions with religious orthodoxy. To do so, I explore the productive tensions between religion, gender and citizenship on issues of family inheritance in Bangladesh, where the laws of succession are governed by family laws determined by the respective religion of the citizen. I study three different but interconnected discourses in Bangladesh: (i) secular feminist advocacies for family law reforms who seek equal inheritance between men and women, regardless of religion; (ii) discourses of recognition and inheritance rights for the peoples largely identified as “third gender”, who are socially marginalized and dispossessed of kinship and succession but are now being granted protection and rights to claim family inheritance; and (iii) the case study of Cynthia Bhuiyan, a transgender activist and entrepreneur who is also the heir of a Sufi saint in Dhaka.

This chapter is organized in an unconventional way perhaps. Instead of beginning with historical context and literature review, I orient the reader with my theoretical frameworks

and methods instead. I ground my study in postcolonial and decolonial feminist theories. I have conducted interviews of activists, community experts and legal researchers. I have used these interviews, along with several secondary sources, ethnographic notes, popular media representations, legal arbitrations and press statements, as texts to analyze the different discourses that exist on this matter. I then proceed with Chapter two to foreground my analysis with colonial, historical and political context for the contemporary political terrains where these discourses exist and negotiate with each other. With the following three analytical chapters, I analyze the tensions between the religious and secular; the emergence of gendered subjectivities as rights-bearing citizens; and the curious case of Cynthia Bhuiyan. In this study, I demonstrate how different meanings, embodiments and subjectivities of gender and faith are in productive tensions with each other, and reflect upon the semiotic disjuncture that exists among these discourses. With decolonial feminist theories, I conclude, that some subjectivities emerge as better approximations of modernity than others, via a corrosion of alternative subjectivities embedded in economies of care and spirituality, where gender and Islam also constitute different meanings that the modern nation state fails to accommodate.

1.1. Theoretical Framework

In this section, I outline the theoretical frameworks for this study in detail. I have engaged with postcolonial and decolonial theories to create the theoretical basis for my analyses and arguments in this study. I use postcolonial and decolonial theoretical contributions to grapple with the implications and connotations of engaging with concepts such as modernity, coloniality and secularism, and to build the very considerations upon which I use gender and religion as my categories of analysis.

1.1.a. Modernity, Coloniality, and Gender

I begin my review of modernity with a description of modern society by Jean Baudrillard, the French sociologist. In his 1987 article on modernity, he described modernity not merely as a concept but rather as a “mode of civilization, which opposes itself to tradition.”¹ He located the establishment of this mode in the French Revolution of 1789, and characterizes it with the “the modern, centralized and democratic, bourgeois State, the nation with its constitutional system, its political and bureaucratic organization.” He found modernity to be an orientation that moved in linear progressions of temporality toward a homogenous recalibration of social fabric, motivated by science, rationality and industrial labor, and responsible for the “destruction of customs and traditional culture.”²

I complicate this with Anibal Quijano’s understanding of modernity as a fundamental basis upon which the projects of European enlightenment, colonialism and capitalism amalgamated to create “a specific universe of intersubjective relations of domination under a Eurocentered hegemony.”³ I understand this hegemony as one that allows the imposition of European conceptions of modern life through the apparatuses of democratic states and capitalist extraction of labor to produce and perpetuate varying functions of the exercise of power. This power is obtained and exchanged through the formation of different subjectivities along the continuing colonial production of race as “new historical social identities”. He defines a relationship of the contemporary production of identities, subjectivities and knowledge with the histories and legacies of European colonialism, that permeates itself

¹ Jean Baudrillard, “Modernite” in *Encyclopaedia Universalis*, Vol. 12 (Paris : Encyclopaedia Universalis France, 1985), pp. 424-426. Translated by David James Miller, Purdue University.

² Ibid.

³ Anibal Quijano, “Coloniality of Power, Eurocentrism, and Latin America,” *Nepantla: Views from South* 1, 3 (2000): 533–80.

through the exercise of power for domination among different subject positions. Quijano calls this concept the “coloniality of power.” In Quijano’s words, “Eurocentrism naturalizes the experience of people within this model of power.”⁴

María Lugones expands Quijano’s concept of coloniality by complicating the production of social identities along the line of gender as well. Where Quijano understands the production of race along biological traits, sex is implicitly understood to be constituted as a form of racialization. However, Lugones demonstrated that the production of gender as social identities in different arrangements of power within the “modern/colonial gender system—the biological dimorphism, the patriarchal and heterosexual organizations of relations” must also be taken into account. I find this theoretical contribution to be of importance, as I trace the coloniality that delineates the production of different gender identities at the nexus of development feminism, long-enduring local histories of gender-variance, and the struggles of these identities to become rights-bearing citizens in the apparatus of the modern democratic nation-state that is Bangladesh. I proceed within this theoretical framework in this thesis to discuss Hijra as a pre-colonial identity that has continued its existence into the modern, postcolonial contemporary, and an identity that has to contend with the emergence of new gender identities to clamor for democratic rights and citizenship. In Lugones’ words, “Understanding the place of gender in pre-colonial societies is also pivotal in understanding the extent and importance of the gender system in disintegrating communal relations, egalitarian relations, ritual thinking, collective decision making, collective authority, and economies.”⁵

⁴ Ibid.

⁵ Ibid.

According to Lugones, decolonial feminism is possible by seeing and acknowledging the colonial differences, not in the erasure of them. In her seminal work, “Toward a Decolonial Feminism”, she builds upon Walter B. Mignolo’s idea of “colonial difference” as the location of the productive tension between the formation of the colonized subject and the agency of the colonized person in subjectivity. Colonial difference is found because the colonized subject is not a static blip on the matrix of power; the subject is agential in their becoming and ontological embodiments as well as in their navigation of epistemological bearings and, much to her faith and hope, continually resistant to colonial invasion of the self. It is in the acknowledgement of the multiplicities of embodiments – of gender, faith, communal belonging, geopolitics – that decolonial praxis of feminism may be found. I identify one such difference in the binary divide between the “religious” and the “secular”, and I identify a coloniality of gender along this divide because of the complex interplays and entanglements of faith, body and rights in the case of Bangladesh. I would like to take Lugones’ theoretical contributions to identify how coloniality of gender becomes apparent in Bangladesh, as identities such as woman, third gender, transgender and Hijra create colonial differences via North-South epistemological channels (such as academia, NGOs, and neoliberalization). In Bangladesh’s trajectory as a postcolonial democracy, the tensions between the “religious” and “secular” play out on the bodies, existences and demands of these gendered and racialized identities as they struggle to become rights-bearing citizens. I am interested in how gendered subjectification (such as transgender, third gender, sexual orientation) travels via concepts and emerges across different cosmologies (where the modern ideology of the secular state is as much a cosmology as are local cosmologies where religion cannot be separate from laws) to create what Lugones calls colonial differences in subjectivity.

With this framework, I will demonstrate how some embodiments of gender and faith are closer approximations to modernity in their negotiations with the modern state. My aim here is to discuss intersubjectivities at colonial differences, to demonstrate how the meanings and implications of concepts such as religion, gender, inheritance and even the role of the state change and transform across these different cosmologies.

1.1.b. Islam as a Category of Analysis

It has been very challenging for me to scratch out, define and articulate the use of Islam as an analytical category. I have decided to not define Islam simply as a religion, by borrowing from Talal Asad's discussions of religion as an anthropological category that is discursively produced in Western academia within secular modernity as a transcultural and transhistorical phenomenon with essentialist features whose genealogies can be traced back to medieval Christianity. I am more interested in religion, especially Islam in this case, as an epistemic category that informs legal and rights-based discourses in the contemporary, modern nation-state of Bangladesh, where: gender and legal rights are largely dealt within NGO-ized channels; and, development is a necessary condition of the epistemic labors that fuel these discourses. Here, I find useful Asad's discussion of Islam as "a discursive tradition that connects variously with the formation of moral selves, the manipulation of populations (or resistance to it), and the production of appropriate knowledges."⁶ This approach allows my discussion of Islam to be embedded in the dynamics of power relations among multiple stakeholders and governable subjects who constitute Islam. But there is an added nuance here that I like to borrow from Shahab Ahmed's 2015 book, *What is Islam?*

⁶ Talal Asad, "The Idea of an Anthropology of Islam," *Qui Parle* 17, no. 2 (2009): 1–30.

In acknowledging the political economy within which Islam develops and exists among its adherents, Asad posits that it is the power of orthodoxy that presents itself as a prescriptive authority. Therefore, Asad argues that Islam emerges as a discursive tradition in response to the authority of the orthodoxy. But Shahab Ahmed argues differently. Ahmed argues that such a centering of the orthodoxy leads to the binary of the orthodoxy and un-orthodoxy, or the heterodoxy.⁷ But, as I discuss the different negotiations of gendered inheritance rights with Sufi and Sunni traditions of Islam in Bangladesh further along this thesis, we see that multiple discursive traditions of Islam not only exist but are also in exchange and entanglements along historic lineages of Islamic knowledge production and discursive traditions. It is not accurate to understand this multiplicity as multiple Islams that simply exist in different social and political locations. It is also not sufficient to charge this multiplicity with ideas of a real, authoritative Islam as opposed to other, different sects of Islam. Here lies the risk of what Ahmed sees as the centering of a “normative Islam” as opposed to “*alternative and particular*” Islam, where a real Islam is understood to be centered by the laws, regulations and prescriptions of Islamic conduct. Ahmed says, “This totalizing “legal-supremacist” conceptualization of Islam as *law*, whereby the “essence” of Islam is a phenomenon of prescription and proscription, induces, indeed constrains us to think of Muslims as subjects who are defined and constituted by and in a cult of regulation, restriction and control.”⁸ As opposed to this, Sufi traditions are regarded as less real, and its history of discursive lineages and exchanges that have contributed to Islamic knowledge and jurisprudence remain unseen and unacknowledged.

⁷ Shahab Ahmed, *What Is Islam? The Importance of Being Islamic*, (Princeton: Princeton University Press, 2016), 273-74.

⁸ *Ibid.*, 120.

When it comes to contemporary discussions of Islam in gender studies, it is easier to find literature on political Islam, which is a response to modernity as legally codified and regulatory practice of Islam that can adapt itself to fit in the apparatus of the modern nation-state. Political Islam can very easily be seen as the prescriptive authority of orthodoxy when one is to explore the contestation of bodily rights by religion, however one may define that. And while political Islam is still relevant to my discussion, it is important for the researcher and reader to recognize and acknowledge that Islam does not merely materialize as a political technology or identity for gendered peoples in Muslim-majority Bangladesh. I am cognizant of how the category of Islam can be conflated and consubstantiated with the category of political Islam discursively within gender studies. When studying or working with Islam as an analytical category, perhaps some of the most fundamental questions that I have arrived at are about the contestations over the very being of Islam in intellectual labor and phenomena: what makes an episteme Islamic; can any and all knowledge produced by Muslims be considered Islamic; does knowledge produced in a 'secular' sphere such as this classroom contribute to one's Islam; where does Islamic knowledge begin and end after all? As definitional as these questions seem, they are not always addressed when discussing the everyday political tensions regarding Islam, especially in the face of violence caused by and/or upon Muslims. And yet, what remains lost is that the knowledge(s) of Islam that Muslims rely upon aren't always the same. In spite of the commonality of transnational identity and belonging (ummah), unchangeable scripture (Quran), consensus over the distinction between lawful vs. sinful, rituals and festivals, a brisk sweep across the lengths of the world occupied by Muslims show us that there is a vast diversity in the understanding of each of these. We do not all pray the same, nor do we all read and understand the Quran the same. These differences cannot simply be explained by individual preferences, even though liberal modernism has consistently tried to individualize religion into our private lives and

proclivities. There are histories of how Islam has arrived at its specific, local positions – histories of transmission, propagation, education, intellectual traditions etc. – whether that be a Sufi shrine in Sureswar, a mass Shia gathering in a refugee camp of Urdu-speaking people in Dhaka, or a privately funded Deobandi Sunni Qawmi madrasah somewhere in Bangladesh.

This is important because political Islamist ideologies such as those of Hefazot-e-Islam⁹ rely on a fixed, monolithic and scriptural epistemology of Sunni Islam. In comparison with such discourses of Islamic belief and practice that are dominant, the Islamic and syncretic spiritual traditions and embodiments of Hijra and *hijragiri* or Sufi traditions and practices such as Cynthia's are considered deviant or marginal, and therefore, often, not even taken into account with serious consideration. But Shahab Ahmed problematizes such a compartmentalization of deviance from articulations of Islam, because he proposes that the ample evidence of contradictions in simultaneity along historical trajectories must also be conceptualized as "constitutive of Islam".¹⁰

Ahmed is able to conceptualize such a constitution of Islam with theories of hermeneutical engagements, wherein a Muslim is agentic in the meaning-making processes of the revelatory truth and text to, in turn, constitute meanings of themselves in terms of Islam. Here, I use Ahmed's argument that "that the human and historical phenomenon of Islam is a field of meaning where truth is constituted, arranged, and lived in terms not of categories constituted by mutual exclusion, but rather by categories of mutual inter-sorption and inter-location that run athwart and conceptually frustrate the religious/secular binary or

⁹ Hefazot-e-Islam is an Islamic advocacy group, often classified politically as far-right. The group is built upon the network of privately-funded schools for Islamic education known as the Qawmi Madrasah system. The group spans all across the country but is primarily based in Chattogram. The group follows the Deobandi movement of Islamic practice, along the Hanafi school of thought and legal jurisprudence.

¹⁰ Ahmed, *What is Islam*, 201.

religion/culture division.”¹¹ His discussion of the “Balkan-to-Bengal complex” invites us to acknowledge that the corpus of Islamic literature which has traveled cohesively over time and space has also been engaged with complexities of language, rhetoric, geography, class and social structures. These engagements make and become Islam, in cohesion but not isolation.

1.1.c. Complicating Post-Secularism and its Discourse of Neutrality with Governmentality

For this thesis, I trace a genealogy of how the terms religion, secularism and gender have discursively transformed through Bangladesh’s historical and political trajectories as a modern nation-state. This discussion is important for me to produce an interpretive framework for my thesis that may foreground the discursive analyses of various gendered negotiations of inheritance rights and traditions between the State and Islam in Bangladesh. Here, I take Talal Asad’s discussion¹² of secularism within the framework of the postcolonial modern nation-state to trace how domains of the secular and the religious reform and transform through and across the “formations” of political events and discourses. Asad’s work builds upon the Foucauldian notions of power and governmentality to discuss secularism as a political doctrine that does not simply separate the religious from contaminating secular spaces, but rather mediates political power within the state apparatus. This is an important theoretical framework for me to complicate the tenet of constitutional secularism, which is taken for granted in Bangladesh’s contemporary urban and academic feminist and queer politics, so as to operate on the political assertion of human rights and therefore, demand a complete separation of governance and religion. Here, I resonate with Asad’s discussion on the inadequacy of treating religion as an analytical category that may simply and apparently

¹¹ Ibid., 116.

¹² Talal Asad, “Secularism, Nation-State, Religion,” in *Formations of the Secular: Christianity, Islam, Modernity* (Stanford University Press, 2003), 181-205.

change its “social location” through historical formations of the secular. Instead, I am interested in a critical interaction of political powers and forces across the institutions of the state apparatus as well as civic societies and communities to build a nuanced understanding of how the definitions, meanings, functions and embodiments of religion change across historical formations and discourses of rights. I take this approach as opposed to a discussion that formulates causality between past historic phenomena and contemporary tensions between religion and secularism, as if the latter were teleological determinations.

Asad critiques Habermas’s¹³ discussion of the public sphere in a liberal modern society by articulating that “there is no public sphere of free speech at an instant.”¹⁴ Habermas envisions the “public sphere” as a critical discursive field for modern liberal democratic spaces to shape public opinion and enter into democratic negotiations where access to the public sphere is taken for granted, this access is not necessarily true for all citizens, especially for those who are hardly granted the rights of citizenship to the same extent. Asad takes his critique of Habermas a step further to note that an act of speech in the public sphere relies on the power to be heard as much as it does on the power to speak, either of which cannot be reduced to the liberal notion of public debate.

This is an important point of entry for me to draw upon the theoretical implications of what I call “semiotic disjunctures.” Here, Saba Mahmood’s discussions¹⁵ of the binaries of meanings, embodiments and values created along the divide of liberal reason and religious affect is another framework I rely and build upon greatly. Mahmood has shown how

¹³ Jürgen Habermas, Sara Lennox, and Frank Lennox, “The Public Sphere: An Encyclopedia Article (1964),” *New German Critique*, no. 3 (1974): 49–55.

¹⁴ Asad, “Secularism,” 181–205.

¹⁵ Saba Mahmood, “Religious Reason and Secular Affect: An Incommensurable Divide?,” *Critical Inquiry* 35, no. 4 (2009): 836–62.

embodiments, articulations and juridical applications of affect and reason remain incomprehensible to secular and religious spheres which operate as epistemic categories along the edges of the metaphorical canyon that perpetuates this divide in modern liberal societies. This framework allows me to foreground the discourses on inheritance in Bangladesh as meanings and embodiments of religion, gender and citizenship change across them. In other words, this framework allows me to do a discursive analysis of the semiotic disjunctures that emerge in the nexus of religion, gender and citizenship, to show how the meanings – ever in flux – of these concepts change among the categories themselves.

1.2. Methodological Considerations

In this section, I outline my research methods and research design. My research methods are grounded in postcolonial and decolonial feminist theories, engaging with intersectionality and discourse analysis, and centering theoretical frameworks from academics of color and Global South. My research design outlines the guidelines and processes I have followed to select my participants for interviews. It also provides information about the texts and secondary sources I have engaged with for the discourse analyses in this study.

1.2.a. Research Method

I have taken a postcolonial and decolonial feminist approach in my work, with immense gratitude for and cognizance of the feminist work that has preceded mine in Dhaka, regardless of whether or not I agree with it all. While researching issues of rights and protections in nation-states of the Global South, I believe one has to be mindful of the limitations of contemporizing the research as a matter of the present times, especially when the focus is to create feminist utopias of the future that can stand shoulder-to-shoulder with

global feminist goals. However, postcolonial and decolonial approaches require us to look back into the past as well. But simple formulations of causality do not do justice to the agency of the colonized in negotiating with colonized pasts and coloniality. I take from Homi Bhabha's statement, that looking back from a postcolonial present is "painful re-membering, a putting together of the dismembered past to make sense of the trauma of the present."¹⁶ We arrive at Bangladeshi citizenship through the events of partition, independence and nation-state formation that have taken place between now and the colonial past within the geographical contours of what is Bangladesh today. It is easy to forget that the past undergirds the present, not in causal relationships, but through the many political events and negotiations of power that have agentively and discursively produced the Bangladeshi today via the imagination and postcoloniality of a bourgeois state. As a feminist, this act of "re-membering" has been a conscious and reflexive one for me, with the guidance of decolonial feminist theories such as Quijano and Lugones.

Mignolo's idea of "border thinking" and works such as Anzaldúa's *Borderlands/La Frontera* have allowed me to imagine an agentic resistance at the colonial difference. And here, my own experience as a child born into immigration and intergenerational movements across borders has been crucial for my sense of colonial differences. I was born to Chatgaiya immigrant parents in a pin-prick of a city in the U.A.E., and my family history is one of the movements of our bodies as wage laborers across borders that would never naturalize us in our host country. I am the first girl child of my family to move to the capital city of Bangladesh for higher education, and the first to move to Europe via the academic route. Even as I produce my own power and agency in academia today with what Sarah Ahmed describes as a proximity to whiteness,¹⁷ I have to learn to soothe the shocks of these

¹⁶ Homi K. Bhabha, *The Location of Culture* (London: Routledge, 1994): 63.

¹⁷ Sara Ahmed, "A Phenomenology of Whiteness," *Feminist Theory* 8, no. 2 (2007): 149-168.

movements across different subjectivities on my sense of self. I am a queer Muslim, and I perform on a weekly basis as a DJ in the nightlife industries of Europe. And while I have even traveled countries to perform in festivals, my family has no idea of this life. Back home, my family lives in the village and I am a good daughter, meant to go down the path of marriage and family as a heterosexual, Muslim woman. As I embody my own subjectivities in a productive tension with coloniality, I am cognizant of the colonial differences my subjectivities navigate as a gendered body. It is from this position that I also reflect upon Donna Haraway's feminist notion of "situated knowledge,"¹⁸ and refrain from the essentialization of identities as static categories of analysis.

Here, I make a nod to Kimberlé Crenshaw's seminal contribution of intersectionality to feminist methodology.¹⁹ Her work has been important in recognizing how different categories of analysis intersect with each other to create differential experiences of gender with class, race, disability, caste, and more. And Nira Yuval-Davis warns feminist researchers against the use of the intersectionality as a means to the end that categories of analysis are only studied in an additive manner instead of studying how these categories are constitutive of each other to create gendered experiences.²⁰ I take the method of intersectionality a step further by complicating it with Puar's discussion of intersectionality in assemblage theory.²¹ I am cautious of using analytical categories (such as, Islam, gender, sexuality, and inheritance) as sedimented results of complex processes, and I would like to therefore work with assemblages that bring varying embodiments and materializations of these categories together

¹⁸ Donna Haraway, "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective," *Feminist Studies* 14, no. 3 (1988): 575-599.

¹⁹ Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43, no. 6 (1991): 1241-99.

²⁰ Nira Yuval-Davis, "Intersectionality and Feminist Politics," *European Journal of Women's Studies*, 13 no. 3 (2006): 193-209.

²¹ Jasbir K. Puar, "I Would Rather Be a Cyborg Than a Goddess': Becoming Intersectional in Assemblage Theory," *philoSOPHIA* 2, no. 1 (2012): 49-66.

as constitutive elements of various discourses surrounding inheritance and gender. Puar, in her seminal 2005 piece “Queer Times, Queer Assemblages,”²² discussed the need to move beyond intersectionality towards an undertaking of assemblages, as discussed by Deleuze and Guattari. Here, she found the need to acknowledge queerness as a process that arrives and moves from and in various directions, forming and dispersing across mutual networks that implicate one another. This is important for her in light of the epistemological violence that can be caused by the fortification of identities as categories, especially within the state apparatus and its surveillance mechanisms.

The colonial differences that I tread with my subjectivities are also further enriched by the fact that I have also been a queer-feminist organizer in several feminist and queer organizations and grassroots organizing in Dhaka for the last decade. This thesis, really, is a product of my own position as an insider and my relationships with the many diverse communities, fellow organizers, activists and peers, who have helped me become who I am as a queer-feminist researcher today and with whom I do queer-feminist work. Therefore, there is an ethnographic approach here as well that is weaved into the many stories, political instances, court cases and negotiations that I bring together for analysis.

For the analysis itself, I use discourse analysis as a method to show how these processes of identification are lost in the sedimentation of identity categories through productive tensions with discourses of feminist organizing, secularism, modernity and rights, as subjects are made to contain themselves into the state’s apparatus. I use this method in two different levels. On the first level, discourse analysis allows for me to trace a genealogy of the binary between secularism and Islam, and how queer-feminist negotiations are made along

²² Jasbir K. Puar, “Queer Times Queer Assemblages,” *Social Text* 3-4 no. 84-85 (2005): 121–139.

this binary distinction within urban intellectual hegemonic discourses fueled²³ by an NGO-led approach to development of gendered peoples. On the second level, discourse analysis also traces how “Hijra” and “transgender” emerge as identity categories of state subjects who are then entitled to rights such as inheritance. This analysis allows us to see how some discourses of gender and rights are pushed to the fore over others in a productive tension among different stakeholders and parties by active agents, which furthermore becomes a self-fulfilling process of making and becoming the subjects themselves.

It is also important for me to acknowledge the global economy of knowledge within which I have not only produced this work, but also that which I have attempted to critique with my discourse analysis too. Raewyn Connell has discussed how “NGOs and the international aid machinery are places where theory building does happen, more often in the interstices and around the edges than as a declared purpose.”²⁴ It is not possible for me to analyze the discursive production of gendered subjectivities without acknowledging the production of these discourses as knowledge within the NGO-led development model. Furthermore, Connell discussions have shown us how the experiences of gendered subjects in the Global South become the raw material and case studies for the production of feminist knowledge in the Global North “by metropolitan conceptualizations.”²⁵ While I am extremely grateful for the very important theoretical contributions by academics of color, such as Talal Asad, Saba Mahmood, Jasbir Puar, Shahab Ahmed and Kimberlé Crenshaw, which have guided my work, I am cognizant of the Western economy of knowledge production within which they have been produced, also in discursive traditions where they have had to speak back to Western academia. This position is not unlike my own, as I write this in Vienna as a

²³ Norman Fairclough, *Analysing Discourse*, (Routledge, 2003), 39-62.

²⁴ Raewyn Connell, “Rethinking Gender from the South,” *Feminist Studies* 40 no. 3 (2014): 518-539.

²⁵ Ibid.

community member who has now relocated Europe. I am aware of how this work becomes distant from the very people I have interviewed here by the very fact that this is an academic product. I contend with this truth along my colonial differences too. And here, a saving grace is in the fact that I am able to engage with decolonial theories from Latin American academics such as Quijano and Lugones. This engagement may not mean much for the impact that this piece of work will have as a study. But it has great implication for my own feminist praxis and subjectivity as I hope to find ways to practice what Lugones calls a “resistant subjectivity.”

Last but not the least, I want to make an acknowledgement of my own position here as a Muslim – the kind that is not Muslim enough for my family but also unable to defend myself as a Muslim with most of my queer peers. This work is also a religious practice for me, an embodiment of my own piety and an exercise of my own agency as a queer feminist Muslim. I am eternally grateful to Saba Mahmood’s contribution to the idea of feminist agency as that which is exercised not necessarily in spite of limiting conditions but as that which is constituted within and in response to them.²⁶

1.2.b. Research Design

The design of this research is greatly informed by own positionality as a queer community member and grassroots organizer in Dhaka. While I have not formally worked for an NGO myself, I have been in dialogue and collaboration with several NGOs and Community-based Organizations (CBO) over the years. As a researcher and community member, I have even contributed to the production of knowledge by some of the NGOs that

²⁶ Saba Mahmood, *Politics of Piety: the Islamic Revival and the Feminist Subject* (Princeton and Oxford: Princeton University Press, 2005).

are featured in this research. This has given me access to the people who have been selected for interviews. The selection of these interviewers is based on the roles they play as discursive agents with their work as activists, community experts and legal advisers. For a topic such as the one I am studying here, I found it relevant to interview those who are not only in the forefront of the discursive production of gendered subjectivities but are also engaged in advocating for the actual recognition of them as rights-bearing subjects of the state on a policy level.

I conducted semi-structured interviews of 6 people in total between December 2021 and June 2023, some over personal visits in Bangladesh and some over audio and video calls on the internet. My interviewees and their incumbent positions/roles at the time of the first interview with each of them are as follows: (i) Joya Sikder, President of Somporker Noya Setu (SNS); (ii) Rofiqul Islam Tutul, General Secretary, SNS; (iii) Jubtadul Javed, independent community expert and District Project Officer, Bandhu Social Welfare Society (BSWS); (iv) Abdullah Titir, Research Specialist, Bangladesh Legal Aid and Services Trust (BLAST); (v) MD Mizanul Haque Mitu, Hijra *guru* and General Secretary, Paddakuri Hijra Sangho; and, (vi) Cynthia Bhuiyan, transgender entrepreneur and activist, and Founder, Bhuiyan Fashions. I have personal relationships with all of them except for Abdullah Titir. In fact, I have made all of them, except for Titir, dance as a DJ. I have DJ-ed a number of secret underground queer parties organized by Joya, Mitu and Cynthia, all of whom are prominent elders and activists in Hijra and transgender communities.

Most of the interview were conducted in Bangla, except for the ones with Titir and Javed which were bilingual in Bangla and English. I am a native speaker of both of the languages. I took multiple interviews of all of them except Titir, and returned to follow up

with them for latest updates until days before the submission of this thesis. All of the interviewees granted me their informed consent to actively participate in this research study as informants. However, there are no written consents. It was my decision to remove the barrier of a written consent form in our conversations, most of which were informed by our own relationships with each other as trusted peers. However, I took their formal consent orally at the beginning of the first interview with each of them. All of the interviewees consented to participate in the study, to allow recordings of the interviews, and to the disclosure of their identities in the study. It is important for me to note here that the interview of Cynthia Bhuiyan followed a different structure from the rest. Cynthia's interviews have mostly been auto-biographical and oral-history narratives, because her life and emergence as a particularly exemplarily gendered and religious subject has been integral to my analysis, in an attempt to tie together the theoretical implications of this study.

I have used these interviews as texts for my discourse analyses, but these are not my only texts. These interviews are also triangulated with the use of popular media representations, news reports, press and protests statements, feminist history narratives, archival extracts, ethnographic accounts and legal arbitrations as texts for analyses. I have taken extensively, in particular, from the ethnographic notes of Adnan Hossain, whose ethnographic research on Hijra subjectivities came together in his 2021 monograph, *Beyond Emasculation: Pleasure and Power in the Making of hijra in Bangladesh*. This was important for me to reinforce the information from my interviews with more detailed ethnographic accounts of Hijra subjectivities and practices, which I have been unable to access personally.

Last but not the least, I also had access to an unfinished draft of the Transgender Persons Rights & Protection Bill, 2023, dated 2-3 June 2023. I accessed this draft from a

trusted source, who must remain anonymous as they are an unofficial member of the representative committee that is currently in dialogue with the Ministry of Social Welfare and Department of Social Services for the formation of this bill. I trust this person, who is a dear friend and formidable activist, immensely. And I am eternally grateful to them for aiding me in my work with their trust.

Chapter 2

Gender & Religion Through a Lens of Development Feminism & Constitutional Secularism in Bangladesh

Please bear with me. Large parts of this introductory chapter – particularly discussions about the use of gender as a category of analysis in this thesis - were initially planned to be put in the Methodology chapters. And it might be so that the methodological implications of these discussions fit better in that arrangement. But I fear that these discussions set the basis for significant epistemological positions for this academic work which would otherwise get lost in the pages of methodological jargon.

This thesis is, by no means, a work in the fields of historical or legal analysis. This is a collage of analyses of several discourses that concern themselves with the rights of the gendered body within the state apparatus of Bangladesh. By all means, it concerns itself with recent political events and contemporary issues. Yet, it should not lack in historicity. Before we can talk about where the gendered subject is now, it is important to have an understanding of how this subject arrived here, and what ‘gendered’ it. More importantly, how have we – academics of gender studies - arrived at this gendered subject, discursively?

2.1. Situating the Gendered Subject in Pre-Colonial Discourses and Colonial Codifications of Religion and Gender in Bangladesh, a Postcolonial Nation-State

A short historical recap that predates colonization offers a recourse for the questions I have proposed. I take Indrani Chatterjee’s²⁷ discussion of pre-colonial “embodiment practices” as a starting point for this. She discusses discourses and practices of intellectual,

²⁷ Indrani Chatterjee, “When “Sexuality” Floated Free of Histories in South Asia,” *The Journal of Asian Studies* 71, no. 4 (November, 2012): 945-62.

philosophical and spiritual cultures in the pre-colonial South Asian subcontinent where the body is a site for the study of consciousness and transcendence that could be embodied in corporeality but also in discourses of art, language and spirituality. These epistemological cultures and traditions, which are beyond the scope of this paper, occurred in historical teacher-student lineages of transmission and intellectual development, which were given authority with ritualistic practices of initiation into the lineage and hierarchical devotion.

An example of such spiritual practice and discourse would be that of the myriad Sufi devotional lineages of practice and intellectual discourse that could be found in several communities that existed in various modalities, ranging from the ascetic to the nomadic, from the courtly to the more rural, from the more textual to the more oral and musical. It is useful to refer to Shahab Ahmed's expansive discussions of the impact that the legacy of post-classical Islamic intellectual developments from the sixteenth-to-twentieth century had upon the "temporal-geographical" site that he refers to as the "Balkans-to-Bengal" region.²⁸ The "Balkans-to-Bengal" complex could be articulated by Sufi philosophical practices and discourses, that were produced in economies of knowledge production with imperial patronages that ruled over this large terrain and traveled across the region via fraternities of disciplinary lineages, and "became home to the largest geographical concentration of Muslims on the planet."²⁹ Sufi Islamic practice is largely understood as an experiential and esoteric practice of religious devotion, where spirituality is not isolated from the physical experience of it, and is iterated metaphorically as is literally, through Ibn-Arabi's dominant theme of "*wahdat-al-wujud*" or "the unity of existence", in which God or Godliness could be studied, understood, experienced, and the revelatory truth could be "known". In this paradigm and across this region, Sufi sites such as shrines, *majlis*, *dargah* and *darbar* have been important

²⁸ Ahmed, *What is Islam*, 5-109.

²⁹ Ibid., 82-84.

social and spatial locations for this practice and worship, and exist as the sites for the economy of *barakah*, that is, divine blessing.³⁰ While there are critiques of this intellectual legacy which argue that his literature deviates from textual, real intellectual development of Islam, toward esoterism that is hard to grapple with when confronted with talks of wine-drinking and homo-erotic poetry, Ahmed argues that this complex is a historic demonstration of the “self-construction and self-articulation of Muslims.”³¹

Here, I find the importance of teacher-student lineages and citationary practices around which such cultures and traditions of discursive and embodiment practices took place. Because the guarded lineage of knowledge transmission is of utmost importance here for the capacity to understand these metaphors and participate in this discursive tradition. It is in the context of these sacralized fraternities, courtships and teacher-student relationships (which even guided the governance of some rulers over their territories and subjects),³² that discourses and practices of the body, desire, conjugality, kinship, love, embodiment and performativity were carried out for several communities and peoples in the subcontinent. It is, however, important to note that Sufi Islam is misunderstood and reduced as a spiritual practice in metaphors, as opposed to legal, juridical and scriptural prescription of religious practice in Sunni Islam. In fact, we can see that in the period of post-classical Islamic development, Sufism has contributed to Sunni intellectual developments, just as Sunni interpretations have also been adapted in Sufi intellectual developments.³³

³⁰ Ibid., 78

³¹ Ibid.

³² Chatterjee, “When “sexuality”.”

³³ Helen Pfeifer, “A New Hadith Culture? Arab Scholars and Ottoman Sunnitization in the Sixteenth Century,” in *Historicizing Sunni Islam in the Ottoman Empire*, ed. Tijana Krstić and Derin Terzioğlu, 31-61 (Boston: Brill, 2020), and Guy Burak, “Reliable books: Islamic law, canonization, and manuscripts in the Ottoman Empire (sixteenth to eighteenth centuries), in *Canonical Texts and Scholarly Practices: A Global Comparative Approach*, ed. Anthony Grafton and Glenn Most (Cambridge University Press, 2016), 14-33.

I could have started this chapter with simple recaps of colonial legislation that criminalized queerness and codified religious law into state governance. But this context is very important for us to acknowledge what Chatterjee calls “discursive colonization.” The civilizing mission of the British colonizers took Catholicism as its hallmark of morality, and the relentless task of categorization and surveillance of its colonized subjects was integral to its project of colonial and corporate governance that could restrain, exploit and grab from the colonized. It is in this process of “naming” that Chatterjee – along Foucault’s discussion³⁴ of the discursive production of sexuality - finds the colonial imposition of “sexuality”.³⁵ I discuss this colonial imposition with The Criminal Tribes Act of 1871.

The act, which was extended to Bengal in 1876, would criminalize several communities and peoples along caste-and-profession-based lineages, so that they could be categorized into “tribes” that were justified by colonial ideology as inherently criminal by birth and inheritance.³⁶ The *Khawaja Sira*, who Chatterjee describes as “Sufi Muslim stewards of treasuries” and to whom several Hijra communities and elders in South Asia make historical connections, were criminalized as “eunuchs” under the Act, for acts such as sodomy, cross-dressing, performance, kidnapping.³⁷ Of particular significance here is the definition of “eunuch” as impotent males.³⁸ The Act dissociated the community from the social functions of their corporeal and embodiment practices, and imposed “sexuality” over them. It is with the colonial introduction of state governance, legal codifications,

³⁴ Michel Foucault, *History of Sexuality* (New York: Pantheon Books, 1978).

³⁵ Chatterjee, “When “sexuality”.”

³⁶ Anjan Saha, “Criminal Tribes & The Raj: An Ideology of Control in Colonial India,” *SOCIAL TRENDS Journal of the Department of Sociology of North Bengal University* 7, no. 31 (March, 2020).

³⁷ XXVII of 1871, PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL, (Received the assent of the Governor General on the 12th October 1871), An Act for the Registration of Criminal Tribes and Eunuchs.

³⁸ Ibid.

parliamentary inductions, categorization and constitutionalism that Chatterjee finds an erosion of “ritual fullness” in the formation of colonized subjects.³⁹

This historicity allows me to unpack the burden of using “gender” as an analytical category in South Asia, especially as I grapple with the postcoloniality of the state apparatus within which gendered subjects are governed. Joan Scott has famously theorized gender as a relational category of analysis, via which differentials of power can be analyzed for “sexed bodies”.⁴⁰ She has discussed how gender has emerged in Western academic discourse of feminism as “a social category imposed on a sexed body.” Chatterjee notes that this discourse emerged within and from liberal feminism that sought sexual liberation from the shackles of Christian morality, and presumed that this said sexuality was also the site for this liberation. This sexual liberation of the sexed body relies on the hegemonic framework of sexual dimorphism and heterosexual binary to create the gendered subject, but this is simply neither historically true nor applicable for all, and definitely not for significant parts of South Asia.⁴¹ For example, there are no separate words for ‘gender’ and ‘sex’ in Bangla. There is only one word, *lingo*, for what could mean sex or gender or even genitalia. So, how does one theorize a social category that is discernible from the bodily or biological, in this context? And what are the implications of gendering Bangladeshi subjects, who also exist in heterogenous spiritual cosmologies, using this discursive vocabulary?

Chatterjee notes that the Hijra remain the most notable vestiges of such teacher-student lineages of embodiment in present times, and they do so in an “ethnographic

³⁹ Chatterjee, “When “sexuality”.”

⁴⁰ Joan Scott, “Gender: A Useful Category of Historical Analyses,” *The American Historical Review* 91, no. 5 (December, 1986).

⁴¹ Ibid.

present.”⁴² But in the following chapters of this thesis, we will see how the discursive presentation of Hijra as “third gender” has changed and transferred from pre-colonial discourses of spiritual embodiment and philosophies of corporeality⁴³ to contemporary political subjecthood in Bangladesh. And in the case of the latter, we see how postcoloniality complicates this subjecthood too.

I will demonstrate this complication by focusing on inheritance laws, which are carried over in the present from colonial-era legislation that demarcated personal laws concerning marriage, family and inheritance to the domain of the religious. In all its attempts to categorize and legislate its colonized subjects, the British colonial governance relegated the institution of family – a primary site for the production of gender in accordance to Christian morality – to separate religious laws of each religious identity. For Muslims, these laws were governed by the Muslim Personal Law (Shariat) Application Act of 1937, which dictated that all matters concerning inheritance (among others in the institution of what is prescribed personal) would be governed according to the Sharia. However, Muslims for Progressive Values defines Sharia as a “moral religious system”, which is not synonymous with a legal system.⁴⁴ Legal jurisprudence would, instead, vary according to schools of thought (*madhab*), where differences in judgements exist along lineages of intellectual debate and development.⁴⁵ Particular traditions, rules, laws and customs that govern inheritance would, and still does, differ from community to community, based on the school of thought that is dominant for the jurisdiction and religious expertise that is available to the community.

⁴² Chatterjee, “When “sexuality”.”

⁴³ Ibid.

⁴⁴ Abdullahi Ahmed An-Nai'm, adapted by Tynan Power, Muslims for Progressive Values, “SHARI'A & ISLAMIC FAMILY LAW PT 3,” Facebook, April 4, 2023, <https://www.facebook.com/photo/?fbid=597274215760191&set=pcb.597274349093511>

⁴⁵ Muhammad Ekramul Haque, *Islamic Law of Inheritance Rules and Calculations* (Dhaka: London College of Legal Studies (South), 2016), 21-22.

However, there is a basic dominant consensus that inheritance, according to Islamic laws, is primarily carried out so that a female heir of a Muslim parent will inherit half of what the male heir inherits. This is further justified on the grounds that Muslim women are entitled to certain economic rights in their marriages from their husbands, such as *mahr* (bride price) and the right to economic maintenance, whereas men are charged with the upkeep and sustenance of the family.⁴⁶

This institutionalization of religion as an identity category of governable subjects during the colonial rule has stuck to the political present of these colonized regions, where independence from the British Raj took place with the formation of borders that separated religious polities – namely, Hindus and Muslims. The partition of the subcontinent gave birth to India and Pakistan in 1947 along the lines of Hindu and Muslim nationalisms for each, respectively. Pakistan adapted the Muslim Personal Law (Shariat) Application Act of 1937 into the Muslim Family Laws Ordinance in 1961. And when Bangladesh gained its independence from Pakistan in 1971, it did so as a nation-state born on the grounds of Bangali nationalism which attempted to supersede Muslim nationalism. However, Bangladesh retained the Muslim Family Laws Ordinance through the Laws Continuance Enforcement Order, 1971. What is important here to note is that Muslim nationalism, in the form of the Deobandi and Khilafat Movements, had emerged in the early-twentieth century as a response to what it believed was the corrosion of Islamic values by colonial rule, and lead an anti-colonial, revivalist tradition towards juridico-legal and scriptural practice of Islam along the Hanafi school of thought. While there is no regulatory body to reinforce this, Islamic knowledge and practice is codified into the legal system of the state apparatus according to the Hanafi school, and the Deobandi tradition remains the most popular via the network of

⁴⁶ Ibid.

Qawmi madrasa⁴⁷ all the across the world. In fact, the predecessor of the far-right Islamic advocacy group, Hefazot-e-Islam, is Shah Ahmed Shafi of the Hathazari Madrasa in rural Chattogram, in a continuity of the Deobandi movement. Fun fact: my family comes from and is still based in Hathazari.

It is in the context of this pre-colonial, colonial, and postcolonial histories of legal codifications of governance that I want to very cautiously analyze discourses that gender the Bangladeshi subject – whether they be a cisgender woman, transgender woman, Hijra, intersex, or third gender. It is pertinent to clarify that the subject of this thesis is not any particular gender, but instead the formation of the subject itself through discourses of religious, gendered and political subjectivities that are haunted by the postcoloniality of governance and governmentality. And with this clarification, I now proceed to sketch historical trajectories of secularism and feminism in Bangladesh, which currently implicate the contemporary discursive formations of these subjects within the state apparatus.

2.2. Constitutional Secularism in Bangladesh

Much has been written about the history of secularism in Bangladesh's constitution, and most of it seems regurgitated along the same lines and events when surveying the literature available on the matter. After Bangladesh's independence in 1971, the constitution that would guide this new nation declared secularism as one of its guiding values, and it was seen through with significant steps such as the banning of all Islamist/Islamic political parties.⁴⁸ Kamal Hossain, an important political leader of the Mujib administration and

⁴⁷ Qawmi madrasah are privately-funded schools for Islamic education, which do not fall under the Bangladesh Madrasa system.

⁴⁸ Abdul Wohab, "Secularism" or "no-secularism"? A complex case of Bangladesh, *Cogent Social Sciences*, 7, no. 1 (2021).

member of the committee which formulated the constitution explained this constitutional secularism as an ideology of religious neutrality (*dhormo niropokkhota*) that would eliminate all forms communalism and religious favoritism in state politics.⁴⁹ This turn towards the secular was especially significant for the kind of ethno-linguistic national identity that the Mujib administration was trying to build for the new nation-state which had fought its way out of a political arrangement built around religious identity. The Bangali identity remained the center of this new national identity, much at the cost of the erasure of indigenous, local, non-Bangali and even Urdu-speaking identities, so as to challenge especially the homegrown inclination towards the Islamic identity of Pakistan.

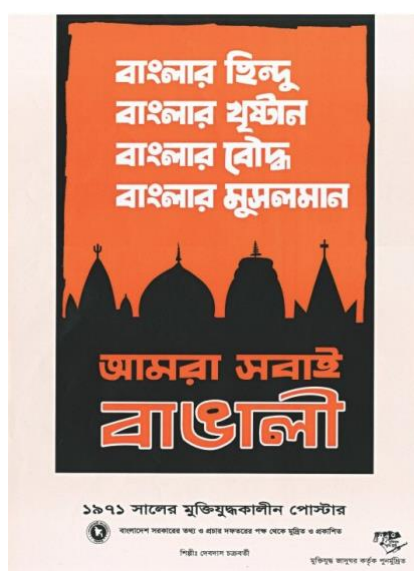


Figure 1. Poster from the 1971 Liberation War, created by Debdash Chakroborty.

The poster reads, "Bangla's Hindu, Bangla's Christian, Bangla's Buddhist, Bangla's Muslim, We are all Bangali."
Reprinted and published by Liberation War Museum.

Mujib's government soon became increasingly autocratic and was eventually toppled by military regimes that lasted from 1975 - 1990. The military regimes of General Ziaur

⁴⁹ Samia Huq, "Tolerance in Bangladesh: Discourses of State and Society," in *Tolerance, Secularization and Democratic Politics in South Asia*, ed. H. Iqtidar & T. Sarkar (Cambridge: Cambridge University Press, 2018), 134-155.

Rahman and General Hussain Muhammad Ershad are widely held responsible for bringing Islam back into politics, and especially into the constitution. Some notable examples are: removal of secularism from the constitution as well as the insertion of the invocation Bismillahir Rahmanir Rahim in the constitution; amendment of Article 38 to allow religious parties to participate in elections; amendment of Article 6 to declare citizens of Bangladesh as Bangladeshis; declaration of Islam as the state religion; and more.⁵⁰ These regimes have been studied by scholars such as Sheikh and Ahmed as autocratic regimes that used Islamization (with increased endowments to religious institutions and economic alliances with Islamic West Asian countries) as legitimizing strategies via which the national identity turned away from the religious-neutral Bangali and towards the formation of a Bangladeshi identity that was more sympathetic to an Islamic polity.

Between 1991 and 2008, democratic governance oscillated between the Bangladesh Nationalist Party (BNP) and Bangladesh Awami League (BAL, led by Sheikh Hasina, daughter of Mujibur Rahman, since 1981), and both parties have histories of colluding with Islamist parties and mobilizing religious sentiments in public discourses.⁵¹ And although secularism was reinserted in the constitution in 2010 by BAL, Islam still remains the state religion. At the turn of the millennium, Islamic political participation, militancy and pressures upon issues pertaining the preservation of Islamic sentiment and religiosity was not absent by any means.⁵²

⁵⁰ Mubashar Hasan, "The Geopolitics of Political Islam in Bangladesh," *Harvard Asia Quarterly* 14 no. 1 & 2 (2012): 60-69.

⁵¹ Ibid.

⁵² Sreeradha Datta, "Islamic Militancy in Bangladesh: The Threat from Within," *Journal of South Asian Studies* 30, no. 1 (April 2007): 145-170.

The corpus of literature on Bangladesh's history of secularism predominantly holds the military regimes of Zia and Ershad responsible for opening the flood-gates of religion back into the politics of Bangladesh, where a distinction is often made between the more liberal secular politics of BAL and the rest. And yet, Mujib's brand of secularism cannot be simply flaunted as an ideology that carved a secular space devoid of religion. Mujib's regime is often touted to be the one when religious readings from the four major religions were transmitted on national television to symbolize religious diversity and harmony.⁵³ But Huq discusses the abrupt shift in collective national and cultural identity that Mujib's secular administration demanded from its citizens produced reactions that found such developments "inorganic", something that perhaps the reintroduction of Islamic political parties during the later regimes would have had to contend and negotiate with. It is also not too difficult to list the contributions Mujib himself made to the patronage of Islamic functions, institutions and performances in Bangladesh during his time (ranging from endowments for madrasah education to public space allocations for mass religious gathering),⁵⁴ and the public speeches he often delivered to defend the Islamic faith and loyalty of his administration and himself. In spite of the Mujib administration's ban on religious political parties in electoral politics, Agrama's discussion⁵⁵ of the public order allows us to complicate the role of the state's regulatory sovereign powers in demarcating the ever-shifting boundaries of the "religious" and the "political" within "social" landscapes.⁵⁶ This is particularly highlighted by the fact the Muslim Family Laws Ordinance, 1961 remained unchanged after the formation of Bangladesh for its Muslim citizens, where all matters concerning inheritance, marriage,

⁵³ Huq, "Tolerance in."

⁵⁴ Saeyd Rashed Chowdury, Foundation of Religious Liberalism In *Bangladesh: Contribution of Bangabandhu Sheikh Mujibur Rahman And Awami League* 6, (2019), 104-132.

⁵⁵ Hussein Ali Agrama, "Secularism, Sovereignty, Indeterminacy: Is Egypt a Secular or a Religious State?," *Comparative Studies in Society and History* 52, no. 3 (2010), 495-523.

⁵⁶ Asad, "Secularism," 181-205.

divorce, custody and guardianship were legally codified in accordance with The Muslim Personal Law (Shariat) Application Act, 1937, which particularly states that Muslim women's personal rights in these matters must be decided according to "Muslim Personal Law (Shariat)".⁵⁷ While Mujib's regime attempted to create a new norm for the public order on secular grounds where diverse religions were apparently multiplied in public visibility rather than eliminated, they relied very much on the privatization of certain personal orders where religious laws don legal and secular formulations to remain very well within the regulations of the state.

2.3. Development Feminism and Neoliberalism in Bangladesh

Tony Lynch has shown in his essay, "Understanding Neoliberal Agency: The British East India Company," how Bengal fell prey to the "neoliberal agency" of the colonizing mission's increasing privatization of Bengal as early as the eighteenth century.⁵⁸ However, for the purpose of situating Bangladesh's feminist discourses in its economic history and trajectories, I would like to begin this section by noting how Bangladesh's independence in 1971 took place during a time of increasing neoliberalization throughout the global South. Anu Muhammad recollects how the growth of global capitalism, since the 1970s, went hand-in-hand with increasing privatization and facilitated "neoliberal restructuring" all over the world.⁵⁹ Born fresh out of a nine-months long war of independence, Bangladesh was in need of economic support for its rehabilitation and strengthening, and resorted to schemes of global economic bank loans, aids and structural readjustment programs like most other countries in

⁵⁷ "The Muslim Personal Law (Shariat) Act, 1937," Laws of Bangladesh, Government of the People's Republic of Bangladesh, Legislative and Parliamentary Affairs Division, accessed May 6, 2021, <http://bdlaws.minlaw.gov.bd/act-details-173.html>

⁵⁸ Tony Lynch, "Understanding Neoliberal Agency: The British East India Company," in *Neoliberal Development in Bangladesh*, ed. Mohammad Tanzimuddin Khan & Mohammad Sajjadur Rahman, 11-28 (Dhaka: University Press Limited, 2020).

⁵⁹ Anu Muhammad, "Bangladesh-A Model of Neoliberalism The Case of Microfinance and NGOs," *Monthly Review*, March 1, 2015.

the global South. Muhammad, in his sketch of Bangladesh's historical route to neoliberal reforms, has shown how the country has since moved towards increasing privatization, free market trading and decreasing regulation.⁶⁰ Such an economic trajectory of neoliberalism, Muhammad argues, relies on cutting loose of public liabilities while the state keeps spending on its own fortification so that, its subjects have to rely on themselves and their own entrepreneurial agency for survival, sustenance and 'development'.

It is in this climate of neoliberal development – towards a market free from the state's management and fueled by the agency of the subject – that the development model of NGOs established itself as a popular means for the acquisition of funding and policy support to combat poverty in Bangladesh. NGOs became an important medium for policy reforms and distribution of services among its beneficiaries for access to healthcare and education, elevation from poverty and social inequality. NGOs became almost indispensable for the mobility of foreign funding and are bound to the conditions of its donors to meet targets. Today, Bangladesh is home to some of the most globally renowned NGOs in the world, such as BRAC and Grameen Bank.

These programs targeted women as one of their primary participants, soon making it a requirement to integrate 'gender' as a category of analysis in development efforts.⁶¹ United Nations announced the "Decade for Women" in 1975 and set a precedent for increased women's participation in development efforts. While Bangladesh also boasts an admirable history of women's rights organizations and women in left politics who made efforts for the rights, rehabilitation and representation of women in the newly formed state, the "women-in-

⁶⁰ Ibid.

⁶¹ Lamia Karim, NGOs, Neoliberalism, and Women in Bangladesh, in *S&F Online, Gender, Justice, and Neoliberal Transformations* 11, no. 1&2 (Fall 2012/Spring 2013), <https://sfonline.barnard.edu/ngos-neoliberalism-and-women-in-bangladesh/>

development” agenda soon dominated discourses for the “gender issue” through the early years of the country’s history.⁶² An important example of Bangladesh’s participation in this agenda, that which is especially pertinent to this thesis, is its ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984.

This history of development feminism has only grown its reaches into the present, and placed Bangladesh in discourses of global and transnational feminism where the “woman” subject has been a matter of debates and discussions. Much has been written by postcolonial feminist scholarship about the harms and erasures caused by the homogenization of the woman subject in the rhetoric of transnational and global feminism, especially as women of these territories become additions to the development agenda as after-thoughts. Women became seekers of services and entrepreneurs that relied on, for example, micro-credit loans, but these programs failed to address the need for structural and integral changes in a society where the location of the woman subject is compounded by the intersections of gender, class, caste, social position, rurality, and religion, among others.⁶³

One criticism against the work and operations of NGO-ised development feminism, especially in rural contexts, remains the lack of addressal and acknowledgement of the faith and religiosity of women in their social, everyday realities.⁶⁴ But this criticism is complicated by the presence and popularity of religion and faith-based groups who also target women as their beneficiaries within NGO models, giving rise to a phenomenon such as the “Islamic

⁶² Ibid. and Maitrayee Mukhopadhyay, “Introduction,” in *Feminist Subversion and Complicity: Governmentalities and Gender Knowledge in South Asia*, ed. Maitrayee Mukhopadhyay (New Delhi: Zubaan Books, 2016), 209-34.

⁶³ Ibid. and Muhammad, “Bangladesh.”

⁶⁴ Mohammad Salehin, “Religion, Gender Relations and Islamic NGOs in Rural Bangladesh,” (paper presented at Australian Sociological Association (TASA) Annual Conference 2011, University of Newcastle, Australia, December 2011).

NGO” where women’s well-being is strongly attached to their duties and spiritual fulfillment as Muslims too.⁶⁵ Women’s roles and participation in secular NGOs and faith-based groups have often been discussed as being at odds with each other, by the subjects themselves and also by academics.⁶⁶ For example, Azim has juxtaposed the *NGO apa* with the *taleem apa* within the purview of the popularity of religious sentiment in the state apparatus of Muslim-majority Bangladesh to discuss the future of secularism in Bangladesh.⁶⁷

Yet, this binary reeks of a false illusion as NGOs, with the help and agency of their women workers, have sought participation from women who are predominantly Muslim, with NGO operations that are able to navigate the social and domestic domains of their participants in rural as well as urban settings⁶⁸. Moreover, in recent years, prominent NGO discourses for the rights of sexual-and-gender-diverse people have attempted to bring religious authorities and knowledge production within the scope of their work, as we see in the work of the most prominent such organization, Bandhu Social Welfare Society.⁶⁹ Simultaneously, religious discourses have also begun to concern themselves with the rights and well-being of people identified as *Hijra* and ‘third gender’, with the establishment of institutions dedicated to their religious education such as the Dawatul Quran Third Gender Madrasa. In fact, the concept of the *NGO Hijra* emerged from the late 1990’s when NGOs became the first viable sites of formal employments for Hijra via the community-focused public health intervention around HIV/AIDS.⁷⁰ Although Hijra *gurus* have been and remain wary of this economy and do fear

⁶⁵ Ibid.

⁶⁶ Ibid. and Ferdousi Azim, “Secularism and the women’s movement in Bangladesh,” in *Feminist Subversion and Complicity: Governmentalities and Gender Knowledge in South Asia*, ed. Maitrayee Mukhopadhyay (New Delhi: Zubaan Books, 2016), 209-34.

⁶⁷ Azim, “Secularism.”

⁶⁹ Khondaker M. Rahman and Taslima Rahman, “Islamic NGOs in Bangladesh: Focus on Their Management,” *Nanzan University Bulletin Academia Social Science*, 16 (January, 2019).

⁷⁰ Adnan Hossain, “The paradox of recognition: hijra, third gender and sexual rights in Bangladesh,” *CULTURE, HEALTH & SEXUALITY* 19, no. 12 (August 2016): 1418-31.

erosions of their cultures, NGO-ization also provided the first avenues for the Hijra to emerge as self-representative rights-bearing citizens.⁷¹ As we move along this thesis, we will see how these discourses overlap with each other to form and defend their gendered subjects so as to negotiate for their rights within the state apparatus

2.4. Caught Between a Binary of Secularism vs. Religion, and Fascist legislation – Digital Security Act 2018

In 2008, BAL, with the leadership of Sheikh Hasina, came to power via a 14-party alliance with a mandate that took the political party back to the values it had set in the original constitution of 1972. Evoking its legacy of the liberation war, it set to redress the injustices of the war by finally proceeding with the trial of war criminals, all of whom were notable religious figures and leaders, under the International Crimes Tribunal (ICT). And while the regime took notable steps to meet its promises by, for example, reinserting secularism into the constitution in 2010, banning Bangladesh Jamaat-E-Islami⁷² (BJI) from participating in the 2013 elections, and proceeding with the trials of the war criminals, their glorious claim to secularism took a sharp hit. The Shahbagh Movement of 2013, named after the popular intersection in the capital city of Dhaka, enabled by the government at first and claimed in popular discourse and dominant narrative by secularist activists, mobilized for the death penalty for war criminals and its demands soon grew to demand the abolishment of BJI and its affiliated institutions. Simultaneously, a religious counter-movement grew in opposition⁷³ and the internet became a battleground for the two groups where the Shahbagh movement and secularists were popularly defamed and denounced as “atheist bloggers”⁷⁴ and from which

⁷¹ Ibid.

⁷² Bangladesh Jamaat-E-Islami is the largest Islamist political party in Bangladesh.

⁷³ Fahmida Zaman, “Agencies of Social Movements: Experiences of Bangladesh’s Shahbag Movement and Hefazat-e-Islam,” *Journal of Asian and African Studies* 53, no. 3 (2018): 339-49.

⁷⁴ Ali Riaz, *Lived Islam & Islamism in Bangladesh* (Dhaka: Prothoma Prokashan, 2017), 107-139.

BAL eventually withdrew its support.⁷⁵ In this backdrop, Hefazot-e-Islam's (HI) role in the advocacy for Islamist politics in Bangladesh grew, culminating in a large procession, full of thousands of activists from their grassroots networks of madrasahs and affiliated organizations, into the capital on 5 May 2013.⁷⁶ Furthermore, the government's position in this scenario is compounded by its violent attack on the HI- led procession. And although Islamic militancy as well as a/political mobilizations were present in the public sphere before too, this movement marks a point in time that heightened polarizations between political Islam and secular nationhood. In 2013, the HI introduced a 13-point list of demands which ranged from the introduction of blasphemy laws to the reinstatement of the phrase "Absolute trust and faith in the Almighty Allah" in the constitution.

Since then, major militant attacks have taken place that have been claimed by local chapters of transnational Islamist groups , and several of these attacks have targeted authors, bloggers and publishers as well as human rights activists particularly focusing on LGBTH+ rights.⁷⁷ However, the government too -perhaps shaken by the extent to which networks such as HI branched out and extended throughout rural grassroots in order to exercise influence over governance - has been in sensitive and mutual negotiations with Islamic groups and sensibilities. In 2016, the High Court rejected a 28-year old petition and retained Islam as the state religion of Bangladesh in the constitution.⁷⁸ In 2017, the government made changes to primary and secondary-level textbooks at the behest of Islamic advocacy groups to eliminate texts by popular secular, liberal and atheist authors who were deemed un-Islamic. In the same year, the sculpture of a localized variation of the Greek goddess Themis in a saree was

⁷⁵ Wohab, ""Secularism".

⁷⁶ Ibid.

⁷⁷ LGBTH+ is an umbrella abbreviation for lesbians, gays, bisexuals, transgender, Hijra and other gender & sexually diverse people.

⁷⁸ David Bergman, "Bangladesh court upholds Islam as religion of the state," *Al Jazeera*, March 28, 2016, <https://www.aljazeera.com/news/2016/3/28/bangladesh-court-upholds-islam-as-religion-of-the-state>

removed from the grounds of the Supreme Court in response to pressures from Islamic groups.⁷⁹ In fact, in response to the murders and threat to LGBTH+ peoples, the police have responded poorly and suggested that they be “less provocative”.⁸⁰ Since 2013, Bangladesh has consistently rejected all recommendation in its Universal Period Reviews as a United Nations member state to decriminalize homosexuality and protect LGBTH+ peoples,⁸¹ citing that it goes “against our values”.

Some wonder whether such negotiations signal a demise of secularism due to political competition that keeps BAL on guard so that public opinion does not swerve away from them in favor of oppositional Islamist alliances. Yet, statistics have often showed that most Bangladeshis would neither opt for an Islamist government, nor have their votes ever remarkably been cast for Islamic politically parties to any significance. Instead, Jahan and Shahan have shown from their field work that the decisions of voters were often motivated by secular concerns and demands such as those pertaining to the economy rather than religion.⁸² However, all of these discussions take a step back when we trace how the current regime has become increasingly authoritarian in the past 13 years, with the aid of elections with questionable legitimacy and draconian laws such as the Digital Security Act 2018 (DSA)

The DSA can be used by civilians to: report any kind of publication in the digital sphere as offence; allows police to search premises and make arrests without warrants; and holds most of the offences and non-bailable.⁸³ The DSA has become a tool for the regime to

⁷⁹ Wohab, ““Secularism”.”

⁸⁰ “Bangladesh: Authorities fail to curb brutal killing spree as LGBTI editor hacked to death,” Amnesty International, April 25, 2016, <https://www.amnesty.org/en/latest/news/2016/04/bangladesh-authorities-fail-to-curb-brutal-killing-sprees-as-lgbti-editor-hacked-to-death/>

⁸¹ “Bangladesh”, Types of criminalization Criminalises sex between men, Human Dignity Trust, accessed on January 2, 2020, <https://www.humandignitytrust.org/country-profile/bangladesh/>

⁸² Jahan and Shahan.

⁸³ Staff Correspondent, “Abuse of DSA worries editors,” *The Daily Star*, March 7, 2021, <https://www.thedailystar.net/frontpage/news/abuse-dsa-worries-editors-2056045>

not only quell dissent and critique against the government, its history and legacy, but also has become a blasphemy law that claims to protect people from religious offence. However, Centre for Governance (CGS) has showed that most of the cases “are not filed by aggrieved persons but by others, often by ruling party activists on behalf of their leaders.”⁸⁴ CGS also found that political leaders and journalists were the most affected by the DSA, but accused persons also range from juvenile students who defame Sheikh Hasina to non-Muslims who have remarked derogatorily about Islam on social media.

While accusations under the DSA have enraged activists and journalists on many occasions, the death of Mushtaq Ahmed remains harrowing: he was detained for nine months and denied bail six times until he eventually died in prison, because he was charged for a series of Facebook posts where he criticized the government for its response to the 2019 COVID pandemic. The DSA has now come to enable what Agamben described as “a state of exception” for this regime, that which allows for the citizen to be stripped of their rights and reduced to bare life which may be killed without impunity.⁸⁵ However, this law does not only protect the regime’s stability and sovereign power to kill and regulate, but also extends and diffuses it as a productive and powerful regulatory tool for civilians and their loyalties to make inclinations in accordance with the regime’s apparatus. For example, the DSA has allowed for dominant Sunni mobilizations with political backing to decide what is “good” or “correct” Islam, as indicated by the arrest of the Sufi singer Shariat Sarker, who was accused by an Islamic scholar for claiming that the Quran “did not prohibit the practice of music.”⁸⁶ I read these contestations with Asad’s frameworks of secularism as a tool for modernity, and

⁸⁴ Zyma Islam, “DSA Cases Studied in last 20 months: Only two of 668 disposed of,” *The Daily Star*, October 1, 2021, <https://www.thedailystar.net/news/bangladesh/news/dsa-cases-last-18-months-only-two-out-668-disposed-2187891?fbclid=IwAR2ydLRDLkFQd9hdJEnjQDuMPiRrhUkn8jHwlJvOEGeWkh6Wfm5tzAVOcac>

⁸⁵ Giorgio Agamben, *Homo Sacer* (Stanford University Press, 1998); and, Agrama, “Secularism, Sovereignty.”

⁸⁶ “Bangladesh,” End Blasphemy Laws, accessed January 10, 2021, <https://end-blasphemy-laws.org/countries/asia-central-southern-and-south-eastern/bangladesh/>

find how the state's regulatory tools create the discursive field for a governmentality that relies on religion and secularism to exist in contention with each other. It must be understood that this reading is not specific to Bangladesh alone, as similar contestations have played out along the lines of religious/secular in several Muslim-majority postcolonial nation-states, such as Egypt, Turkey and India, in the twentieth century.

Chapter 3

Situating the Rights of Gendered People Within Discourses of a Post/Secular State

In 2012, Ayesha Siddiqua of Dinajpur applied for the position of marriage registrar, a government appointment for which no gender requirements were specified. Her application was, nevertheless, rejected on the account that she is a woman. She refused to accept the decision and challenged it with a writ petition with the High Court in 2014. The Ministry of Law decided that women were not eligible to work as marriage registrars, with the reasoning that their menstrual periods made them unfit to enter mosques and exempted them from religious duties. Furthermore, the decision also pointed to “practical conditions” in Bangladesh which made the job unfit for women. On February 26, 2020, the High Court delivered its full verdict and upheld the Ministry of Law’s decision. The court did not offer any scholarly or faith-based evidence on this matter.⁸⁷

This decision was met with disappointment and disagreement among civil and political organizations. The Jatiya Samajtantrik Dal (JASAD, or National Socialist Party of Bangladesh)⁸⁸ and Shamajik Protirodh Committee,⁸⁹ an alliance of women’s rights organizations, called the verdict unconstitutional. Sharmin Kabir, founder of the health start-up Wreetu which focuses on menstrual health and hygiene, said that the verdict was “disappointing” and “frustrating” because it perpetuated the taboo around women’s menstrual

⁸⁷ Zyma Islam, “The woman who wanted to be a marriage registrar: Ayesha Siddiqua says fight to go on,” *The Daily Star*, January 11, 2021 <https://www.thedailystar.net/online/news/the-woman-who-wanted-be-marriage-registrar-ayesha-siddiqua-says-fight-go-2026025>

⁸⁸ Tribune Desk, “‘Barring Muslim Women as marriage registrars unconstitutional’,” *Dhaka Tribune*, January 12, 2021, <https://archive.dhakatribune.com/bangladesh/politics/2021/01/12/barring-muslim-women-as-marriage-registrars-unconstitutional>

⁸⁹ Nawaz Farhin Antara, “Why can’t women be marriage registrars?,” *Dhaka Tribune*, January 12, 2021, <https://archive.dhakatribune.com/bangladesh/nation/2021/01/13/can-women-be-marriage-registrars>

health. Naripokkho, one of the oldest women's organizations of the country, "expressed surprise, shock and outrage over the court's sentence".⁹⁰ In fact, Naripokkho issued a press release on 11 January, 2021 demanding for the protection of women's constitutional rights, foregrounded by the expectations that such decisions should be taken by the government on the basis of the constitution and not religion or culture. Most importantly, the statement ended with a vocalization of their primary demand in this case: elimination of religion-specific family laws and the establishment of a uniform, civil law for marriage for its citizens, alluding to previous mobilizations for reform in family and marriage laws in the country's capital, largely led by women's rights organizations, intellectuals and activists in the 1980s, which ultimately did not succeed because of religious pressures.⁹¹ The statement said, "Naripokkho demands that, marriage registration laws on the basis of religion be eliminated and uniform marriage registration laws be introduced."⁹² Such a statement is significant for us to discuss what values lead the way for the dominant feminist discourse in Bangladesh.

Naripokkho was founded in 1984 as a women's organization, distinguishing itself from NGOs and political party affiliation.⁹³ Dedicated to women's rights and welfare, Naripokkho sought to build a larger solidarity of womanhood and women's experiences that could bring women from different social, ethnic and economic positions (ranging from sex-workers to indigenous women) together in a critique of what they perceived as a core issue-woman's position in society.⁹⁴ While Naripokkho hardly represents the entirety of feminist spirit in Bangladesh, I find it rather unattainable to mark an organization that can even do that.

⁹⁰ Online News Editor, "Bangladesh woman challenges Islamic tradition, seeks to register marriages," *La Prensa Latina Media*, January 12, 2021, <https://www.laprensa-latina.com/bangladesh-woman-challenges-islamic-tradition-seeks-to-register-marriages/>

⁹¹ Ayesha Banu, "GLOBAL-LOCAL INTERACTIONS: FIRST THREE DECADES OF THE WOMEN'S MOVEMENT IN BANGLADESH," *Journal of the Asiatic Society of Bangladesh* 60, no.2 (2015): 203-30.

⁹² Naripokkho, "নারী নিকাহ রেজিস্টার হতে পারবে না"- হাইকোর্টের রায় আমরা বিস্মিত, হতাশ ও ক্ষুব্ধ", Facebook photo post, January 11, 2021, <https://www.facebook.com/Naripokkho/photos/3405917122867305>

⁹³ Azim, "Secularism."

⁹⁴ Ibid.

However, Naripokkho's role and work in Bangladesh is taken into consideration here as a starting point for the discussion of the discursive field within which, since the very independence and formation of Bangladesh as a nation-state, feminist spirit is implicated in the issue of "women's development". I have already discussed how women's welfare has been primarily addressed as an issue of development in Bangladesh through and with the help of NGOs and top-down initiatives guided by foreign donor funding, sponsorship and reforms towards neoliberalism so as to create the "woman" as a self-sustaining, entrepreneurial, rights-bearing and service-seeking neoliberal subject of the state. Naripokkho's feminist work lets us discuss how this "woman" - as subject - is further implicated by the tenet of constitutional secularism.

For organizations such as Naripokkho and civil society movements based in Bangladesh's capital, Dhaka, secularism is a value embedded in the constitution that resulted from the formation of Bangladesh around an ethno-linguistic identity – the Bangali – rather than the Muslim, mobilized during the struggle for independence from Pakistan. The current ruling regime of BAL, which has been in power since 2008 and is led by Sheikh Hasina, is a direct legacy of those founding values, often compared to its opposition parties for being more secular. And yet, as debates have recently ensued locally, nationally and internationally about the regime's increasing turn towards authoritarianism,⁹⁵ some wonder whether this regime has politically and socially stepped into negotiations with Islam in ways that will soon see the end of secularism in Bangladesh.⁹⁶ And within this state apparatus, where legal and policy reforms can be sought, Naripokkho's rhetoric is an example of a discourse for women's right that takes the secular state for granted.

⁹⁵ Faisal Mahmud, "Is Bangladesh moving towards a one-party state?", *Al Jazeera*, April 4, 2018, <https://www.aljazeera.com/features/2018/4/4/is-bangladesh-moving-towards-one-party-state>

⁹⁶ Wohab, ""Secularism".

While gender, sex and bodily rights remain, undoubtedly, notable grounds upon which the lines of secular vs. religious are often debated in many countries around the world, I am interested in a historically grounded discussion of the semantic and semiotic significances that the word ‘secular’ holds in the context of Bangladesh. Following Asad’s discussions⁹⁷ of secularism as a function of modernity that reproduces the religious within the purview of the nation-state - almost as if two sides of the same coin - I have previously discussed that the ‘secular’ was never in its own intact state in Bangladesh to mean separation of religion from the state’s affairs. In agreement with Asad’s discussions about the “*necessary conditions*” of the nation-state,⁹⁸ I have discussed how, historically and politically, religion itself has functioned, and still does, in different conditions and with different meanings to charter tentative lines between the secular and religious in Bangladesh, as opposed to the idea that religion has simply occupied (or can, in the future) different social positions in Bangladesh’s political history. It is in the light of this complication of secularism in Bangladesh, then, that I want to situate a discourse analysis of the NGO-led, transnational, secular and human-rights based approaches to feminist and queer activism that are currently the dominant feminist discourse in Bangladesh. In doing so, I would like to complicate the tenet of constitutional secularism that is sometimes taken for granted in contemporary urban and academic Bangladeshi feminist and queer politics, which operates on the political assertion of human rights and, therefore, demands a complete separation of governance and religion for the gendered subject.

⁹⁷ Asad, “Secularism.”

⁹⁸ Ibid.

3.1: Naripokkho and Feminist Demands for a Secular Democratic State

Naripokkho's emergence as a secular woman's organization is perhaps best illustrated in its protest of the 8th amendment to the constitution during Hussain Muhammad Ershad's military dictatorship.⁹⁹ Naripokkho did not organize itself as an NGO but rather as a civil society group that had vested interests in the welfare of women. However, when the regime declared the 8th amendment to the constitution in 1988 so as to establish Islam as the state religion of Bangladesh, Naripokkho inserted itself in a "progressive" movement with several other stakeholders. The declaration of Islam as the state religion set a precedent for inequality among its citizens, especially for those who weren't Muslims. Furthermore, for an organization such as Naripokkho, this was an institutional challenge for the equality of women. And of relevance here is the European notion of secularism that this movement, especially for Naripokkho, relied upon – separation of state and religion. Azim remembers the slogans of the protests against the 8th amendment: "religion is a personal matter, what does the state have to do with it?"¹⁰⁰

Naripokkho did not agree with an idea of a positive secularism, where multiple religions would co-exist in practice. It found such a state discriminatory when faced with the spirit of a liberal democracy, especially in light of the fact that Bangladesh was and still remains a Muslim-majority country. It protected the notion of this separation of religion and state with the constitution of Bangladesh. In fact, Naripokkho submitted a writ petition to the court to "demand an answer for the contradiction that such an amendment posed to the constitution."¹⁰¹ While the petition was never brought up in court, this act itself is a

⁹⁹ Azim, "Secularism," 212-216.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

demonstration of how Naripokkho's work relies on constitutional secularism for a feminist discourse.

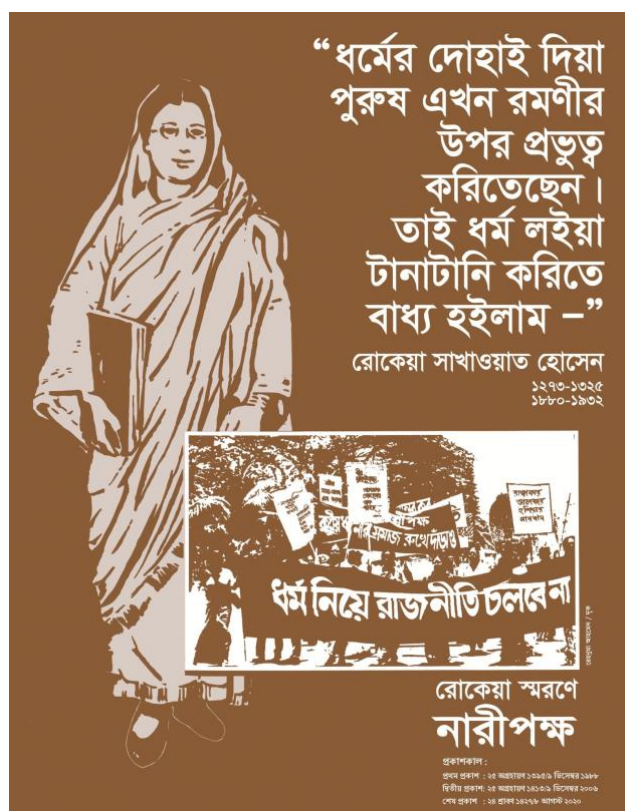


Figure 2. A poster published by Naripokkho in 1988 to protest the declaration of Islam as state religion.

Rokeya Sakhawat Hossain is quoted, “Men have used religion to justify their domination over women, that is why we are forced to debate with religion.”¹⁰²

How this tenet of constitutional secularism travels between discourses is of interest to me. An important milestone noted in the history of women's movement in Bangladesh is its ratification of the CEDAW in 1984, where Bangladesh held reservations on selected articles concerning women's autonomy in personal decisions regarding personal and family rights in marriage, guardianship and inheritance on the basis of religious grounds. Family laws in Bangladesh are vestiges of its colonial past,¹⁰³ where rights and legal directives regarding the

¹⁰² Naripokkho, “১৯৮৮ সালে অষ্টম সংশোধনীর মাধ্যমে সংবিধানে রাষ্ট্র ধর্ম ইসলাম সংযোজনের বিরুদ্ধে নারীপক্ষ এর আন্দোলন চলাকালে ৯ ডিসেম্বর রোকেয়ার জন্ম-মৃত্যু দিবসে প্রকাশিত পোস্টার I”, Facebook photo post, October 3, 2020, <https://www.facebook.com/Naripokkho/photos/3325760827549602>

¹⁰³ Banu, “GLOBAL-LOCAL.”

family are determined on religious grounds. In the late-80s, simultaneously with progressive protests against the 8th amendment, urban women's advocacy groups and organizations mobilized for a Universal Family Court to protect the legal equality of women in family law.¹⁰⁴ The mobilization for a uniform family code was led by prominent organizations such as Bangladesh Mahila Parishad (BMP) and Ain o Shalish Kendra (ASK). BMP presented a draft proposal for a uniform family code in 1989, which also relied upon the constitution to warrant equal rights and legal protections for women in Bangladesh. Ultimately, these efforts were deemed "anti-religion" and the government remained largely unwilling to reform and secularize family laws.¹⁰⁵ Until now, there are no uniform legal rights for women with regards to their families and status of marriage. Yet, it is important to note that this rhetoric is not a sentiment of the past. Naripokkho reiterated this demand for the elimination of religion-specific family laws in a 2021 protest statement in response to the High Court's verdict which upheld the Ministry of Law's decision to reject Ayesha Siddiqua's application for the position of a marriage registrar on the account that she is a woman.

Naripokkho's social and political position in these discursive spaces warrants a discussion. Naripokkho emerged during a time in Bangladesh's feminist history where the gender issue was either being established as a developmental one via NGOs, or as a national and political one via prominent organizations like Bangladesh Mahila Parishad which had strong connections to left-wing politics. Neither an NGO nor an affiliate of party politics, Naripokkho has claimed the role of a civil society group whose subject is a secular woman, brought together by common experiences of discrimination in society within the state apparatus. Naripokkho has historically functioned, and still does, as a facilitator of social

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., and Sohela Nazneen, *The Women's Movement in Bangladesh A Short History and Current Debates* (Dhaka: Friedrich-Ebert-Stiftung, 2017).

movements, with the firm belief that women's position in society must be critiqued to create systematic and infrastructural changes for the empowerment of women as rights-bearing citizens in a liberal democracy. Therefore, during Ershad's regime of military dictatorship, Naripokkho's acts of protest tied the stake of women's welfare to governance in a manner that claimed accountability from the state apparatus and found itself embedded in a larger mobilization for the re-establishment of secular democracy. Yet, several members of Naripokkho were NGO workers themselves, complicit participants in the discursive spaces of NGOs, but also informed by it to stretch these discursive spaces for subversion all the while.¹⁰⁶

The Fourth United Nations World Conference on Women took place in Beijing in 1995. And in an amazing feat in the 1990s, leading up to the conference, Naripokkho brought together a network of more than 350 women's organizations in these discursive spaces of transnational, NGO-facilitated development feminism. Here, Naripokkho facilitated the representation of the woman-subject who was also Urdu-speaking and remains un-repatriated and unrepresented by the state since the 1971 war of liberation; who was indigenous and at risk because of the state's military-led occupation of the Chittagong Hill Tracts; who was a sex-worker and Hijra.¹⁰⁷ This representation of womanhood is hardly possible without a critique of the nation-state that is Bangladesh – built upon Bangali nationalism with a state apparatus that carries the remains of its postcolonial history as a state divided and codified on the grounds of religion and Muslim subjecthood. Yet, in its critiques of the state, Naripokkho never locates the state itself and its apparatus as the problem. Instead, Naripokkho relies on negotiations with the state for the evolution of an apparatus that will protect the woman-subject. It relies on negotiations with the state, with democratic force and participation of its

¹⁰⁶ Azim, "Secularism," and Mukhopadhyay, "Introduction."

¹⁰⁷ Azim, "Secularism," 225.

polity, as if the problems – be they religion or Bangali chauvinism or violence against women – were appendages that could be simply removed from the state apparatus rather than tools that the apparatus relies upon for governance, policing and power. It seems as if a thin film separates these problems that impede women's welfare from the state apparatus. And this separation, for Naripokkho, is warranted by the constitution.

In 2021, Naripokkho was one of the 50 organizations, forums and alliances that formed the International Women's Day Committee. On March 10, 2021, the union released a public statement, which Naripokkho also endorsed on its official Facebook page, to deliver its plans for the International Women's Day demonstration - protesting repression and demanding democracy - that would take place on March 12, 2021. An analysis of this statement studies how the constitution sets the precedent for the discourse of secular feminism in Bangladesh. This discourse centers itself around freedom of speech as a driving political force, and how this demand for free speech indexes threats of religious censorship as a challenge to feminist goals. The statement builds the event's legitimacy upon constitutional rights to freedom of speech and self-autonomy, and argues for the relevance of the event in terms of the need for democracy and freedom of speech for women's welfare. It consists of eleven items of demands. The very first item demands the removal of the Digital Security Act 2018 and all other (unspecified) "oppressive laws". Central to this demand for freedom of speech and democracy is the need for a viable and politically effective climate for feminist discourses to be presented in the public. It points specifically to the Digital Security Act as a threat to these rights.

"That this law is undemocratic and a threat to everyone's security is exemplified by the case we have observed last year in Noakhali's Begumganj,

where a victim of sexual violence was intimidated by a group attack, the video footage of which was distributed by the attackers. It was later found that the attackers were some men who were associated with political power.” (2021, 1)

The event referred to is the case of a violent attack led by a group of men against a woman, of which they took and widely distributed a video on social media.¹⁰⁸ The event surely points to an act of violence against women, which is of Naripokkho’s direct concern. The statement expresses that the DSA threatens the security of this woman, and democracy, because it is only selectively applied, and particularly not applied against “people of political power”, which could implicate the current government but not establish the actual logical link between DSA and violence against women.

However, what remains unspoken in the text is the timing of this demand and its particular relevance with the political events of the time. This statement was released only two weeks after the death of Mushtaq Ahmed in police custody, who was arrested under the Act for allegedly spreading misinformation against the regime. His death incited renewed protests and criticisms,¹⁰⁹ many of which were led and endorsed by allies and prominent members of Naripokkho itself.”¹¹⁰ Of further relevance here is how the Act is also deployed in numerous cases with allegations of religious offence,¹¹¹ thereby functioning as a blasphemy law of sorts.¹¹²

¹⁰⁸ Star Online Report, “Video of Noakhali woman tortured triggers mass condemnation, 1 arrested,” *The Daily Star*, October 5, 2020, <https://www.thedailystar.net/country/news/video-torture-noakhali-woman-triggers-mass-condemnation-leads-1-arrest-1972561>

¹⁰⁹ Star Digital Report, “Arrested under DSA, writer Mushtaq Ahmed dies in custody,” *The Daily Star*, February 25, 2021, <https://www.thedailystar.net/bangladesh/news/writer-mushtaq-ahmed-no-more-2051177>

¹¹⁰ Tribune Desk, “TIB: Digital Security Act curtailing freedom of expression,” *Dhaka Tribune*, June 20, 2020, <https://www.dhakatribune.com/bangladesh/2020/06/20/tib-digital-security-act-curtailing-freedom-of-expression>

¹¹¹ Staff Correspondent, “Concerned over abuse of Digital Security Act, demands review,” *Prothom Alo English*, March 7, 2021, <https://en.prothomalo.com/bangladesh/concerned-over-abuse-of-digital-security-act-demands-review>

¹¹² “Bangladesh,” End Blasphemy Laws, accessed on April 4, 2021, <https://end-blasphemy-laws.org/countries/asia-central-southern-and-south-eastern/bangladesh/>

Somewhere in here is lost the discussion of how the state apparatus relies on the DSA too for its own existence, longevity and power. There is an implicit separation of “political power” from the state, as if there are those (some men) who are “associated” with it. And this separation fails to see how the state - via the brute force that the regime exercises with the state apparatus and the agency of the citizens that it governs - provides a framework for the citizen to produce power for the state. I have discussed previously the role of the DSA in the preservation of this regime within this state apparatus. And by invoking reflections upon Asad’s discussion of the “necessary conditions” of the state, I find that somewhere in the daze of the tenets of the constitution, there is a lack of acknowledgement that the state also relies on blasphemy laws and the reproduction of the “religious” for its governed polity to produce power and legitimacy for the state too. How it does so, is discussed in the next section.

3.2: Collisions of Religion with Women’s and LGBTH+ Movements

The collusion of the state with patriarchal religious sentiments is neither novel nor new in Bangladesh. For example, there was opposition from Islamist parties to the National Women’s Development Policy in the years preceding its adoption on the grounds that such economic development and autonomy of women is unIslamic.¹¹³ However, for the purpose of my work, I focus on events after 2013. This focus is neither as a result of an assumption that there is Islamist pressure now while the periods before were free of it, nor to create any discontinuity in the relationship between Islam and state, even with respect to rights of women and LGBTH+ people. I am mostly narrowing down my focus in trying to put recent events in perspective of not only recent political developments in Islamist politics during the gradual strengthening of the current regime, but also in perspective of the increasing visibility

¹¹³ Nazneen, “The Women’s Movement”.

of discourses surrounding sexuality and gender in the past decade, driven by transnational NGO-driven interventions but also grassroots mobilization.

In present-day Bangladesh - where homosexuality remains criminalized by the colonial-era Section 377 of the Penal Code - interventions targeted at LGBTH+ communities can be traced back to the NGO-led HIV-AIDS-related health intervention programs in the 1990s, when the term mostly widely used to address homosexuality was “men who have sex with men” (MSM).¹¹⁴ Despite rich traditions of queerness manifested by pre-colonial communities such as the Hijra¹¹⁵ (more of which will be discussed in the next chapter along with the emergence of “transgender” and “third gender” as identity categories), it is with the advent of the internet, among other factors such as the emergence of sexuality in transnational human rights organizations and networks, that small, urban communities for gay men and pockets of movements surfaced in the 2000s.¹¹⁶ With a distinct absence of women in the scene, organizations such as Boys of Bangladesh and Roopbaan emerged with potentials of a new movement for recognition of homosexuality. And it is important to note that these new movements were based upon demands for secular human rights because of large-scale religious condemnation of homosexuality. Some milestones of the increasing visibility of this growing movement can be found in events such as the Rainbow Rally in April 2015, which gay rights activism also joined hands with the Hijra community to organize, taking inspiration

¹¹⁴ Ibtisam Ahmed, “Decolonising Queer Bangladesh: Neoliberalism Against LGBTQ+ Emancipation,” in *Sexuality and Translation in World Politics* eds. Caroline Cottet and Manuela Lavinias Picq (E-International Relations, 2019).

¹¹⁵ The Hijra are a very heterogeneous pre-modern community-based people who differ within in their social groupings in physiologies, sexualities, subjectivities of gender and socio-economic origins. Eluding unidimensional definitions based on gender/sex discourses, the Hijra identity has mostly been characterized across South Asia by their social functions based in the traditions of Hijragiri in guru-chela (mentor-mentee) relationships and communal belonging.

¹¹⁶ Shuchi Karim, “Erotic Desires and Practices in Cyberspace: “Virtual Reality” of the NonHeterosexual Middle Class in Bangladesh,” *Gender, Technology and Development* 18, no. 1 (2014):53-76, and Ahmed, “Decolonising.”

from the Hijra Pride that took place just the year before.¹¹⁷ As the space for grassroots activism expanded, new and visible demonstrations of protest and mobilizations surfaced into the public imaginary of these new polities of LGBTH+ peoples with publications such as “Roopbaan” in 2014, Bangladesh’s first queer magazine, and “Dhee”, a comic book based upon a lesbian protagonist published by Boys of Bangladesh in 2015.¹¹⁸

However, this surge in activity was met with harsh blows soon. Avijit Roy, an American-Bangladeshi secularist blogger and writer, was hacked to death by Islamist militants in 2015. Best known for founding the blog website “Mukto Mona”, he was not particularly a LGBTH+ activist himself but his oeuvre included the seminal text on homosexuality in Bangla, “Shomokamita”. An alliance of 15 Islamist organizations, including the HI, presented the government with a 15-point list of demands, and this list included demands for criminalizing blasphemy and strict enactment of Section 377.¹¹⁹ This event was followed by the brutal murders of prominent gay rights activists Xulhaz Mannan and Mahbub Rabbi Tonoy in 2016. Both of these attacks were claimed by Ansar al-Islam, the transnational Islamic militant group and local chapter of Al Qaeda.¹²⁰

These events must be put into perspective. As discussed in previous chapters, we have seen how the current regime invoked sentiments of the liberation war, to which the BAL claims direct legacy, to mobilize public favor in support of its reelection into power in 2014. We have seen how, in 2013, a people’s movement for justice against war crimes was

¹¹⁷ Ahmed, “Decolonising.”

¹¹⁸ Ibid.

¹¹⁹ Inge Amundson, “The ruins of Bangladesh’s LGBT community,” *East Asia Forum*, March 23, 2018, <https://www.cmi.no/publications/6489-the-ruins-of-bangladeshs-lgbt-community>

¹²⁰ Eliott C. McLaughlin, Don Melvin, and Tiffany Ap, “Al Qaeda group claims responsibility for Bangladesh LGBT hacking murders,” *CNN*, April 28, 2016, <https://edition.cnn.com/2016/04/25/asia/bangladesh-u-s-embassy-worker-killed/>

institutionally and discursively supported by BAL and the state, and then eventually was also forsaken when the movement lead to a polarization of ‘Atheists vs. Islamists’ and found itself torn between discourses of secular nationalism vs anti-Islamic governance. The rise of HI cannot be seen simply as a counter-movement, but also a means for the state’s delicate negotiations to the end that is the governance of its religious polity.

How these collisions have induced a climate of fear for queer-feminist organizers and polarized bodily rights against Islam need a more nuanced exploration into the testimonies of people who found themselves in the cross-hairs. In “Inside Out: An Intimate Conversation with Xulhaz Mannan,”¹²¹ an archived conversation from 2015 collected from the Bangladeshi queer archival project Mondro, Mannan discussed his personal experiences as a Bangladeshi gay man and activist. While discussing the taboo of homosexuality in Bangladesh, he stressed on the gravity of religious taboos surrounding sexuality, and iterated that this societal condemnation was of greater concern to him than the criminalization of homosexuality itself, particularly in the context of the post-2013 polarization between secularists and Islamists. I am particularly keen on noting how he senses a shrinkage of space for LGBTH+ mobilization in the country and was concerned about his own life, as if he could predict it.

“... atheists were hated even before, but they were not killed. But now, they are being killed, and it is popularized, as a celebrated thing to kill an atheist. ... And if I just consider this as an opinion poll, then I know that’s how people think, that just because someone has a different point of view about religion then they should be killed. And since homosexuality is strongly related to religious beliefs, that’s what worries people most, not that they care about people, and I mean it’s anyway illegal in the country.

... They (people) don’t even know about it, it’s one of these stupid ancient Colonial laws (377). But they definitely know that it’s forbidden in the religion, they know that they will go to hell. So that’s what worries them, and that’s why talking about it is difficult. So, even with the rally, whether we will be beaten

¹²¹ “Inside Out: An Intimate Conversation with Xulhaz Mannan (Part Two),” Mondro, accessed January 2, 2020 <https://mondro.org/2020/11/29/inside-out-an-intimate-conversation-with-xulhaz-mannan-part-two/>

up by someone or the other next year, is a possibility. The space in which you can try to do something different, that leading your life how you want to, it's become more difficult. Like, five years ago, I would say that okay I'm different, and some people don't like me and that's fine. ...But now, trying to be different means some people don't like me and many of them may even want to come and kill me."

I would like to unpack this statement by Mannan in light of the truth that he and his fellow activist, Tonoy, were brutally murdered on April 25, 2016. Mannan had already sensed that the discursive spaces for any kind of discussion about sexuality were shrinking, but I note how this shrinking of space is implicated by the insinuation that anyone advocating for the legitimacy of homosexuality is an 'atheist' – a continuation of the polarization that emerged in 2013. What followed the murders was a 'climate of fear' driven by threats, kill lists, and police harassment.¹²² The pride rally was cancelled in 2016 and since then, LGBTH+ mobilization in Bangladesh has been unable to recover and plan any further public assemblies, even greatly recoiling from any kind of well-meaning or otherwise public attention.¹²³ But this 'climate of fear' is not simply an array of terrorist attacks; it's an assemblage of events that materialized within the state apparatus in a productive collaboration with state subjects, to the end of causing disruption in discourses of secular nationalism. On May 19 2017, the police raided a party and arrested the attendants, reporting them in media as homosexuals but eventually charging them for possession of narcotics rather than "unnatural sexual activity", thereby aligning with Mannan's comment on homosexuality being socially condemned more so than legally attacked but furthermore compounded by policing. In fact, in response to the murders and threats to LGBTH+ peoples, the police have responded poorly and suggested that they be "less provocative,"¹²⁴ Since 2013, Bangladesh has consistently

¹²² Amundson, "The ruins".

¹²³ I. Sayed and Rasel Ahmed, "The Problem with Straight Intentions," *The Daily Star*, July 17, 2019, <https://www.thedailystar.net/star-weekend/opinion/news/the-problem-straight-intentions-1769974>

¹²⁴ "Bangladesh: Authorities fail to curb brutal killing spree as LGBTI editor hacked to death," *Amnesty International*, April 25, 2016, <https://www.amnesty.org/en/latest/news/2016/04/bangladesh-authorities-fail-to-curb-brutal-killing-sprees-as-lgbti-editor-hacked-to-death/>

rejected all recommendation in its Universal Period Reviews as a United Nations member state to decriminalize homosexuality and protect LGBTQ+ peoples.¹²⁵

These collisions implicate issues of women's rights and welfare too, especially when they are predicated upon the grounds of a secular state apparatus. In June 2020, Shamir Montazid, a founding member and ex-employee of the online education platform Robi 10 Minute School (10MS), was faced with criticism and threats on social media after he shared a post from his personal social media accounts favoring gay rights with a photograph of himself in front of a pride flag from the grounds of the University of Oxford. This soon exploded into larger online attacks and threats targeted upon 10MS and his fellow founders. Ayman Sadiq, the most well-known founder of the platform and a public figure on the internet, is reported to be "*hounded by threats*,"¹²⁶ which forced him and fellow founders to address the issue with public apologies on behalf of the organization. In one of his public statements regarding the issue, he said, "*When your mother comes over to show you that people on YouTube are threatening to murder her son, how would you feel?*"¹²⁷ Consequently, the organization responded by removing their educational content about menstruation and consent. And although the police have responded to the situation by linking the threats to Ansar al-Islam,¹²⁸ no conclusive investigations have been reached.

Here, we see how the internet and social media have become sites for discursive spaces where these contentions play out. And, as discussed in previous chapters, it is in this 'climate of fear' that the DSA was introduced by the regime to extend the reaches of the state

¹²⁵ "Bangladesh", Types of criminalization Criminalises sex between men, Human Dignity Trust, accessed on January 2, 2020,

<https://www.humandignitytrust.org/country-profile/bangladesh/>

¹²⁶ Zyma Islam, "10 Minute School: Hounded by threats, trolls," *The Daily Star*, July 12, 2020,

<https://www.thedailystar.net/frontpage/news/10-minute-school-hounded-threats-trolls-1928837>

¹²⁷ Ibid.

¹²⁸ Arifur Rahman Rabbi, "10 Minute School founder Ayman Sadiq receives death threats," *Dhaka Tribune*, July 6, 2020, <https://www.dhakatribune.com/bangladesh/2020/07/06/10-minute-school-founder-ayman-sadiq-receives-death-threats>

apparatus to these discursive spaces as well. While digital attacks like the ones on Montazid and Sadiq theoretically fall under the jurisdiction of the DSA, no arrests have been made in this matter because how can one arrest a mob? Whereas on the other hand, scores of people, ranging from school-going teenagers to folk singers such as Shariyat Boyati who defended music in Islam, have been arrested under this act for hurting religious sentiments or criticizing the ruling government. The DSA has become a blasphemy law in its own accord whereby targeted militancy is no longer required to create or maintain a climate of religious persecution. In fact, several LGBTH+ activists have expressed concerns about how such a draconian law works to potentially persecute and stifle their mobilizations rather than protect them from online threat and dangers.¹²⁹ Concomitantly, as I write this chapter, Khadijatul Kubra remains imprisoned for eight months now because of a case filed by the police against her on the grounds of the DSA.¹³⁰ She is accused of spreading false and defamatory statements against the prime minister, the government and the state because of a Facebook webinar she hosted. Khadija, a student of political science at the Jagannath University, was only 17 years old at the time of arrest and tried as an adult.¹³¹

3.3: In Conclusion: Un/constitutional Mediations between the Religious and the Secular in Bangladesh

I would like to refrain from concluding that the current regime is merely using religion as bait in what the liberal world would like to claim a secular politics of democracy. I do not

¹²⁹ Onnokotha, "Ruling the Digital Closet: LGBTI+ Activism in the Shadow of Bangladesh's Digital Blasphemy Laws," *Shuddhashar* 19, May 1, 2020, <https://shuddhashar.com/ruling-the-digital-closet-lgbti-activism-in-the-shadow-of-bangladeshs-digital-blasphemy-laws-onnokotha/>

¹³⁰ Staff Correspondent, "DSA case: JnU student Khadija in jail for 8 months," *Prothom Alo English*, April 12, 2023, <https://en.prothomalo.com/bangladesh/udnvi77fie>

¹³¹ Zyma Islam and Emrul Hasan Bappi, "Digital security act: Sued at 17, JnU student in jail," *The Daily Star*, September 18, 2022, <https://www.thedailystar.net/news/bangladesh/crime-justice/news/digital-security-act-minor-sued-adult-2yrs-ago-languishing-jail-3121741>

want to draw metaphoric parallels either to show that the current government has become a protector of Islam which can legitimize its rule over a Muslim-majority population. Heeding to the caution that Asad offers for us against the comparison of the ideologies of nationalism and religion as likes and the penchant for modernity to fixate on causality of political events, I would like to complicate discussions about secularism in the case of Bangladesh by breaking down the mechanisms with which the state mediates between “religion” and “secularism” in a flux of its changing meanings and significances. The regulatory mechanisms of the state not only decide where the lines between the secular and the religious can be drawn at any given moment, but they also toy with the very “essence” of religion to establish which meanings and significances of these terms and concepts will determine productive power for the state apparatus. BAL’s sensitive negotiations with Islamists do not only function to manage religion in a secular world, but also to cement its own regime via the agency of religious actors and forces in what is apparently perceived to be a secularized public order.

This analysis shows that the dominant feminist discourse in Bangladesh is inspired by a global feminist rhetoric of human rights, which is warranted in legal and policy frameworks by the constitution’s endorsement of secularism, democracy and autonomy. But this discourse does not acknowledge the entanglements of the state with religious beliefs and sentiments, as well as the curbing of autonomies. When the court ruled to retain Islam as the official state religion, Shireen Huq responded to the event by calling it a “political expediency”.¹³² She explained this ruling as an effect of anticipation created from religious pressure, reiterating that “the government is not prepared to face” the reaction of people.¹³³ In doing so, a discourse is materialized that takes for granted a secularism that detaches the state from

¹³² David Bergman, “Bangladesh court upholds Islam as religion of the state,” *Al Jazeera*, March 28, 2016, <https://www.aljazeera.com/news/2016/3/28/bangladesh-court-upholds-islam-as-religion-of-the-state>

¹³³ Ibid.

religion completely, does not engage with the political realities of how secularism materializes in a modern postcolonial Muslim-majority nation-state such as Bangladesh, and refuses to acknowledge how the state colludes with Islam in a productive tension for the power of its own regime. Concepts such as constitutional rights, free speech and secularism are assumed to be important for all of this state's subjects and in doing so, the entanglements among the state, religious beliefs, and personal freedoms pertaining to sexuality and gender remain unacknowledged in a 'feminism vs. religion' polarization.

This is perhaps better demonstrated by the Prime Minister's recent statement about the need for reform in inheritance laws so as to ensure that transgender and Hijra people can protect their right to family property, which she suggested should take place in accordance to the Sharia, where those who exhibit more male features would inherit as men and those with more female features would inherit as women.¹³⁴ What this entails legislatively and how it may be achieved will be discussed in the next chapter as I focus on the work of activists and advocates for the introduction of a Transgender Persons Rights & Protection Bill in Bangladesh. For now, perhaps, discussions of secular queer-feminist advocacy in Bangladesh need to be foregrounded by a nuanced and historically aware complication of 'secularism' within the state apparatus.

¹³⁴ AFP, "Bangladesh transgender people to gain inheritance rights," *Prothom Alo English*, November 17, 2021, <https://en.prothomalo.com/bangladesh/bangladesh-in-world-media/bangladesh-transgender-people-to-gain-inheritance-rights>

Chapter 4

Inheritance as a God-Given Right for “Third-Gender” Peoples

In 2013, the Prime Minister’s Office decided during a Cabinet meeting that Hijra would be recognized as a separate gender category on all official documents.¹³⁵ This was in line with similar recognitions that preceded in the sub-continent¹³⁶ at the turn of the century. This recognition of Hijra as a new gender category was officially published later in 2014 with a gazette by the Ministry of Social Welfare, but there remained no definitions for the term “Hijra”. What this recognition would entail remained unclear as the instructions for the legal processes required to change gender identification in official documents did not follow. These processes remain different for different authorities, and generally require different steps for verification that can involve the police and local government.¹³⁷ But it is now possible to identify as “Hijra” on the national identity card, or mark “other” on the passport. Moreover, people can now officially register as voters with “Hijra” as their gender identity. In this spirit of better assimilation for the Hijra as a third category of gender identity in Bangladesh, the state has taken various steps over the last decade to offer them economic rehabilitation and bring them under welfare schemes that could offer them financial independence, whether it be with loans or the provisions to open bank accounts. One big event in this project is the chance that the Ministry of Social Welfare offered to Hijras for low-income government employment in December 2014.¹³⁸

¹³⁵ Mohosinul Karim, “Hijras now a separate gender,” *Dhaka Tribune*, November 11, 2013, <https://archive.dhakatribune.com/uncategorized/2013/11/11/hijras-now-a-separate-gender>

¹³⁶ The Indian Supreme Court declared transgender people as the Third Gender in 2014; the Supreme Court of Nepal added “Other” as a new gender category on all official documents in 2007.

¹³⁷ Abdullah Titir, *FROM RECOGNITION TO REALISING RIGHTS: Legal Protection of Gender Identity in Bangladesh Law* (Dhaka: Bangladesh Legal Aid and Services Trust, 2019), <https://www.blast.org.bd/content/publications/Policy-Brief-Hijra-and-GDC-Rights.pdf>

¹³⁸ “*I Want to Live With My Head Held High*” *Abuses in Bangladesh’s Legal Recognition of Hijras* (United States of America: Human Rights Watch, 2016).

In January 2015, the Ministry of Health published a memorandum where it was announced that a “thorough medical check-up” would be carried out to verify the authenticity of the Hijra status of the applicants. After various steps for screening and selection, 12 Hijras were selected for further “medical” screening over several sessions in 2015. This included external screening of genitalia as well as ultrasound examinations. At the end of it all, all 12 Hijras were declared ‘fake’ – men who were pretending to be Hijra – and their names and identities were disclosed in public media.

The 12 applicants later reported the entire event to be one filled with undignified behavior from the medical personnel and interviewees, where they were stripped down, harassed and questioned about their appearance and bodily traits. In most cases, the medical professionals were not even willing to touch the applicants and made non-medical personnel touch their genitalia. In many cases, the applicants were “tested” to see if their penises would erect. Ultimately, they were found to be sexually able-bodied men, and not Hijra. This was met with protest from Hijra organizations soon after. And what became most clear was that the government and the medical experts involved had little idea about what it meant to be Hijra, and how it would be defined. It seemed as though the medical check-up sought some kind of sexual deformity or disability as the defining character of Hijra, in line with the popular sentiment that Hijra are “born this way.”¹³⁹

This vignette is a helpful beginning to this chapter, where we see how gender-variant people exist in Bangladesh within a cloud of vagueness underlined by lack of information, even and especially in state mandates. Yet, very closely entangled with these “misunderstandings” are also histories of agentic local negotiations of Hijra and transgender

¹³⁹ Adnan Hossain, “CONCEIVING SEXUAL AGENCY,” in *plainspeak*, 2009, <https://www.tarshi.net/downloads/plSpk/issue-2-2009.pdf>

people that are allowed by the customs, infrastructures and discursive channels of the time and place. In this chapter, I demonstrate how academic and advocacy discourses position Hijra as an example of gender-deviance that eludes a unidimensional categorization along sex/gender dimorphisms. And then, I will demonstrate how the emergence of “transgender” as a gender identity category contends with the legacies and presence of the “Hijra”, particularly as the possibility of a “third” gendered person to become a rights-bearing citizen emerges as a political reality in Bangladesh. In all of this, secularism implicates the very notion of “rights” in Bangladesh as the question of inheritance remains determined by religious laws and customs. Here, I draw from Quijano and Lugones to discuss the emergence of new social identities and their entanglements with the colonality of gender.

4.1. From the Mysterious, Spiritual Hijra to the Rights-Bearing Third Gender

This classification of Hijra as sexually disabled men is not so different from the classification of gender-variant communities as “eunuchs” under the Criminal Tribes Act of 1871 by the British colonial government in the sub-continent. The Hijra are one of several communities who have existed outside of the heteronormative imaginary of the gender binary in the South-Asian sub-continent, and names such as Khawaja Sira, Gamchali, Kothi¹⁴⁰ can be found in the vocabularies of the larger region to indicate different registers and expressions of gender. However, the biological makings of Hijra remain masked in mystery.

In popular imaginary, Hijra are men who are born this way, and what “this way” is remains unknown. The Hijra are considered to be born with some kind of ambiguous genitalia or sexual deformity, and therefore, considered asexual. And the Hijra have also reinforced this

¹⁴⁰ Ibid.

imagination from time to time to perpetuate a sanitized reputation.¹⁴¹ But that Hijras are also sexual subjects became a reality to be contended with as public health concerns about the HIV/AIDS crisis emerged in Bangladesh during the late 90s.¹⁴² These interventions were largely carried out within the development model with the help of focused NGOs and CBOs. While Hijra fell under the larger umbrella of males who have sex with males, it was understood that Hijra are not to be conflated with homosexuality of gay men, and that this community had its own particular sexual health needs that had to be addressed via focused channels catering to them. But if Hijra are simply neither asexual nor homosexual, then what are they?

It is important to remember what the Criminal Tribes Act criminalized “eunuchs” for, because it was not just the act of “unnatural sex” or sodomy that was criminal under Section 377 of the Penal Code. It was criminal to cross-dress, that is, for men to be in women’s clothing. It was criminal to engage in dancing and singing in public performance while being dressed in this manner, be it outdoors or in someone’s residence. It was criminal if a boy under the age of 16 were found in the household of the person, which insinuated kidnapping, and it was criminal to castrate boys. This is where ‘sexuality’ is imposed on acts that are not sexual, but rather the culture of a larger people that existed an ecosystem of sustenance, livelihood and kinship guided by a lineage of teacher-student relationships.

Adnan Hossain drew from years of ethnographic research with Hijra of Dhaka to demonstrate that it is the ability to do *hijragiri* which defines Hijra in Bangladesh.¹⁴³ And this ability is developed in *guru-chela* (mentor-mentee) relationships that only “male-bodied

¹⁴¹ Hossain, “The paradox.”

¹⁴² Ibid.

¹⁴³ Adnan Hossain, *Beyond Emasculation Pleasure and Power in the Making of hijra in Bangladesh* (Cambridge: Cambridge University Press, 2021).

persons with a desire for masculine-identified men” can initiate with Hijra *guru*.¹⁴⁴ *Hijragiri* brings together the myriad socio-economic functions, skills, behavioral characteristics and affiliations of kinship to the lineage of knowledge transmission that a Hijra is bound to. Such as *badhai*, where a Hijra holds a new-born in their arms to confer blessings with dance; or the collection of alms called *cholla* within the purview of jurisdictions termed *birit* which are inherited from *guru* to *chela*; or the mastery of the secret language, *ulti*; or, in the case of Hijra who do not undergo the process of castration, that is, the *janana*, the ability to conceal the penis at will. There are Hijra who are undergo castration (*chibry*) and those who do not (*janana*), and the genital status itself does not determine whether someone can qualify as a Hijra, although Hossain does find in his ethnographic observations that there are complex power dynamics among members over genital status. In any case, it is this “occupation”, or profession of *Hijragiri* that one must be initiated into in order to identify as a Hijra who can be located in a lineage.

This definition of Hijra is reinforced by my interviewees too. Jubdatul Javed, Joya Sikder and Abdullah Titir called Hijra a “cultural system” centered around the profession of *hijragiri*. This profession has a specific class location, that even resonates with dynamics of caste-based occupations.¹⁴⁵ Hossain finds that people from middle- or upper-class families do not enter *Hijragiri*, and that Hijra are castigated socially to the point that they are socially excluded from class mobility. Hijra households commonly live in low-income and working-class neighborhoods, harmoniously even in a way that is not found to be extended towards the Hijra in middle class neighborhoods. In my own research, I have visited homes of Hijra households in low-income housing with shared sanitation and kitchen facilities, where the bedrooms of non-Hijra neighbors even hosted guests of the Hijras. During our interview, Titir

¹⁴⁴ Hossain, “The paradox.”

¹⁴⁵ “I Want to.”

noted that in this classed location and reality, youth who lose or lack familial support because of their gender expression and/or sexuality find shelter and sustenance in Hijra groups and households.¹⁴⁶ However, Joya told me that, while homeless and socially excluded people do build affiliations with Hijra households, they do not all necessarily become Hijra; one only becomes Hijra over time by initiating into *hijragiri* with a Hijra *guru*.¹⁴⁷ The collection of *cholla*, which is often equated to a form of begging, remains the socially acknowledged means of income and subsistence for Hijra. But for Hijra who do seek employment for alternative livelihoods, discrimination against gender-variance pose challenges for prospects of employment and sex work remains a final resort. Sex work among Hijra remains an open secret, which was only dealt with sexual health interventions in the late 1990s for preventive and treatment measures against HIV/AIDS.

The profession, or *pesha*, of *hijragiri* has its own cosmological and religious locations too, which navigate complex social economies of caste, gender and religious politics across South Asia. Traditional scholarship and imagination about Hijra have depicted them as male-bodied feminine people who receive spiritual powers upon the sacrifice of their genitalia.¹⁴⁸ Hossain, in his ethnographic research, has found the Hijra origin stories of castration to go back to the myth of Maya Ji and Tara Moni, which are comparable to deities in Hindu cosmologies and similar mythologies of origin stories found from previous research on Hijra cosmologies in India.¹⁴⁹ But regardless of genital status, Hijra in Bangladesh tend to their functions in *hijragiri*, whether it be in the acts of constituting themselves as conduits of blessings or as disciples who learn from their teachers the act of concealing their genitals.

¹⁴⁶ Abdullah Titir, interview by the author, April 6, 2022.

¹⁴⁷ Joya Sikder, interview by the author, December 26, 2021.

¹⁴⁸ Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (New Delhi: Yoda Press, 2006).

¹⁴⁹ Adnan Hossain, "Beyond Emasculation: Being Muslim and Becoming *Hijra* in South Asia," *Asian Studies Review* 36 (December 2012): 495-513.

And in spite of their references to these un-Islamic myths of origins, Muslim-born Hijra (called *surki* by Hijra) also remain proud Muslims in the social fabric of Muslim-majority Bangladesh. Hossain finds that Hijra faith and practice of Islam challenges dominant discourses of Islam and demonstrates a local praxis of faith. And while this demonstration may appear syncretic on the surface, I find it constitutive of the Hijra subjecthood as an exemplary gendering of a Muslim subject who not only transgresses the gender binary but also poses challenges for secularism to define this subject simply as a secular one.

I will now draw from Hossain's ethnographic vignettes to discuss at least one form of Hijra religious embodiment. Hossain discusses the piety of a Hijra whom he calls Sonia. They are in their late 40s, and have lived a long life as a Hijra. They are employed in a local NGO that focuses on Hijra sexual health, and they are also an active volunteer with a local mosque. They have the status of a *Hajji*, having performed the most important pilgrimage in Islam – the Hajj. They dress in women's clothing when they are in the office, and in men's clothing when they are in the mosque. Sonia is one of many Hijra who move between masculine and feminine comportments. This may be read as a nuanced negotiation between different social spaces for Hijra to conduct in appropriate and normative manners, and this has especially been the case for Hijra as they are compelled to fit into normative male appearances for employment opportunities.¹⁵⁰ But Hossain's vignettes demonstrate at least one form of embodiment of piety among Hijra that is fittingly expressed in the words of another Hijra, Roksana: "You can lie to the whole world but not Allah."¹⁵¹

What I find rather crucial here is the fact that they are Hijra AND Muslim. There is no denial that they are sinful Muslims; that anal sex is a sin and that there is much debate among religious priests about the sin of altering God's creations with acts such as castration. But they

¹⁵⁰ "I Want to."

¹⁵¹ Hossain, "Beyond Emasculation: Being Muslim."

are Muslims nonetheless, even if they are sinners in their lives as Hijra. Tina, another Hijra, is chided by her peers for not dressing in appropriate masculine garb while visiting a shrine during a religious festival. But she remains silent and tells Hossain afterwards that she couldn't indulge in this dishonesty because she identifies as "transgender". She is initiated into a relationship with a Hijra group and has a *guru*, but works with an NGO instead and is not interested in *hijragiri*. For Tina, a transgender woman who has become a prominent activist, her subjecthood as a gendered person is cemented in her self-identification as a transgender woman and this motivates her conduct in a religious space. Ontologically, this differs from how a Hijra like Sonia or Roksana enter a religious space with their self-identification as Hijra who were born as men with sexual desire for men. Hossain discusses the gender of Hijra as an alternative practice of masculinity – "male femininity" – where the sexual desire for anal stimulation from masculine men is neither a form of emasculation nor a necessary affiliation with womanhood in performing femininity. What the ontology of Hijra as a gender is, is beyond the scope of this thesis and my analysis. But pertinent here for my analysis are the nuanced distinctions that I find in the embodiments and discourses of subjecthood between Hijra and transgender as gendered subjects, and their entanglements with Islam as rights-bearing citizens.

I now analyze a handbook published by BSWS in 2019. BSWS is one of the most prominent NGOs in Bangladesh to work exclusively with the healthcare needs and human rights of sexual and gender minorities. It has been an important actor and advocacy group for the rights, representation and welfares of Hijra. In May 2019, BSWS published this handbook, with participation from academic and religious experts, to provide directives and knowledge on how the major religions of Bangladesh (Islam, Buddhism, Hinduism, and

Christianity) can accommodate and be inclusive of Hijra.¹⁵² In doing so, the book defined Hijra according to Islamic Shariah as people who are born with ambiguous genitalia. The definition cited Qamoos Ul Fiqh, a book of Islamic jurisprudence written by Maulana Khalid Saifullah Rahmani, an Indian scholar of Sunni Islam trained in the Deobandi tradition. According to this definition, Hijra are born this way and are a creation of God, and because God makes no mistakes, His creations must be treated with dignity and their rights must be protected. Because inheritance and family rights in Islam are defined according to gender, this would be done by assessing if the traits of the Hijra individual are comparable to those of men or women. This would be decided by the biological features of the individual: if they urinate via a male sex organ, then they will inherit property according to the rights of a man; if they urinate via a female sex organ or ambiguous sex organs, then they will inherit property according to the rights of a woman. According to the book, therefore, Hijra are born with ambiguous genitalia. In modern medical terms, this would categorize Hijra as intersex.

However, as we have seen in the case of the 12 applicants who went through the “medical screening” for government jobs, this is far from true. While there may be Hijra of varying genital status, genital ambiguity does not make a Hijra in Bangladesh. This is true not just because there are *Janana* Hijra, that is, Hijra who are born with penises. Hijra also move between genders, shifting between comportments and appearances for the sake of practicalities but also between actual gender roles, identities and functions as many Hijra also have heterosexual relationships and family households alongside their Hijra lives.¹⁵³ But Hijra have also perpetuated a public imagination of asexuality and ambiguity, with a rhetoric of being “born this way.” According to the Human Rights Watch’s report on the harassment

¹⁵² হিজড়া অভিজ্ঞান বাংলাদেশে প্রচলিত প্রধান চারটি ধর্মে হিজড়া জনগোষ্ঠী সম্পর্ক দিক-নির্দেশনা, (Dhaka: Bandhu Social Welfare Society, 2019).

¹⁵³ Hossain, “Beyond Emasculation: Being Muslim.”

faced by the applicants, one applicant, who is identified as Turvi A., reported that she was examined during the test to check whether or not she could get an erection. In her words, “As I am a hijra, by no means my penis would be hard. My genitalia is not like that...maybe they thought that as we are hijra, we won’t have it [a penis].”¹⁵⁴

This ambiguity eludes attempts of modern Western classification of genders and sexualities – are Hijra asexual, or sexually disabled, or transgender women, or homosexual men, or bisexual men, or cross-dressers? The recognition of a “third gender” – one that is neither man nor woman – has been met with several critiques within the larger community of Hijra and transgender people to demand what this hierarchy of genders means for peoples who are already marginalized.¹⁵⁵ And yet, the government’s introduction of some very unclear ways to exist as a citizen and state subject with a gender marker that is outside of the gender binary has also been welcome. Hossain has discussed that definitions of sexual disability and ambiguity have “reinforced the pre-existing trope of hijra as a form of disfigurement, but also has turned this definition into the only acceptable mode of hijra representation.”¹⁵⁶ The government’s introduction of welfare schemes and employment opportunities, including disability schemes for Hijra, have offered resources to this classed group of people who are otherwise disenfranchised and excluded from class mobility. Similar sentiments follow for initiatives like the Dawatul Quran Third Gender Madrasa, which made history by emerging as the first school for Islamic education for people of the third gender. Begun with a 150 Hijra and third gender students, the institution was celebrated by several Hijra organizations and heralded by local and international media as a step towards inclusion. However, the truth is a little more complicated. My interviewee, MD Mizanul Haque Mitu,

¹⁵⁴ “I Want to.”

¹⁵⁵ Afra Nuarey, “Why ‘third gender’ is a problematic label,” *The Business Standard*, August 16, 2021, <https://www.tbsnews.net/thoughts/why-third-gender-problematic-label-288802>

¹⁵⁶ Hossain, “The paradox.”

the General Secretary of a CBO named Paddakuri Hijra Sangho, is a Hijra elder from the parts of the city that are categorized as Old Town. She is a dear friend of mine who is simply Mitu Apa (Mitu sister) to me. She is also an important community leader and organizer who leads networking and organizational tasks out of her volition and religious dedication to connect Hijra people to 44 madrasahs like the Dawatul Quran Third Gender Madrasah all over the country. When I asked her if the religious leaders of the institution differentiate between Hijra and transgender, she told me that it is preferable to not use the word the term “transgender” with them. Mitu told me, “The scholars of the institution understand transgender people to be those who wish to change their identity and their body, and it is a sin to change God’s creation. So, this is not accepted well.”¹⁵⁷ Mitu’s words are not to be taken lightly; she has been a prominent Hijra activist and development worker for 26 years now, having worked with BSWs first and then starting her own CBO in 2013. I have also never seen her wear makeup, or women’s clothes. I have only ever seen her wear pants with long shirts or tunics, even when she has danced with me in secret sex-positive queer parties that were hosted by her in Old Town. While she has been advocating for the rights of Hijra and transgender people alike with her transgender peers and friends, she is also a Muslim in the Hijra tradition who is caught in this sensitive and contested location of “thirdness” that Hijra and transgender women occupy in the public imaginary. When I asked her if she identifies as a Hijra or as a transgender person, she said, “Of course I am a Hijra. I abide my guru’s instructions; I obey and defer to her.”¹⁵⁸

4.2. Emergence of “Transgender” – the Gendered, Neoliberal Subject

¹⁵⁷ MD Mizanul Haque Mitu, interview by the author, May 29, 2023.

¹⁵⁸ MD Mizanul Haque Mitu, interview by the author, May 29, 2023.

In April 2023, Inclusive Bangladesh, a not-for-profit human rights organization with particular focus on rights for transgender and sexually diverse people, conferred this year's Xulhaz Mannan Memorial Award of Diversity to a transgender woman named Layla. A small video accompanied the announcement on the organization's Facebook page, in which a voice narration gives the audience an inspiring overview of Layla's life.¹⁵⁹ In it, she is introduced as an entrepreneur who runs a small business of selling miscellaneous items such as mats and toothbrushes on the streets of Dhaka. Hailing from Mymensingh originally, she moved to Dhaka decades ago and first moved into a Hijra household. But she has now moved away from the tradition to make her own living in this manner for several years now. From this business now, she earns somewhere between BDT 250-300 on a daily basis now, which amounts to less than three euros. The narrator adds that this is significantly less than what could be earned in the Hijra profession. However, in spite of how small this amount is, the narrator stresses that "she lives a simple life with her hard-earned money, being daily scorched by the sun, drenched by the rain, and covered in street dust." Therefore, the organization finds her deserving of this award "for her indomitable courage, righteous lifestyle, and ability to serve as a model for others." It helps us to remember that this award memorializes Xulhaz Mannan, the famed gay activist who was murdered in 2015 by Islamists for his activism. With this award, Layla is not only heralded as a figure that can inspire in spite of her humble life, but she is also a poster child of the twenty-first century modern plights for equality and human rights that brings the queer people together in global solidarity.

In my analysis of this discourse, I find that Inclusive Bangladesh is not an NGO; it is an advocacy group for human rights that operates from the United Kingdom and Bangladesh, but particularly engages with human rights issues of Bangladesh by engaging with

¹⁵⁹ Inclusive Bangladesh, 2023, "Meet Layla!", April 28, <https://www.facebook.com/watch/?v=247264327827756>

international organizations and Bangladeshi queers in the diaspora. For the third year in a row now, Inclusive Bangladesh has been organizing a virtual event called the Dhaka Pride, which has caused much ruckus on social media and have been met with caution and disengagement by several networks of queer activists and organizations who weigh the risks of queer visibility and public assemblies in the current climate. It is rather curious that Inclusive Bangladesh, an organization that has chosen an approach of visibility with sentiments that are loud and proud, memorializes Xulhaz Mannan with this award on the one hand. Whereas, on the other hand, Mannan's death caused a tremor that forced the issue of gay rights underground in 2015, as discussed previously in Chapter 3, to the point that the Pride Rally was canceled in 2016. However, no attempt is small as they bring together transgender activists and performers together with non-transgender queer performers from small towns of Bangladesh in these virtual programs for their editions of Dhaka Pride, and engage in conversations about equality, ethnic marginalization and inter-faith relationships in Bangladesh. But one cannot look away from the juxtaposition of a transgender lifestyle against a Hijra one that this organization's rhetoric poses. And what I notice here is the merit of the former over the latter. Layla is hardworking, persevering and self-reliant, and that is more meritorious than the Hijra lifestyle even though it is one riddled with poverty, which would logically assume that Hijra are not self-reliant. The image of the capable, persevering, money-making transgender woman is at the forefront of the organization's advocacy. The most demonstrative example of this is perhaps in the fact that for the last two years, the executive director of the organization was Tasnuva Anan Shishir, who made history in 2021 by becoming the first transgender news anchor on Bangladeshi television.¹⁶⁰

¹⁶⁰ Geneva Abdul, "'I Had to Prove That I Exist': Transgender Anchor Makes History in Bangladesh," *The New York Times*, March 16, 2021, <https://www.nytimes.com/2021/03/17/world/asia/bangladesh-transgender-tv-anchor.html>

In this chapter, I find and analyze how the many feats of the first accomplishments among transgender people emerge as a wave to be reckoned with. In April 2023, the Bangladesh satellite TV channel Somoy TV published a news feature on Rani Chowdhury to celebrate the many trials and tribulations she has overcome as a transgender woman.¹⁶¹ In the story, she declared that she is the first transgender woman to perform on the country's national TV channel, Bangladesh Television. But she had to conceal her transgender identity in order to be accepted as a performer. And although there's still much to be done for the improvement of the lives of people like her, she has hope because the government did take the big step of recognizing them in 2013. Somewhere in here is lost that the state never actually recognized "transgender" as a separate gender category, but instead recognized a third gender category for Hijra people.

In January 2023, Ankita Islam made history by becoming the first transgender student of the country's oldest and largest public university, University of Dhaka. In Jamuna Television's news report of the event, the reporter Lamia Tithi heralded Ankita's accomplishment by saying, "The only representation of transgender or third gender people is not in the excuses they make about social unacceptance or lack of livelihood. Some of them are as exemplary as an Ankita too!"¹⁶² This statement was accompanied by footage of Hijra-coded people going to stores to collect alms - a representation of the Hijra tradition of collecting cholla. In March 2022, DBC News TV aired a news feature on the story of Neel Asha Chowdhury, a transgender woman who inspires with her hard work and dedication as she battles her financial struggles and continues her education.¹⁶³ She lives with her family in

¹⁶¹ সময়ের গল, 2023, "ট্রান্সজেন্ডার রানীর না বলা কথা," April 25, <https://www.facebook.com/watch/?v=745407097080761>

¹⁶² Jamuna Television, 2023, "১০০ বছরের ইতিহাসে প্রথম ঢাবিতে ভর্তি হলো ট্রান্সজেন্ডার শিক্ষার্থী," March 18, <https://www.facebook.com/watch/?v=176013161455076>

¹⁶³ dbcnew.tv, 2022, "'আমি চাই সং পথে উপার্জন করতে' | DBC News Special," March 11, <https://www.facebook.com/watch/?v=437112964831272>

Jessore, and her mother appeared on the feature to say some words about her ambitions and the family's financial shortcomings too. Neel Asha works as a food delivery person to finance her education, and dreams to qualify in the Bangladesh Civil Servant examinations to become a civil servant one day in the future. The news reporter compared her merit and struggle for a respectful livelihood to the lack of the same among others by saying, "Some ridicule them, some are annoyed by them – these transgender women. And many of them are involved in crimes such as extortion." Neel Asha, in her interview, appealed to other transgender women to try and live with their families - a social reality that many gender-diverse people cannot afford in Bangladesh. In saying so, Neel Asha's ability to live with her family stands out as a rare example of familial acceptance that many Hijra have recovered themselves from by accepting an alternative model of kinship in the Hijra tradition. And while the word Hijra is not even uttered once in the entire report, the report is titled "I want an honest livelihood," which, at least superficially, alludes to dishonest livelihoods that Hijra are associated with as the act of collecting *cholla* is compared to extortion. This criminalization of the Hijra livelihood is not so different from the same that the Criminal Tribes Act did in 1871.

This reputation of extortion, economic dependence, and lack of the ability to make an honest, reputable livelihood is one that Hijra have also been trying to escape. While many Hijra remain in the tradition and collect *cholla*, many also engage in clandestine informal economies of sex work while formal employment remains inaccessible to them because of discrimination. But the plight for viable employment and non-discriminatory workplaces has been a consistent demand from Hijra activists and organizations. The state has also responded to this plight on several occasions by offering provisions for Hijra in the form of bank loans, vocational programs and motivating employment of Hijra by offering even tax breaks for companies that employ a certain amount of third gender people. The advent of public health

interventions in the late 90s offered the first viable options of employment and livelihood opportunities outside of *hijragiri* for Hijra in NGOs.¹⁶⁴ In fact, although unwelcomed at first by many Hijra households and elders for fear of how such new employment may affect old ways of *hijragiri*, NGOs gave Hijra people an avenue to represent themselves in discourses for rights and also find alternative opportunities for income.

The plight for economic rehabilitation of Hijra continues, but the language surrounding the nature and expectations of this rehabilitation is no longer one that demands the state's interventions and aids. Rather, popular discourse demands that it is the Hijra who become competent and proactive. In March 2023, Prothom Alo, Bangladesh's largest circulated Bangla-language newspaper, published a news report on the story of 50 Hijra people who came together and started an agricultural project in Gazipur. It was reported as an extraordinary feat of accomplishment that this group of Hijra came together to become "self-dependent." When the group approached Osman Ali, the owner of the plot, for the opportunity to farm on the land, he gave his land to the group out of sheer goodwill and no fees because he saw that they wanted to be "self-dependent." The news report further elaborated that the villagers were previously annoyed at this group of Hijra because they would collect essentials and necessities from the households and shops of the village. But now, they are self-dependent, and no longer a trouble to the people. The villagers are now happy.

And then there's the story of Cynthia Bhuiyan, the famed transgender entrepreneur whose success story has catapulted her to a celebrity figure, in and outside of queer communities in Dhaka. Jamuna Television news reportage on Cynthia's success story was

¹⁶⁴ Hossain, "The paradox."

titled “Story of a human who never admitted defeat.¹⁶⁵” And it is true. Today, after different business ventures, Cynthia runs her own fashion business, Bhuiyan Fashion, where she produces ready-to-wear garments for Aarong, a fashion-and-lifestyle-centered social enterprise of BRAC, the Bangladeshi NGO that has also emerged as one of the world’s largest. The report begins with an aerial view of her seven-storied factory building, where her factory is housed. Her feat is remarkable; she currently employs 2200 people in different capacities. But that’s not just it. She also runs a not-for-profit organization called Amader Bhabna Association, where she trains Hijra and transgender people with fashion production skills so that they may be employed in Bhuiyan Fashions. Her aim is to build the capacities of and create employment opportunities for this group of people. The news report features several of her gender-diverse employees, working and praising her for providing them with these opportunities. During my interview of her in March 2023, she told me that she believes employment opportunities like this could allow Hijra and transgender people to bring home some money. She said, “They face immense discrimination and abuse from their families. I want to give them skills trainings and give them work so that at least when they can show their families some money, they will be treated better.”¹⁶⁶

Her aspirations to support Hijra and transgender people are actualized by her success as an entrepreneur. She shared with me stories about how she has picked transgender women up from the streets in rural Bangladesh and made arrangements for them to work with her. Full of empathy and zeal for leadership, she understands the social stigma and barriers that Hijra and transgender women face although she herself is not a Hijra. In fact, Cynthia’s

¹⁶⁵ Jamuna Television, 2022, হার না মানা মানুষের গল্প, August 5, <https://www.facebook.com/watch/?v=1200081664166184>

¹⁶⁶ Cynthia Bhuiyan, interview by the author, March 25, 2023.

success had made her a “madam”, a formidable person who commands respect and holds the power to negotiate for those who don’t.

During the interview, she told me the story of how she helped a Hijra through security protocol in the airport when she was traveling to Australia. She discussed with me the problems that gender-diverse people face because of the discrepancies in paperwork, as their birth names and assigned genders do not match their appearances and new identities. She faces the same problems because her paper still records her birth name, Siddique Bhuiyan. However, she is well known and, therefore, faced no obstruction in the airport, and then proceeded to wait in the VIP lounge even. But she noticed how, at the same time, a Hijra person was being controlled by security forces in the airport. She stepped in to defend her and demanded to know why the Hijra had to be verified so strictly when she wasn’t. She said, “Am I not a Hijra too?”¹⁶⁷ The security forces responded back to her saying, “But you are a madam, *Apa*.” She told them, “Yes, I am transgender. But you can tell from how I look that I could be a Hijra too. I am well-known but she isn’t, and that is precisely why you should make it easier for her to pass through as long as she has all the legal requirements to travel. Here, I will take liability for her.”¹⁶⁸ She ended up submitting an application where she vouched for the Hijra person’s good character and identity. As a visibly transgender woman with the shadow of a beard, immaculate fashion and unashamed public expression of her identity, she manages to separate herself from the Hijra identity, and she is able to do so because of her financial success as an entrepreneur.

Her success story has made her the poster child of BRAC. Through her, BRAC wants to extend support so that she can employ more transgender people. The same news report was

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

also featured on Aarong's website where the headline read, "Transgender artisans find hope with Aarong producer," and the word Hijra was not used once to denote her or any of the people she employs in Bhuiyan Fashions to produce for Aarong.¹⁶⁹ Her portrait and life story were featured in BRAC's special 50th anniversary publication as one of the inspiration stories that BRAC has facilitated. And she is ever so grateful to BRAC too, who is her first and only client. She walked into the Aarong head office 15 years ago looking for work, and one designer gave her the opportunity to demonstrate her skills by producing two sample designs for them. From then onwards, their partnership has only grown and aims to grow bigger, as she hopes to employ more people and turn the number of employees to 5000. Her faith in BRAC is unwavering, but she doesn't have similar faith in the state. She has been trying to avail the tax break that the state has offered to companies which employ a certain number of Hijra and transgender people. But she has repeatedly failed to access this provision in spite of all the paperwork that she has submitted. She tells me that private companies have stood by her in ways that the government has not. But she is not a dissenter, neither is she unsupportive of the government. In fact, she is well connected with local party offices and incumbent politicians. And as we see in this quintessential Bangladeshi political poster, she identifies herself as Bangladesh Awami League's "transgender leader," and places her own image next to other local BAL political leaders including the Prime Minister herself. Please also note that, like most other posters of this nature, this one also begins at the top with the invocation "Allah is the most powerful" in Bangla. Here, she is wishing luck for the successful execution for the triennial BAL conference for Wards 1, 2, 3 and 75 of the Khilgaon Thana, where her residence and business are located. But more about her address later.

¹⁶⁹ "Transgender artisans find hope with Aarong producer," aarong.com, August 28, 2022, <https://www.aarong.com/newspost/transgender-artisans-find-hope-with-aarong-producer.html>



Figure 3. Poster printed by Cynthia Bhuiyan¹⁷⁰

Her own success and the success she seeks for Hijra and fellow transgender people alike falls neatly into the rhetoric of the third gender that must become capable and self-dependent. In fact, during our interview, she reiterated that transgender people deserve work and are favored by BRAC because “we can work very quickly.” She recollected to me how she excelled as a student in a training program in 1987 where she learned dairy farming, which would become her first business venture before starting Bhuiyan Fashion. She completed the program with the best results, and she remembers that she was applauded by the organization for being a Hijra who has surpassed everyone else in her merit. Comparisons such as this place the self-initiating, individual, work-seeking Hijra/transgender person as extra-able, whereas the cholla-seeking Hijra have been categorized as disabled.

4.3. The Power of Recognition, Conflation of Identities and Governance of the Self

¹⁷⁰ Collected from Cynthia Bhuiyan on October 24, 2022.

Joya Sikder is a formidable woman. I met her 8 years ago in Dhaka, when I was only finding my footing among queer groups. I call her Joya Apa, and she is the first transgender woman I ever met in Dhaka. She commands immense respect not just because she is one of the most well-known transgender activists who speaks for transgender people as well as Hijra people, but also because she embodies the solidarity of an umbrella term like LGBTH+ so strongly. She moves seamlessly between women's groups, Hijra groups, transgender groups, and gay groups, and is known among all. Joya's history is known to all. She was, after all, the first transgender woman to be elected as the president of the Sex Workers' Network.¹⁷¹ When she was initially forced to leave her family decades ago, she moved to Dhaka and initiated herself in a Hijra household. Today, she runs her own organization, Somporker Noya Setu (SNS) and no longer identifies as a Hijra. She has broken from the tradition and no longer engages in *hijragiri*. Now, she identifies as a transgender woman, but remains connected to her Hijra kin and offers support to all. As an activist, she remains proactive in creating awareness in popular discourses about the transgender identity. One can find Joya repeating herself in articles, interviews and speeches that Hijra and transgender are not the same.¹⁷² In Bangla, she has been one of the prominent figures to popularize the term "*Rupantorito Nari*" (Transformed Woman) as a translation for Transgender Woman.

She also distinguishes Hijra as a culture that "may include intersex people, castrated men and also transgender women. This group of people live as a community or 'family', under a or community leader or 'guru'. So Hijra, is in fact a community, and not a sex or a gender."¹⁷³ She has been active in combating the conflation that happens in popular media between Hijra and transgender under the common indicator that is "third gender." Moreover,

¹⁷¹ Hossain, "The paradox."

¹⁷² "'The terms 'Transgender' and 'Hijra' are not the same' says Joya Sikder", *Share-Net Bangladesh*, February 9, 2019, <https://www.share-netbangladesh.org/transgender-and-hijra-is-not-the-same-says-joya-sikder/>

¹⁷³ Sikder, interview.

she has been active in diagnosing the major problem that has arisen in the state's grand gesture to recognize a third gender. She points out that the government officially recognized Hijra as another gender category, which is often misunderstood as gender ambiguity and is not comparable with transgender. Joya is not the only one in this endeavor to create awareness about this conflation. In a recent TV interview of the transgender makeup artist and social media personality, Saad MUA, the interviewer prompted a similar conversation to ask the artist for clarifications regarding the distinction between Hijra and transgender.¹⁷⁴

But this distinction is always not so clean. In a continuity of sorts of the feminist solidarity that Naripokkho espoused in the 1990s, urban feminist movements have also become increasingly aware of trans-inclusivity. In March 2023, on the occasion of International Women's Day, a news report by the web-based news portal, Benar News Bengali began with the voice of a transgender woman claiming, "Transwomen are also women."¹⁷⁵ Speckled with footage of an International Women's Day demonstration from which hopeful faces of transgender women stood out, the report featured interviews from several prominent women's rights activists who acknowledged that the plights of transgender women must be given more attention in women's rights agendas. However, when statements about the government's initiatives are discussed in the report, the topic of recognition lingers. Irteza Ira, a transgender woman, discussed the government's roles and reiterates that it is only since the state's recognition of people like her that transgender women have recently begun to get attention. But the state never did recognize transgender women. And even while the report is about how transwomen are women after all, the term "third gender" is hash-tagged in the Facebook post.

¹⁷⁴ RTV Entertainment, 2023, "ট্রান্সজেন্ডার ও হিজড়ার মাঝে পার্থক্য কি? জানালেন বাংলাদেশের ট্রান্স সুন্দরী," May 22, <https://www.facebook.com/watch/?v=1125378305518723>

¹⁷⁵ BenarNewsBengali, 2023, "রূপান্তরিত নারীর পাশে নারীবাদীরা," March 8, <https://www.facebook.com/benarnewsbengali/videos/750327870004496>

In her opinion piece for *The Business Standard*, Afra Nuarey, who was a research associate for Bangladesh Forum for Legal & Humanitarian Affairs (BFLHA) at the time, discussed the confusions that are created by the term “third gender.” In her opinion, the term “third gender” prevails and persists because some recognition is better than none. While I agree with Nuarey, I believe that some nuance is lost in acknowledging the governmentality with which all of these different groups of people arrive at the term “third gender.”

Media’s mis/representations aside, it is important for me to also discuss the theoretical debates that exist in larger community discourses among experts and activists. When Javed discussed his expertise on the matter with me, he delved into the unresolved debates within himself as someone who demands the grounds of self-identification for gender identity. He told me, “As I am speaking with you, I know that Hijra is identified as a culture now but I am also wondering if it is a gender. Theoretically, if they also define themselves as a gender, what allows us to dispute that?”¹⁷⁶ In his prolific work across the country, he has recently found people who identify as transgender even in Hijra households in rural Bangladesh. When I asked him where is it that the term “transgender” comes from, he alludes to a Western framework of gender that discourses here latch on to. But I do not expect to know where really anyone finds the vocabulary to articulate their subjectivity, because I do not believe there is any one location or channel of dispersion for such a vocabulary. However, both Javed and Titir, as legal experts and community researchers, opine that education has a correlation.¹⁷⁷ Both of them have found that while they may initiate or live in Hijra systems, many transgender people seem to have some level education and exposure to this information. I find it curious because historically, people with educational qualifications have also resorted

¹⁷⁶ Jubtadul Javed, interview by the author, January 4, 2022

¹⁷⁷ Titir and Javed, interview.

to *hijragiri* for social and financial support because of the lack of traditional employment opportunities for people who exhibit gender-deviance. But what I find important here to note is that both Javed and Titir work with these communities by virtue of their roles in prominent NGOs, and arrive at these people who are subjects, participants and beneficiaries of their projects via the economy of NGOs and foreign aids that become a primary site for these discourses. Here, Lugones' concept of the colonality of gender allows me to scratch out the contention of these different social identities in the larger discursive field of gender, as old customs and economies and new conceptions of gender occupy this same discursive field. In this discursive field, Hijra becomes a culture (race, maybe?), and transgender becomes a gender who may or may not be in the culture of *hijragiri*. And the power to become neoliberal subjects, who can compete in capitalism and free-market trade, is what allows a distinction where one can be defined as a gender that can be plucked out from the other's definition of culture.

The fact remains that "third gender" is an unofficial term, made popular by media, academia and NGOs, in an attempt to scratch a terrain outside of the sex/gender binary. In the way that Hijra perpetuate ideas of asexuality and genital ambiguity about themselves to prevent the stigma and criminality of homosexuality, and in the way that some Hijra people subscribe to the idea of sexual disability to access disability provisions, the idea of thirdness allows the institution of *hijragiri* to exist for Hijra *guru*, *janana* Hijra, *chibry* Hijra, *koti*, and more. As an historical institution with religious cosmologies, *hijragiri* offered a livelihood and tradition for all those whose gender and sexual experiences are non-normative in ways that do not follow the sex-gender distinction that Western feminist theory takes for granted. Hijra mythologies of spiritual power are not the only markers of their negotiations with the religious sphere. In Hossain's account of a Sinni Festival – the Hijra festival that celebrates

Moriom Hijra, a favorite disciple of the popular Sufi saint Khwaja Moinuddin Chishti – children and people gathered while they sang devotional songs. Here, we see a religious embodiment that negotiates the piety of these Hijra subjects with the challenges that questions of social and religious legitimacy pose. The imam of the local mosque that delivered the sermon for the festival prayed for the well-being of the Hijra, and told Hossain that they are, after all, “handicapped.” In these negotiations, the Hijra, whoever they are in the way they are with desires and inclinations that might as well be sinful, are God’s creation after all. They exist on a register outside of those of the normative man and woman, and are embedded in a tradition where their contribution to the social economy is with functions where they offer blessings to members of the society and, in return, expect kindness and provisions for basic sustenance in the form of *cholla*. The Hijra, who practice these traditions in their lineages of teacher-student relationships, are not an exception in this. Many ascetic traditions have existed in Bengal in this manner, whose philosophical and epistemological exercises rely on an economy of exchange that the society sustains and nurtures.

But these traditions are alien to the neoliberal agency of economic productivity which also subsumes gendered peoples towards self-reliance and individual responsibility. It is this neoliberal agency that, in today’s Bangladesh, allows a subject to exercise power in the state apparatus as a rights-bearing citizen. And one can see the Hijra tradition adapt to this neoliberal agency in order to qualify as rights-bearing citizens who have the power to govern themselves. This is demonstrated by the theatrical way in which several Hijra communities came together to donate BDT 20 lakhs (approximately EUR 17,500) to the businesses who lost their assets in the fire accident that burned the Banagabazar Shopping Complex to

ashes.¹⁷⁸ One Hijra said in a news report, “We are today extending support to those who used to support us.”¹⁷⁹

Transgender people are subsumed in “thirdness” simply by virtue of being audacious enough to *choose* to imagine a separation of gender from the sex, an idea that remains alien in the public imagination where sex and gender have not been distinguished. Javed recollects how, in spite of how global media and liberal discourses of human rights celebrated the feat, Tashnuva Anan’s accomplishment as the first transgender woman to become a TV news presenter caused a big stir of anger in social media.¹⁸⁰ And no matter how hard transgender women try to exist as women after all, they also exist in a register outside of those of the normative man and woman. This is true for not just Bangladesh, but also the region. Pakistan’s Transgender Persons (Protection of Rights) Act 2018 was celebrated as a model for the region, because of the remarkable feat it achieved by giving people the right to identify as transgender on the grounds of self-identification alone, without any provisions for a screening committee. But in May 2023, the Federal Shariat Court of Islamabad passed a ruling that found the right of self-identification to be un-Islamic.¹⁸¹ The court explained that this gave men the opportunity to disguise themselves in order to access and invade women’s spaces.¹⁸²

¹⁷⁸ Bangabazar fire: Hijra communities donate Tk 20 lakh to traders,” *The Daily Star*, April 9, 2023, <https://www.thedailystar.net/special-events/bangabazar-fire/news/bangabazar-fire-hijra-communities-donate-tk-20-lakh-traders-3292746>

¹⁷⁹ Click Ittefaq, 2023, “২০ লাখ টাকা নিয়ে বঙ্গবাজারের ব্যবসায়ীদের পাশে দাঁড়ালো তৃতীয় লিঙ্গের জনগোষ্ঠী | Bongo Bazar Fire,” April 9, <https://www.facebook.com/Clickittefaq/videos/1153560778670215/>

¹⁸⁰ Javed, interview.

¹⁸¹ “Pakistan: Revocation of rights of transgender and gender-diverse people must be stopped,” Amnesty, May 19, 2023, <https://www.amnesty.org/en/latest/news/2023/05/pakistan-revocation-of-rights-of-transgender-and-gender-diverse-people-must-be-stopped/#:~:text=The%20Federal%20Shariat%20Court%20of,their%20interpretation%20of%20Islamic%20principles.>

¹⁸² Ibid.

Similar justification was put forth in the case of defining the “transgender person” for India’s Transgender Persons (Protection of Rights) Act.¹⁸³

Transgender, as an identity, is not embedded in an historic institution as the Hijra are. Instead, they embed themselves in their individual competencies to excel with neoliberal agency. But the caveat remains that transgender people must rely on the recognition of a thirdness to make themselves visible in their fight for recognition as legitimate subjects, and, therefore, they find themselves vying for the thirdness with the Hijra too. This co-option of the thirdness not only creates a distinction between the usefulness and productivities of the Hijra and transgender subjects, but also creates an alternative where the tradition is no longer necessary. In the process, the historically classed and philosophical location of *hijragiri* as a profession is erased in this process. This was especially visible when the 2018 bill of India’s highly debated Transgender Persons (Protection of Rights) Act, 2019, attempted to criminalize begging - which is the act of collecting *cholla* - for transgender people before amending it in the final act¹⁸⁴. I find the similarities between such an attempt and the criminalization of begging by eunuchs in the colonial era Criminal Tribes Act 1871 very curious.

In all cases, thirdness is what clumps these subject positions together and also pits them against each other in an invisible competition to emerge as ideal subjects whose rights will be protected even as parts of their lives (sexuality and gender) remain socially and religiously unacceptable. More importantly, in both the cases, the Sufi and syncretic

¹⁸³ Ilma Hasan, “LGBTQ community protests against Transgender Persons Bill,” *India Today*, December 17, 2017, <https://www.thehindu.com/news/cities/Delhi/trans-activists-up-the-ante-to-challenge-bill/article25945066.ece>

¹⁸⁴ Sidharth Ravi, “Trans activists up the ante, to challenge Bill,” *The Hindu*, January 9, 2019, <https://www.indiatoday.in/india/story/lgbtq-community-protests-against-transgender-persons-bill-1110328-2017-12-17>

religiosity of those in the Hijra tradition and the possibility of gender transitions remain largely disapproved of in orthodox Sunni traditions like the one that is cited in BSWS' booklet to define Hijra. And this becomes highly relevant as we get to the nitty gritty of these rights to calculate what that would mean for these subjects that dwell in thirdness.

Chapter 5

Inheritance at the Nexus of Gender, Religion and Citizenship

On November 9, 2020, Sheikh Hasina, the Prime Minister of Bangladesh, brought the matter of inheritance for third gender people up during a cabinet meeting. She encouraged the responsible ministries to make it possible for third gender people to claim their right to family inheritances¹⁸⁵. Anisul Hoque, the Minister of Law, told Agence France-Presse (AFP), “We’re trying to frame a legislation in accordance with the Islamic sharia law and our constitution which will ensure the property rights for a transgender family member.” The specifics of the term used by the Minister is lost in translation though – did he use the term “transgender” or “third gender”? In any case, news reports on the matter flooded all news channels and outlets on the matter soon after¹⁸⁶. More recently in February 2022, Saifuzzaman Chowdhury, the Minister of Land, added that the “government has taken initiative to ensure inheritance of property for people of the third gender community.”¹⁸⁷ But the initiative was not elaborated upon.

However, in March 2023, a lawyer named Abdul Halim Kafi filed a writ petition before the High Court demanding why a Hijra Welfare Board should not be formed for the protection of the rights of this community. Kafi said, “Nowhere in the country’s constitution and religious tradition have the transgender (hijra) people been denied their right to

¹⁸⁵ “PROPERTY INHERITANCE LAW FOR THE THIRD GENDER,” bproperty, December 18, 2020, <https://www.bproperty.com/blog/property-inheritance-law-third-gender/>

¹⁸⁶ Transgenders to gain inheritance rights in Bangladesh, Dhaka Tribune, November 16, 2020, <https://archive.dhakatribune.com/bangladesh/people/2020/11/16/transgenders-to-gain-inheritance-rights-in-bangladesh#:~:text=Transgender%20people%20will%20soon%20be,the%20conservative%20Muslim%2Dmajority%20nation>, and “Bangladesh transgender people to gain inheritance rights,” Prothom Alo English, November 17, 2020, <https://en.prothomalo.com/bangladesh/bangladesh-in-world-media/bangladesh-transgender-people-to-gain-inheritance-rights>

¹⁸⁷ “3rd gender people soon to get property inheritance rights: Land minister,” The Business Standard, February 23, 2022, <https://www.tbsnews.net/bangladesh/3rd-gender-people-soon-get-property-inheritance-rights-land-minister-374800>

inheritance of family property. To ensure that transgender (hijra) people can inherit their family property, there must be a legal framework.”¹⁸⁸ The secretaries of the Ministries of Law, Social Welfare, Home Affairs, Health, as well as the Director General of the Department of Social Services and the Inspector General of Bangladesh Police were instructed to respond to the writ petition in 4 weeks.

On May 11, 2023, BSWs organized a workshop to discuss opinions on the matter of “The Violation of the rights of Transgender, Hijra and Gender-Diverse People and Further Steps,” which was hosted in the conference room of the National Human Rights Commission of Bangladesh (NHRC). In the session, Dr. Kamal Uddin Ahmed, the Chairman of the Commission, declared that the Commission would propose the formation of a Welfare Board for the protection of the rights of this community of peoples. As I write this chapter only days before the deadline for the submission of this thesis, the second draft of the Transgender Rights & Protection Bill 2023 is being composed under the auspices of the NHRC and Ministry of Social Welfare with the participation of a twelve-member committee constituted of transgender activists and community experts, many of whom are my friends. I have just ended a call with an exasperated friend who is an informal thirteenth member of the committee, and procured a copy of the unfinished draft from them. All of this sounds highly exciting, but it is also charged with heightened tensions among different stakeholders, all of whom belong to this larger constellation of “gender-diverse people” but are at odds with each other as the negotiations for every noun and name for any identity are complex.

¹⁸⁸ হিজড়াদের সম্পত্তিতে উত্তরাধিকার নিশ্চিত কল্যাণ বোর্ড কেন নয়, *Prothom Alo*, April 20, 2023, <https://www.prothomalo.com/amp/story/bangladesh/mkyjxv3exj>

I have previously argued how this constellation of ‘gender-diverse people’, who exist in the imaginary as a ‘third’, are racialized as their own separate category of people by virtue of deflecting from biological dimorphism of sex. In this chapter, I elaborate upon the complexities of patriarchal customs, religious traditions and multiplicities of gendered subjecthood to sketch an assemblage of different negotiations that gendered people find themselves in as they claim their right to inherit family property. I map the differing and disputing opinions to demonstrate how these gendered people negotiate their claims to the actual, tangible resource that is land. Finally, I discuss Cynthia Bhuiyan’s life and emergence as a prominent transgender activist and entrepreneur by embedding her in the spiritual cosmology and legacy of her father, the Sufi saint Hajji Mohammad Montaj Shah Rizvi. In doing so, I tie my analysis together to discuss the contentions between the different meanings and embodiments that exist in the larger discursive field for citizenship and rights of gendered people. I will draw from Lugones’ theory of the colonality of gender to discuss how these negotiations, in the modern democratic plight for the creation of rights-bearing citizens within the two separate yet entangled purviews of state apparatus and religious law, fall prey to modernity and colonial impositions of gender.

5.1. Patriarchal, Heterosexual Economies of Inheritance

It is useful to begin here with an understanding of inheritance for Muslim households in Bangladesh, and the social fabric of heterosexual patriarchy within which it is embedded. As discussed previously, inheritance of property is governed by respective religious laws in Bangladesh. For the majority Muslim population in Bangladesh, inheritance is governed by the Muslim Family Law Ordinance 1961. This entails that inheritance would be determined by Sharia, and legal codification of the Sharia predominantly prescribe to the Hanafi school of thought. As such, it is commonly understood that upon the death of a parent, a male heir

would inherit twice as much as of what a female heir would inherit. In a gender analysis of Muslim inheritance laws, this remains the simplest understanding.

However, these laws must be embedded in an economy of care for a more intersectional analysis. Muslim inheritance laws and practices do not encourage excessive disposal of assets in philanthropic efforts; it is encouraged that assets be passed down to the next generation for the future security and safety of the progeny. Men are considered as custodians of the family unit and as such, women are entitled to certain economic rights on principles of equity rather than equality. For example, women are entitled to the right of *mahr*, which is a bride price of sorts that her husband must gift her unequivocally as a form of security for her personal ownership and upon which her husband has no right or say. Similarly, a woman must be cared for by her parents, husband and children.¹⁸⁹ Therefore, a woman is entitled to inheritance from all parties – parents, husband and children – in the case that any of them die before she does. However, women are not entitled to have sole ownership of the family inheritance in any case. In the case that a person only has daughters, some of their property will be inherited by the closest male progeny, such as the male children of the parent's siblings.

Given that Bangali Muslim society is patriarchal, heterosexual and patrilineal, men are generally in positions of power and decision-making roles as heads of families. Women marry into the households of men and are dependents of male guardians. A legal manifestation of this can be found, for example, in the fact that until January 2023, women did not have the

¹⁸⁹ Shah I Mobin Jinnah, "Land and Property Rights of Rural Women in Bangladesh," Community Development Association (CDA), January 2013, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/RuralWomen/CDABangladesh.pdf>

provisions to be legal guardians of their children.¹⁹⁰ In practice, the implementation of inheritance laws is governed by local customs and governance, and internal negotiations among family member. It is found that women are largely deprived from their entitlements due to lack of agency, information and the prevalence of pressures from family members. An additional dimension here that must be taken into consideration is the value of the ancestral property in question as well. Women are often deprived from inheriting the ancestral land upon which the family residence is established, commonly known as *bheetey-bari*, and, often, other land that may be adjacent to it also. This is justified by the assumption of a patrilineal transfer of power from generation to generation, where the custody of family property and address is in the hands of male heir who will pass the family name and lineage down to his children, as opposed to women who will become matrons of the households of other patriarchs. In all of my interviews from 2022, discussions of inheritance for “third gender” people were preceded by this acknowledgement of the customary and patrilineal nature of inheritance in local traditions.

Jubdatul Javed worked for BSWS from September 2019 to December 2020 as a legal consultant and legal aid provider for the beneficiaries of BSWS under the project, *Ain Alap*. During our conversation in January 2022, he remembered that a large number of the cases he worked on were cases of disputes regarding the inheritances of Hijra and transgender women.¹⁹¹ This is especially complicated by the fact that that Hijra and transgender women are male-identified at birth, and by transition to a different gender, they forsake their rights as male custodians of the family property. This is further compounded by the fact that these transitions are accompanied by a departure from traditional heterosexuality. Javed said,

¹⁹⁰ “Mothers to be recognised as legal guardians of children: HC,” *Prothom Alo English*, January 24, 2023, <https://en.prothomalo.com/bangladesh/a8yesxg2e0>

¹⁹¹ Javed, interview.

“When families realize that their sons will not marry, they don’t want to give them inheritance. There are many any cases of people being denied inheritance because they identify as Hijra. Even when there are exceptional cases of successful inheritance, they end up inheriting the kinds of properties that is not arable or is largely unusable, especially in rural regions.”¹⁹²

The most perpetuated image of the “third gender” is that of social isolation and exclusion from family infrastructures. Most Hijra narratives begin from an origin story of social ostracization that require of them to arrive at the Hijra household as a shelter and alternative model of kinship for people who identify and live in non-normative registers of gender. During my interview of Joya Sikder in December, 2021, she told me, “When a man becomes a woman and transitions towards femininity, society doesn’t accept that. Families often deprive them of their right to inheritance even though they have this right. Parents might say, ‘What would you do with inheritance? You do not have any children of your own. You have not married.’ The lack of family acceptance deprives the transgender woman of her right to inheritance, and also distances her from claiming this right due to fear of social exclusion and ridicule.”¹⁹³

However, some cases of Hijra and transgender people who have successfully obtained their claims to inheritance can be found. It is tricky, however, because Bangladesh has lacked a clear procedure of changing one’s name and gender identity on identification records, especially in the case of transgender people. While one can now identify as a Hijra on their national identification document (NID) by marking Hijra as a gender, the process is tedious and not uniform. And there are no legal stipulations for what that would entail for the

¹⁹² Javed, interview.

¹⁹³ Sikder, interview.

individual when it comes to inheritance rights as a Hijra is neither male nor female, and the law only accounts for gendered stipulations for the two genders. As a voter, some people can also mark their gender as “other”, but the challenges remain the same in that regard too. There is no official recognition of transgender as an identity. So, according to Joya, it is found that most Hijra and transgender people retain their birth names and male gender identities on their documents, and are able to inherit as men. For some, it is even strategic to fully transition to a different gender identity after the demise of their parents and claiming their inheritance as male heirs.¹⁹⁴

Not everyone has the privilege of waiting though. And Joya’s organization, Somporker Noya Setu (SNS), is one of several CBOs which facilitate interventions for sexually and gender diverse people to access support, legal counsel, resources and services with the help of partnerships with larger NGOs and service providers as well as local partners. I have a case study here from one of many inheritance arbitrations that SNS has facilitated, which can demonstrate the different negotiations that take place with institutions of family, local governance and other stakeholders, and how these negotiations are embedded in a heterosexual economy of patrilineal custody.

Rofiqul Islam Tutul is the General Secretary of SNS, and at the time of his interview with me in December 2021, he also worked as a Junior Advocacy Officer for one of BLAST’s larger legal aid projects, Legal Empowerment and Gender Diversity (LEGD), which collaborated with several CBOs like SNS to offer legal aid, resources and services to sexually and gender diverse people within the existing legal framework. Tutul told me the story of Seema Hijra, from Sirajganj, a Hijra *guruma* who was forced to leave her paternal home

¹⁹⁴ Sikder, interview.

because of her gender variance. She used to rent a small plot of land, over which where she raised a house for her Hijra household of 10-12 people.¹⁹⁵ However, the owner of the plot demanded the plot back for his own agricultural project. She sought a notice period of one month to arrange for a means to relocate her household. During this time, she got in touch with her family to seek support. She sought her inheritance for the purpose of relocating her Hijra household, but her family refused and this resulted in conflict. She kept returning to negotiate her claim, and this led to multiple instances of physical abuse led by several family members over her.

However, Seema Hijra refused to give up. She believed that she was entitled to this support and inheritance by blood relations. With the help of SNS' paralegal partners in Sirajganj, she got in touch with the CBO. SNS recommended that she take their paralegal support and report the acts of physical abuse upon her. Accordingly, she filed a General Diary with the police to record this act of violence. SNS got in touch with the Chairman and Upazila Nirbahi Officer (UNO) of the local government to appeal for Seema's case. Officers of the local governance asked her family to appear before them for an arbitration, but they refused. Seema went back to her family for further negotiations but was met with more physical abuse in return. However, Seema refused to still give up because, in Tutul's words, she believed, "I am a child of this family, a citizen of this country. I must get my rights."¹⁹⁶

Ultimately, the Officer-in-Charge of the sub-district police station, the Chairman, and the UNO made a visit to the house of the family and lead discussions for an arbitration to settle the matter. At the end, due to pressures from the police, BLAST, and SNS, and with the office of the local governance on Seema's side, her family finally agreed to let her take

¹⁹⁵ Rofiqul Islam Tutul, interview by the author, December 26, 2021.

¹⁹⁶ Ibid.

ownership of some of the family's assets. However, she was not given a part of the land upon which the ancestral home lies, that is, the *bheetey-bari*. She was given a small portion of arable land outside of the main permanent address of the home. With the help of some financial support from all the involved stakeholders, a donation of BDT 20,000 was gifted to her so that she may relocate her household to this plot of land. However, it is important to note here that although Seema Hijra did obtain an inheritance, it is not her rightful inheritance according to the law, regardless of the gender she is assigned. Joya further adds her commentary on the case to say, "It must be noted that one cannot actually inherit any family property before the demise of their parents. According to Muslim law, one is not entitled to inheritance while their parents are still alive. This is really not a case of inheritance; this is a case of giving Seema just enough for her situation in response to all the pressure."¹⁹⁷

Seema Hijra's case is not only an example of the discrimination that Hijra and transgender people face and the reality of familial exclusion. It is also an example of how inheritance, or succession of family property, can bypass legal frameworks and are subject to negotiations with customs of a patrilineal and heterosexual economy of care and custody. Due to lack of legal recognition, prescribed stipulations, as well as ambiguities and confluences in definitions of these different identities, the "thirdness" of Hijra and transgender subjects as discussed in the previous chapter struggles to find its place within this economy. In the following section, I will discuss how activists and policy makers find themselves entangled in negotiations at the nexus of gender, religion and citizenship, in order to formulate the country's first law for Hijra, transgender, intersex and gender-diverse people who exist in this "thirdness".

¹⁹⁷ Sikder, interview.

5.2. Transgender Persons Rights & Protection Bill 2023

In the last decade, a larger regional debate and pressure around the rights and protections of transgender people as citizens in South Asia has gained prominence and attention. This debate remains ongoing, especially in light of the fact that discourses of the transgender identity are embedded in NGO-ised channels of knowledge production and rights-and-services-based development projects in South Asia, while debates surrounding this have also become more visible and prominent globally, especially in the West. These debates have to contend with local customs and historical evidences of gender-variance among communities such as Hijra, Kinnar, Khwaja Sira, etc. When the Transgender Persons (Protection of Rights) Act 2018 was enacted in Pakistan, it was considered a big feat for the progression of rights for transgender people in South Asia. In fact, Pakistan's provisions for self-identification as the primary basis for the definition of a transgender person (although at risk now due to religious pressure), became a model. In comparison, India's Transgender Persons (Protection of Rights) Act, 2019, which was enacted in the following year, faced much criticism on several grounds after years of debate and pressure over two different bills in 2016 and 2018.

When I returned to Dhaka in December 2021, I started hearing hush whispers about a Transgender Bill. It also seemed like a divine intervention for my thesis as I was preparing to collect interviews. However, I would soon find out that some of the most prominent transgender activists were not even aware of the bill. It was only during my interview with Joya in December 2021 that she first heard about the bill. It came as a shock to her, with a strong feeling of betrayal, as she failed to understand how a leading transgender activist such as her wasn't consulted for it. In fact, she herself had been envisioning similar plans towards mobilizing for a law for the protection of the rights of transgender people via the partnership

channels that her CBO had in collaboration with NGOs and community groups. She had been discussing plans for a Public Interest Litigation (PIL) that would make the demand for a Transgender Bill.

But what had really happened is that BSWS had been working behind closed doors with the NHRC on a bill. My friend, Javed, was employed in BSWS at the time and was actually one of the people in the team of people that drafted the bill. He told me during our interview¹⁹⁸ that although he was one of the authors of the bill, he remained highly critical of it and expressed to me that he was obligated by his employment to participate in it. But as a community expert, he also wanted to do his best. I learned from him that BSWS also had similar plans for a PIL at first but was later advised against it by NHRC. The revised plan was to draft a bill instead that the NHRC could lobby for. Javed expressed to me that he disagrees with the lack of consultation with community members and representatives in the process. However, on the one hand, he was cognizant of the fact that as the only registered organization that works for the rights and welfare of sexually and gender diverse people in Bangladesh, BSWS could be in negotiations with the state on a policy level that independent activists did not have access to. On the other hand, he also identified that BSWS' relationships with gender-diverse people was primarily through Hijra groups, who constituted a large proportion of their beneficiaries and allowed their work a locally attuned visibility, but negotiations with Hijra groups were also notoriously difficult because Hijra *gurus* remain very protective of their traditions and cultures as a community. This entire complex is also demonstrative of the ways in which NGOs become a channel for negotiations while also creating distance between citizens and the state as they become gatekeepers and decision-makers and, simultaneously, navigate pressures from the state apparatus and foreign donors.

¹⁹⁸ Javed, interview.

I found no public news of this bill at the time. In fact, Javed believed that this bill would not see the light of day for years, and that “an entire decade may pass before we see any progress on this matter.”¹⁹⁹ And this remained unspoken of until May 2023, only a little more than 2 years after my interview with Javed. During an interview with Bangladesh Television to announce the NHRC’s proposal for a Hijra Welfare Board, Dr. Kamal Uddin Ahmed, the Chairman of the Commission, mentioned that the first bill was presented to the Ministry of Social Welfare by NHRC in 2021.²⁰⁰ Reiterating the need to protect “this group of people”²⁰¹, he went back to the 2013 recognition of Hijra as a phenomenal starting point. In fact, he compared this feat to that of India, who only declared a similar recognition in the following year in 2014. However, he expressed in the interview that Bangladesh has faltered in this mission as Pakistan and India have already introduced their own laws for the protection of the rights of transgender people. Following the example of India, where the new act provided stipulations for the formation of welfare boards in every state to facilitate the welfare and access of transgender people to their rights, the NHRC also now sees merit in the formation of a similar welfare board. And on similar grounds to keep up with the demands of its time in the region, Dr. Kamal Uddin stated that 2021 bill is being currently revised with the help of a committee so that it can be enacted soon. As of my last conversation with Javed on 2 June, 2023, official members of the committee include Joya and other prominent community members, activists and NGO representatives. And luckily enough, through a trusted source who cannot be named here, I received an unfinished draft of the revised draft, dated June 2-3, 2023.

¹⁹⁹ Ibid.

²⁰⁰ National Human Rights Commission, ড্রামজেন্ডার ও হিজড়া জনগোষ্ঠীর অধিকার সুরক্ষায় কল্যাণ বোর্ড গঠনের প্রস্তাব করা হবে, YouTube, May 17, 2023, <https://www.youtube.com/watch?v=lZYfpJO0AGw>

²⁰¹ Ibid.

Dr. Kamal Uddin's description of "this group of people" is very interesting to me, and promising for the acknowledgement of different identities. He clarified that while there is a recognition of a third gender in Bangladesh which was done by recognizing Hijra as another gender category, this third group is diverse and includes different identities. The identities he named were "intersex, transwoman, transmen, non-binary, queer, gender neutral, etc." That the words "non-binary," "queer" and "gender neutral" were mentioned on national television so casually is surprising to me, but I also see this as the efforts of many queer activists (some of whom are my friends and engaged with this vocabulary) who have been sitting in workshops and community meetings with policy makers for years on end now while also keeping their sexualities secret due to fear of humiliation and criminalization. This push for expanding the umbrella of identities is reflected in Section 4 of the draft that is in my possession, where "Transgender Person" is defined as: (i) intersex people, that is, "people with biological traits who cannot be included in the categories of complete male or complete female", and whose sex could not be determined at birth due to varying sexual traits; (ii) hijra, transgender-man and transgender-woman, that is, "people who undergo physical or mental changes that cause changes in behavior, mental state, actions or expression"; and (iii) "people who perceive their gender to be non-binary."²⁰² Although I am critical of how the word "transgender" subsumes all of these different identities, this definition is still remarkable for me because it does not conflate intersex, Hijra and transgender people into one umbrella "third gender" classification. Simultaneously, new avenues open up with the mention of non-binary and gender-neutral as identities, the implications of whose definitions and meanings are yet to be understood with time, *if* this definition passes into actual law. However, Section 5 of the draft elaborates on the recognition of the transgender person, and this is where the law stipulates that a special committee will be formed to accept applications for recognition

²⁰² Private collection of the author, collected on June 3, 2022.

and change in gender identity. The committee will also be responsible for verifying the facts of the application and, once verified, it will also be responsible for facilitating the transition on all personal and state documents thereafter. But there is no clarity on what this committee would constitute of and what the verification process entails. Would there be a medical screening, or psychological assessments? We do not know yet.

The lack of clarity continues into Section 11 of the draft, which elaborates upon the inheritance rights of transgender people. The section states that transgender individual cannot be deprived of their right to family inheritance. The section stipulates that transgender men will inherit as men and transgender women will inherit as women. However, intersex and non-binary people will inherit according to their biological makeup and traits. An assessment will decide which sex their bodies align more with, and that would assign them into the rights of either men or women. All of this would be subject to the verification and recognition processes that the special committee is responsible for.

To discuss furthermore the lack of clarity, I draw from my interviews that demonstrate differences in aspirations, meanings and bureaucratic barriers that result from ambiguities. During my interviews in 2021, the discourse for inheritance rights also had similar provision: third gender people who appear more as men will inherit as men, and those who appear more as women will inherit as women. Javed had a fundamental problem with this provision because as of now, this law relies upon the 2013 recognition of Hijra as a gender category, who are constituted of male-bodied people who transition to feminine comportments as Hijra.²⁰³ The idea of the transgender man hardly exists in the public imagination, although there are increasing numbers of gender transitions as transgender men in recent years, most of

²⁰³ Javed, interview.

which manage to remain rather private. Why this is the case is beyond the scope of this thesis, and there are interesting discussions about patrilineality and the gain of male heirs here to follow up on. And this is relevant to the rights of transgender women who, in their achievement of rights as women, become entitled to half of the inheritance they would otherwise obtain as male heirs.

Joya told me that transgender women are happy to receive rights as women according to the prescriptions of the Sharia, as is she. But, according to her, "... those who are Hijra, however, do not always subscribe to such an idea of transition. Some of them identify neither as men nor as women; but somewhere in between. And when it comes to inheritance, sometimes they demand to inherit as men."²⁰⁴ Our previous discussions of gender fluidity among Hijra also reflects this. According to Javed, this is about male privilege that is not limited to Hijra alone. In his work, he has found that most of the Hijra and transgender people he has come across, not only in Dhaka but also in rural regions across the country, prefer to inherit as male heirs and are willing to rely on their biological sex to claim it.²⁰⁵ And with the lack of legal provisions for the recognition of transgender people up till now, this kind of movement between genders has been possible in several cases with the help of arbitrations where Hijra have inherited as male heirs. According to Javed, "Nobody wants to let go of male privilege."

But there is need for some more nuance to this. In my many conversations with people about inheritance laws, I have found a lot of disagreement with the idea of gendered inheritance stipulations. It certainly seems unfair that women are entitled to only half of what their male siblings are entitled to. In fact, as a human rights defender, Javed is also a strong

²⁰⁴ Sikder, interview.

²⁰⁵ Javed, interview.

proponent of a uniform code for inheritance, regardless of gender and religion. But the economy of care that women are embedded in needs to be taken into consideration.

According to Islamic law, women are entitled to inheritance from all their male guardians and caregivers – father, husband, and son. If protected and implemented according to the ideal regulations, women are entitled to inheritance on principles of equity based on the prescription that they are dependents of male custodians who also have the right to own their own sources of income that their husbands do not have any entitlement over. However, in the case of transgender women, this becomes impossible to achieve under the current circumstances. Javed pointed to me that while Hijra are recognized as a third gender, they aren't recognized as women and do not have the right to marry as women.²⁰⁶ There is no husband, no child that they could legally have. In fact, the bill that I am in possession of now does not grant or expound on transgender people's right to marry. According to Section 7 of the bill, transgender people will be supported for better integration into their families to prevent exclusion, and support will be extended for family members to grow their capacities. But there is no provision for legal unions. I believe that this is a dangerous territory for policy makers in Bangladesh, where marriage laws fall in the domain of religion-prescribed family laws just like inheritance. Marriage of transgender people would lead to bigger debates around homosexuality. Therefore, even if transgender women are given the provisions to inherit as women, they remain deprived of their entitlements over care and inheritance from husbands and sons.

5.3. Cynthia Bhuiyan- the Transgender Child and Heir of a Sufi saint

This is a good opportunity to discuss Cynthia Bhuiyan's successes again. I hope you remember her success story, and my mention of the news report that featured an aerial view of

²⁰⁶ Javed, interview.

her seven-storied factory building. The news report, just like BRAC's narratives, exemplifies Cynthia's success as an individual who has transgressed all social and institutional barriers to become a pall-bearer of the individual capacities of a transgender individual to participate and compete in a free-market economy. But Cynthia is embedded in a social system too – an economy of care and support where she not only produces her power as a transgender activist but also contributes to the power of other Hijra and transgender people. However, I find that all of these narratives that describe the emergence of Cynthia Bhuiyan - who once used to be Siddique Bhuiyan - only acknowledge this economy of care in a manner that erases the intersection of religion and class upon which she is located, so as to produce her as a secular subject where her gender is the only category that defines her identity. But Cynthia is also a practicing Muslim, who was born into an upper-middle class family of a Sufi saint. The seven-storied building is not just a piece of property she developed with her money as an entrepreneur; it is built on a piece of family property that she inherited with her brother. She did not only inherit this property, but also inherited the custody of her father's legacy as a religious leader. All of these facts about her are not just isolated additions to her identity; these are constitutive of the history and present in which she emerged as Cynthia Bhuiyan. She tells me, "I became a transgender in the house of a *Wali*.²⁰⁷ Do you think that just happened all on its own? No, something like this doesn't just happen. We are human beings created by Allah."²⁰⁸

Even in her self-identification as a transgender woman, Cynthia describes her birth as someone who is neither man or woman, but somewhere in between.²⁰⁹ During an interview with her in March 2023, she gave me an account of her life and upbringing. She realized at a

²⁰⁷ A *Wali* is a Sufi saint. It is an Arabic word that may literally translate into "master" or "custodian."

²⁰⁸ Bhuiyan, interview.

²⁰⁹ Ibid.

very young age - as early as when she was in Grade 5 - that she wanted to live as a girl even though she was born in a boy's body. And she made her family aware of this. In a rare example of love and acceptance, her family encouraged her to live as a girl in the household. She is the eldest of her parents' four children, and she has another brother and two sisters. Her family believed that this is Allah's will. She said, "I had my family's full support. My father used to call me *mamoni*.²¹⁰ My mother and siblings were very supportive of me. My sisters would enjoy when I dressed as a girl." In fact, Cynthia recollects that her mother believed that Allah created her as a boy to save her mother, who had been unable to birth a child and produce an heir for a long time and was in fear of abjection as her husband threatened to marry another woman for a child. Her mother told her, "Allah made you a boy so that my place in this family would be protected. But you were always meant to be my daughter. You were only born as a boy to save me and my marriage. Allah saved me through you."²¹¹

Jamuna Television's report of her success describes her as "the human who never accepted defeat." And it is true; in spite of all the social ostracization she faced as a child, she excelled as a meritorious student. However, her father did not give her the permission to continue her education after she graduated high school. Her father told her, "I have a lot. I will leave everything for you. And your siblings will support you." This is not unlike the patriarchal attitude most parents, including mine, have towards their girl children as they do not wish for us to struggle through social and institutional barriers. We are taken care of; we can stay home. Cynthia's father also encouraged her to stay home and help her mother with the cooking. But Cynthia persisted to do something of her own. When she started her first business venture in dairy farming, it was her father who bought her the first two cows for her

²¹⁰ *Mamoni* would literally translate into "my dear mother," and is a term of endearment that is used for girl children.

²¹¹ Bhuiyan, interview.

farm and built her a shed for her project on this very plot of land where her factory building now stands. In fact, this is the same property where her family has always lived in Dhaka.

This plot of land is not just any piece of land. This is akin to her family's *bheetey-bari*, her family's permanent address in their society. The seven-storied building is not just her factory building; it is also her family's primary residence even in the present. When her father departed his physical form,²¹² she inherited this property with her brother equally as a male heir in spite of the protests that erupted from people in her extended family and neighborhood. But her mother and siblings protected her right. In fact, because she is still legally identified as a male in her documents, and because she was born as a man, she was entitled to inheritance as a male heir. The building has twelve residential units which are divided equally between her and her brother. She and her brother's family reside in separate units each within this same building, and she has rented the rest of her brother's units to use them as factory workspace. She has employed her sister's son in her business, and invested in the businesses of all her siblings.

She is the child of Hajji Mohammad Montaj Shah Rizvi, a Sufi *Pir* who is also known as *Pir Baba* and *Guru* among his devotees. He initiated his journey as a Sufi devotee later in life when he accepted the saint Akbar Ali Rizvi as his spiritual guide and pledged his allegiance to his *tariqa*²¹³ as a *murid*²¹⁴ for spiritual enlightenment. He went on to become a prominent saint himself who, Cynthia claims, has over ten thousand human devotees and thirty to forty thousand jinn²¹⁵ devotees. Her father preached and offered services to his

²¹² In Sufism, it is believed that a saint does not deny. Instead, they pass onto the spiritual realm.

²¹³ A *tariqa* is a Sufi school of order. It is a lineage of esoteric spiritual practice in Sufism.

²¹⁴ A *murid* is a novice who initiates a relationship with a saint for guidance in achieving spiritual enlightenment.

²¹⁵ In Islamic belief, the *jinn* are a separate race of their own, made of fire. They are believed to exist and live on this world alongside human beings, but remain invisible to humans.

devotees from this same plot of land. And today, she has not only inherited this family property but also the custody of his *darbar*, which is located on the ground floor of the same building. Hence, this building, which is emblematic of her entrepreneurial success in the aerial shot of the news report, is not just a factory building. It is also her family's residence and a site of her father's legacy as a saint and religious leader. Within the *darbar* that is hosted on the ground floor of this building, a *dhikr*²¹⁶ event is hosted every Thursday and a *samā*²¹⁷ event is hosted every Monday, making this building also a site for the practice of Islamic congregational worship. And Cynthia is the prime custodian of this site, who makes all financial and logistical decisions for the sustenance and upkeep of her father's legacy and religious community.

Her father's religious guidance has guided her business too. He could predict important dates for her business but she was encouraged to depend on her hard work and honesty instead. Her father encouraged piety and honesty among her workers and, therefore, work is halted during prayer times. All male prayers are instructed to go to the mosque to pray, while all the female workers have a dedicated prayer room in the building for prayers. This factory is, therefore, not just a site where self-reliant and employable subjects are cultivated. This factory is also a site for the cultivation of piety.

While she has inherited the custody of her father's legacy, she is not, however, a successor of his spiritual enlightenment. And this is one of her biggest regrets because her father had offered it to her before he passed onto the spiritual realm. He invited her to open her mouth so that he could pass his spiritual enlightenment on to her by spitting into her mouth. But she was too afraid to accept it. She admits that she wasn't as believing in her

²¹⁶ Sufi ritual act of worship. *Dhikr* is an Arabic word that literally translates into "remembering."

²¹⁷ A Sufi ritual act of worship mediated by music and dance.

father's spiritual practice then as she is now. And because of her lack of faith, her father withdrew his offer because, in his words, "This is not the game that is played between a *pir* and his *murid*. The *murid* must be devoted and exercise complete faith in his *pir*. There can be no fear."²¹⁸ She tells me now that she regrets her inability to accept this spiritual connection and guide. She says, "He could not pass this ability on to me, because I did not have the ability to accept it."²¹⁹

Instead, the *khalifa*, that is the successor of his *tariqa*, is now his former *murid*, Hanif Shah. Her father's spiritual enlightenment has been passed to him, and he now holds her father's esoteric knowledge of spiritual guidance that allows him to offer spiritual services and guidance to devotees and followers. I asked Cynthia if Hanif Shah is accepting of her transgender identity. Cynthia responded²²⁰ that she is accepted in this form by not only him but all of her father's devotees. She told me that it is Allah's will that the saint's child has this form in this world, and this is how his devotees accept her as the custodian of her father's legacy. In fact, preparations for her shrine have already been made in their ancestral address in Cumilla where her father's main shrine is also located. It has been decided that photos of her as Cynthia Bhuiyan, in her transgender form, will be hung on the shrine. And on the shrine, her name will be "Cynthia Shah".

She remembers her father's guidance and tells me that her father teachings stipulated that no act is sinful as long one can be responsible and exercise reasoning. She said, "My father would say that even if you do not pray, but if you keep your faith strong and feed people, this act of service would guarantee your path to heaven. He would say that if you if

²¹⁸ Bhuiyan, interview.

²¹⁹ Ibid.

²²⁰ Ibid.

you can still be responsible when you drink alcohol, it is still permissible to do so.”²²¹ A statement such as this is radical and largely unacceptable in Sunni practice, where alcohol consumption is forbidden. In fact, the word that is actually used in the Qu’ran is *khamr*, which is conventionally translated to alcohol but literally translates to mean any substance that can cloud the mind. This translation is, therefore, used to deduce that any substance that intoxicates is forbidden in Islam. Stipulations for this in the Quran can be found in verses 2:219, 4:43 and 5:90, where the act of drinking is met with increasing disapproval in each chronological revelation. But how is it that this Sufi saint can allow this when drinking is popularly known to be forbidden in Islam? Is her father a proponent of a rare sect, a deviation from traditional and normative Islam?

No, he is not. In fact, Sufi ritualistic practices of drinking together, and references to the wine-cup in Sufi philosophy and Muslim poetic literature, are what Shahab Ahmed calls, a universally evident “*positive valorization*.”²²² In fact, Ahmed cites the thirteenth century philosopher, Naṣīr-ud-Dīn Ṭūsī, whose works were extensively produced and studied in the Balkans-to-Bengal complex, to discuss how the practice of drinking wine is not only normative, but also embedded in a material reality and social fabric in which Islamic intellectual developments and collective religious practice took place.²²³ In his book *Ethics (Akhlāq)*, Ṭūsī dedicated an entire chapter to the practice of drinking to conclude in the same manner that Cynthia’s father did: one may drink as long as they can be responsible.

This would be unacceptable to the practice of Islam by a group such as Hefazot-e-Islam, who operate in the framework of the Deobandi tradition on principle of *taqlid*.

²²¹ Ibid.

²²² Ahmed, *What is Islam*, 62-63

²²³ Ibid.

Britannica defines *taqlīd* as “the unquestioning acceptance of the legal decisions of another without knowing the basis of those decisions,” according to Islamic law.²²⁴ But the Deobandi tradition is also not completely isolated from Sufi traditions of Islamic practice. The movement had to incorporate and adapt to Sufi practices in the region, which had been long-present and proliferated historically, in order to reform it in a modernist vision.²²⁵ In fact, the movement worked closely with the Chisti order of the Sufi saint, Khwaja Moinuddin Chishti. Let me help you remember that this is the same saint that Hijra worshippers remember and follow in the Sinni festival, where they remember a favorite disciple of his - Moriom Hijra, who is also believed to be buried near his shrine.

All of this seems highly convoluted, and it is. Especially because movements like the Deobandi emerge as a response to the Euro-centric and colonial vision of modernity. I take from Shahab Ahmed here, who discusses that it in response to such colonial binaries of the religious/secular that Muslim colonial subjects attempted to conform Islamic discourse into juridico-legal codes within the state apparatus, and in the process, agentively caused “the severing of the historical relationships of various intellectual discourses through the radical reorganization and reconstitution of educational institutions and curricular content—that is to say, by a prescriptive reconstitution of the discourses and institutions of concept-formation, including the compartmentalizing concepts of ‘religious’ and ‘secular’.”²²⁶ But, according to Ahmed, Islamic practice and discourses have existed in “socially and spatially *non-compartmentalized*” manners. They have not only co-existed but also engaged in Islamic intellectual discourse with each other. Cynthia’s father’s is not the only Sufi practice that allows the consumption of alcohol; there are several Sufi discourses and practices in the

²²⁴ “taqlid,” Britannica, accessed on June 6, 2023, <https://www.britannica.com/topic/taqlid>

²²⁵ Ira M. Lapidus, *A History of Islamic Societies* (Cambridge: Cambridge University, 2014).

²²⁶ Ahmed, *What is Islam*, 191

region where the same is collectively practiced even as acts of worship. Deobandi traditions also discourage and forbid Muslims from visiting shrines and celebrating events such as *urs*, where the saint is remembered and prayed for, as acts of *shirk*.²²⁷ But this has not stopped hundreds and thousands of believers and worshippers from participating in the economy of *barakah* on these sites, that are much like the ones hosted in Cynthia's building. What is different now, however, is that the State's canonical and self-preserving laws like the DSA allow for legal and regulatory tools that can police and prescribe the 'right way' of normative, Islamic practice. This is demonstrated in the use of the DSA by an Islamic scholar to arrest the Sufi singer Shariat Sarker who defended the use of music in Islamic religious practice. The state uses secularism as a regulatory mechanism and relies on the productive power of its governable subjects to participate in this discursive field. In the process, these debates unfold where proximity to modernity and legal codifications within the state apparatus allow for some discourse and traditions to erode and become criminalized even as collateral damage. I find that this contention is what allows for the emergence of an orthodoxy, according to Asad's conceptual framework.

When I discuss Cynthia's inheritance, we see that she was allowed to exist, participate and inherit her father's legacy in ways that the orthodoxy doesn't. But she exists anyways, as a successful transgender entrepreneur and heir. She continues to participate in both the economies: the secular free-market one and the religious one of the *barakah*. She uses this property to give work to queer people and non-queer people alike. She uses this property to host religious events of worship for her father's followers and worshippers; she also uses this property to host secret queer parties for hundreds of queer people. She offers security to our queer gatherings using her political connections with the local governance and political

²²⁷ In Islam, *shirk* is the act of polytheism.

offices, so that we are not raided. These parties are locally understood as Hijra gatherings, and no one disturbs us. We have partied into the night on the rooftop of the same building, with loud music and dispositions that would be marked ‘sinful’ without the batting of an eye. And on the same rooftop, Cynthia told me that two *jinn* are always stationed. She can even see them; they do not talk to her but they give her *salam*. In fact, her father told her that several *jinn* are always guarding the building.²²⁸ If I take from Orsi’s discussions on religious abundance as an alternative to modernity, what is to stop me from saying that this spiritual abundance produces her power – socially, spiritually, even politically – as a subject who uses this power to protect her people in an economy of care?²²⁹

This economy of care entangles her with legal prescriptions of the orthodoxy too. When she dies, she will have no heir because she does not have the right to marry as a transgender woman. But her assets will be passed down to the children of her siblings according to Muslim inheritance laws. When I asked her if her sisters have been supportive of the fact that she has inherited as a male heir, she told me that she has her sisters’ full support because, after all, all of this wealth that she is building and accumulating upon this family property will ultimately go to the children of her siblings. In fact, with her inheritance, she is not only the custodian of her family’s properties but also the proliferator of her family’s wealth. But Cynthia is never identified as a Muslim transgender woman. In all the media reports and success stories about her life, she is only a successful transgender entrepreneur.

²²⁸ Bhuiyan, interview.

²²⁹ Robert Orsi, “Abundant History: Marian Apparitions as Alternative Modernity,” *Historically Speaking* 9. No. 12-16 (2008).

Conclusion

I will keep this conclusion short because I am well-aware that I have far exceeded the word limit. In this thesis, I have studied the various discourses of inheritance rights in Bangladesh that contend with each other at the nexus of gender, religion and citizenship. In my analysis, I have used postcolonial theories to show how the European modern binary of religious/secular opens a discursive space for different gendered identities to negotiate their rights within a state apparatus where family laws and inheritance rights are guided by religious laws. Furthermore, in my analysis, I have used decolonial theory to show how different gender identities and religious traditions contend with each other as they negotiate with the colonality of power and gender to arrive in approximations of rights-bearing citizens and struggle for recognition and power. As different subjectivities and embodiments of faith use different meanings of gender, rights and religious practice to participate in this discursive field, I have shown how different negotiations with modernity, capitalism, neoliberalism and the state apparatus form new subjects as rights-bearing citizens in Bangladesh.

All of the interlocutors or actors that I am studying are all agents who are engaged in active negotiation with the state for reforms in inheritance rights and other civic demands and, therefore, are working within the framework of the modern nation-state to (in some manner) to secularize their own cosmologies so that their demands and existences can fit and be included.²³⁰ But what I have shown is how embodiments of gender and faith emerge as subjects to be better approximations of modernity than others, via a corrosion of alternative subjectivities embedded in economies of care and spirituality, where gender and Islam also constitute different meanings that the modern nation state fails to accommodate. My aim here

²³⁰ Asad, *Formations*, 181-205.

has been to discuss intersubjectivities at the colonial differences, to demonstrate how the meanings and implications of concepts such as religion, gender, inheritance and even the role of the state change and transform across these different cosmologies. I take from Saba Mahmood²³¹ to conclude that secular affect might as well demand equal inheritance for everyone. But as we tread the sharp edges of postcoloniality and struggle to fight the remnants of colonial impositions upon legal, social and political orders of life, religious reason also allows for different subjectivities to evade criminalization, to participate in economies of care, and to produce power as subjects embedded in alternative cosmologies. This is not a clear-cut, black-and-white picture that can offer a solution for just, equal inheritance for all, regardless of gender and religious identity. But this study complicates the terrain upon which these negotiations take place, and discusses the agencies of these different subjects who engage in these negotiations to create power within the very restrictions that limit their power and rights in their first place. These restrictions constitute their agency, power and subjectivities.

I am limited in my capacities as a researcher. But I hope I can improve on this study in the future, because I know there is room for improvement. More importantly, these are currently ongoing discourses that have yet to stand the test of time through more negotiations and discursive exercises via events and processes that are highly political. This study is far from complete.

²³¹ Mahmood, "Religious."

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হিজড়া অভিজ্ঞান বাংলাদেশে প্রচলিত প্রধান চারটি ধর্মে হিজড়া জনগোষ্ঠী সম্পর্ক দিক-নির্দেশনা. Dhaka: Bandhu Social Welfare Society, 2019.