

*Vanja Hamzić: Sexual and Gender Diversity in the Muslim World: History, Law and Vernacular Knowledge*, I. B. Tauris, London 2016, 352 pages, hardcover, \$ 110, ISBN 978-1-784-53332-8

*“Fundamental human rights are rights superior to the law of the sovereign State [and should, hence, lead to the] consequent recognition of the individual human being as a subject of international law.”*

*Sir Hersch Lauterpacht, International Law and Human Rights*

Like many early career academic researchers at the School of Oriental and African Studies (SOAS, University of London), I first became aware of the complexities of South Asian law by taking the class “Legal Systems of Asia and Africa”. In light of Professor Emeritus Werner Menski’s extensive work on South Asian law, this book, through a notably ethnographic approach, further challenges the failures of a dilatory judicial system in redressing instances of LGBTI discrimination. A comparison of the socio-historical changes from ecclesiastical (canonical) laws to modern-day transnational soft positivist<sup>1</sup> approaches, reveals that international human rights law has somewhat challenged the perverse binary ideologies that hampered sexual and gender rights for more than two millennia. Many conversations with the author of this important book have exposed me to the harsh realities and challenges that the LGBTI community face, in Pakistan as well as across the Muslim world. As Sears suggests:

*For sexual and gender minorities, liberty is always linked to knowledge. Liberty nurtures our ability to study and understand the diversity of all people. At the same time, we must understand these diverse lives in order to properly craft laws and policies to protect that liberty. The history of sexual and gender minorities is marked when liberty and knowledge inch forward, each enhancing the other.<sup>2</sup>*

Recently, as this book illustrates, an increasing body of work relating specifically to transgender rights in Pakistan and more broadly South Asia has been forthcoming. Such scholarship has given rise to a polysemic analysis attributed to human rights law, denoting the capacity to have multiple meanings within a semantic field. However, human rights for centuries have been transnationally bound up in paternalistic turmoil, which has degraded the recognition of transgender rights into a judicial *La La Land*, somewhat reminiscent of an esoteric dream world. This book posits that an internally plural and highly vigilant framework must be adopted within the fabric of South Asian culture and judicial law-making if

1 *Werner Menski, Comparative Law in a Global Context: The Legal Systems of Asia and Africa, Cambridge 2006.*

2 My interview with R. Bradley Sears, Los Angeles (California), USA, 4 April 2017. Mr Sears is the founding director and current Executive Director of the Williams Institute, Associate Dean of Programs and Centers, and Adjunct Professor at UCLA School of Law.

victims of transgender discrimination are to be sufficiently supported. In doing so, one must conceptualise the evolution of transgender law through a socio-historical and quasi-religious framework, which threatens étatism whilst promoting the flourishing of a pluralistic judicious praxis in breaking the shackles of restraint by which gender-variant communities are bound.

The book is divided into four chapters, namely: (I) A Critique of Terminological Conundrums; (II) Sexual and Gender Diversity in International Human Rights Law and Its Originatory Milieux; (III) Sexual and Gender Diversity in Islamic Law and the Muslim World; and (IV) Muslim Sexual and Gender Diversity in Contemporary Pakistan.

In the introduction, Hamzić provides an excellent overview of ideas of sexual and gender diversity progressively revealed to be socially warped, whilst universal human rights law has outlawed such discriminatory views. Some Muslim-majority countries unequivocally repudiate the idea of sexual diversity, considered to be an immediate affront to the 1.2 billion Muslims around the globe (p. 2). Through a socio-historical analysis, Hamzić grapples with such resounding issues, intending to dispute their veracity and to fathom why and how they developed. It is posited that the central verifiable condition and adjudication of human rights law remain bound by socio-legal Eurocentrism, thus enabling LGBTI rights to prosper. In this manner, Hamzić investigates the legal, social and religious implications and complexities of human, sexual and gender diversity within Pakistan. These pluralities are then compared with a short ethnographic account of gender-variant Muslims in contemporary Pakistan, where Islamic law and human rights law remain in a cultural-relativist deadlock. Hamzić thus suggests that Muslim gender-variant subjectivities ‘are not merely the inert subjects of the dominant discourses of international human rights law and Islamic law’ (p. 11), but also members of a glocalised South Asian contestation which challenges the perverse ideology of hegemonic masculinity.

He further suggests that a more critical analysis of the histories of discourses on Islamic and international human rights law uncovers the potential for a more congruous connection between them, one in which sexual orientation and gender identity are no longer observed as an "affront" in any case, but rather, an inborn component of human selfhood (p. 3). The Yogyakarta Principles define *sexual orientation* as “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender”; and *gender identity* as “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms[.]”<sup>3</sup>

- 3 These principles outline a comprehensive set of international legal duties relating to sexual orientation and gender identity. See the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, available at [<https://doi.org/10.5717/10609-7386-2017-4-458> - Generiert durch IP 216.73.217.73, am 16.08.2020, 04:09:23. © Urheberrechtlich geschützter Inhalt. Ohne geordnete Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.](http://www.yogyakar-</a></p>
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Hamzić argues that:

*[A] critical, comparative look into the historical trajectories of international human rights law and Islamic law can unearth hitherto uncharted legal and social landscapes, in which what passes today as 'the law' on sexual and gender diversity, in either Muslim or human rights milieu, is given a much-needed contextual interpretation (p. 16).*

The interpretative intimations are drawn from statute, and shaped by religion, philosophy and science.

The book explores the concepts of gender, sexuality and pariahdom over the past two millennia, in great depth. In the first two parts of the book, Hamzić focuses, inter alia, on the Pakistani gender-variant community known as *hijras* or *khwajasara*, which occupies a position outside the normative sex/gender binary of male/female. The socio-religious and post-colonial intolerance towards gender-variant minorities, stemming from the political and moral machinations of the British Raj, has led to skewed representations of the cultural value placed upon alternative gender identities. Although Hamzić alludes to legal pluralism, he posits that an alternative stance, focusing on cultural integration amidst a re-normative social power discourse, can more effectively combat discrimination against gender-variant subjectivities and the discursive legalities that prevail within Pakistan. Taking an ethnographic approach, Hamzić reports the experiences of Neeli, a *hijra* in Lahore, and her sariclad companions in their uphill battle for recognition (p. 2). However, *hijras* have been involved in socio-political turmoil, in which presentations of the self through an insurrectionary vernacular approach and recalcitrant activism have been mostly ignored, and the nuances of *hijras'* lives disregarded. Hamzić further tackles the interplay of international human rights law and *shari'a* jurisprudence (*fiqh*) in highlighting the social-constructionist implications of a binary gender system, whereby new alternatives to the 'subversive transgender' and the 'conservative transsexual' tropes can be introduced (p. 68). The emphasis on nonlinearity, self-association and open-endedness underpins a point of view that sees sex/sexual orientation as a continuum and not a dichotomy. The first two chapters chiefly explore the socio-historical and politico-legal developments in the advancement of LGBTI rights, where previously 'the ecclesiastical (canonical) and municipal European medieval laws had eventually spurred the most brutal and systemic persecutions of sexual/gender transgressions' (p. 37).

In Part III, Hamzić considers the desultory lineage of criminalisation and decriminalisation of gender-variance and same-sex practices, proceeding, in the perspective of contemporary universal human rights law, to compare and contrast judicio-legal renditions with Islamic positive law (*furū' al-fiqh*) (p. 81). Hamzić further explores the interrelatedness of heterogeneous pluralities by grappling with the uncertainty of Anglo-Muhammadan Islamic

taprinciples.org (last accessed on 12 April 2017). The Yogyakarta Principles are critically examined in Chapter 3 of the reviewed book.

jurisprudence and the compatibility of LGBTI rights. In doing so, Hamzić denounces the ‘substantive rationality’<sup>4</sup> standpoint, whereby the modalities and scope of LGBTI rights remain seriously limited due to a failure to distinguish between law, morality, religion and politics. As a result of such limitations, Hamzić supports a *le temps social*<sup>5</sup> (‘social time’) critique, by which a pluri-legal sexual/gender hermeneutics de-popularises the rigid scripturalist approach adopted by the early *fuqaha*’ (Islamic jurists) (pp. 86-88). Hamzić thus proposes a shift in narrative, whereby a quintessentially proleptic and trans-temporal vernacular ceaselessly raises doubt about what it means to be human. This causes an intense societal ‘character crisis’, which empowers oppressed types of self-definition to prosper and further propagate (pp. 134-137). Whilst gender-variant minorities have, through judicial reform within the international arena, sought to seek an improvement in the adjudication of rights, false hopes dressed in seemingly auspicious language have dampened such efforts. The attempts of the Organisation of Islamic Cooperation (OIC) to propagate a supra-national legal system (*siyar*) in tackling human rights abuses, have furthered an insular approach, whereby pluri-legal dynamism and plurality-conscious assessments of national and international law have been carelessly neglected (Hamzić, pp. 118-120).

In Part IV, Hamzić examines the basis for the development of the *hijra* movement in Pakistan (and especially Punjab), emphasising the need for national repositories of human rights to encourage insurrectionary practices when implementing and enforcing gender-variance-related legal measures (p. 193). Although Justice K.S. Radhakrishnan Panicker and Justice A.K. Sikri, in *National Legal Services Authority v. Union of India*,<sup>6</sup> delivered a Supreme Court judgement giving third-gender status to *hijras* in India, ‘local social actors have picked apart and appropriated only some aspects of human rights discourse’.<sup>7</sup>

Hamzić further explores the ubiquitous nature of trans-phobia within the perennially ambivalent surroundings of Punjab (Pakistan), in line with the implications of Case 63/09, which resulted in the Chief Justice of the Supreme Court of Pakistan's granting *suo motu* some elementary rights and protections to *hijras*. Whilst this landmark decision revitalised the *khwajasara* political movements, Hamzić argues that an equivalent to an ‘epistemic bomb’ is needed in order to shift the interventionist political spectrum in favour of greater transgender rights and freedoms (pp. 177-179). Although Pakistan’s ‘current hybridity – oscillat [es] between an antiquated colonial(ist) *corpus juris* and the conflicting theopolitical visions of “Islamic” law’ (p. 182), Hamzić suggests that an epistemological primacy for translated vernacular values can foster further de-binarisation of gender taxonomies within a geopolitical locus. Despite political and legal repositories inadvertently camouflaging epistemologies, a recalcitrant human rights discourse is needed to counter the discursive

4 *Max Weber*, Max Weber on Law in Economy and Society, Massachusetts 1954.

5 *Fernand Braudel*, *Écrits sur l'histoire*, Paris 1969.

6 WP (Civil) No 604 of 2013.

7 *Mark Goodale/Sally Engle Merry*, *The Practice of Human Rights: Tracking Law between the Global and the Local*, Cambridge 2007, p. 30.

subjectivities which threaten the polyversal implementation of socio-political and judicio-legal transgender reform within Pakistan.

In the reviewer's mind, Hamzić ought to have made clearer still how an insurrectionary vernacular approach is perhaps unable to eradicate the judicio-legal strain between societal norms and the adjudication of transgender rights within Pakistan. Despite the fact that state law is utilized, as in the renowned Case 63/09, the consideration of the social advantages and the more noteworthy political revitalisation of the *khwajajara* could have received further illustration. It is from a similar viewpoint that Muslim gender-variant subjectivities have furthered the decolonising of post-colonial law, thus essentializing the need for a human rights vernacular in addressing transgender rights abuses prevalent in Pakistan (Hamzić, pp. 283-285). This epistemological supremacy is of critical significance for the accomplishment of any future social, political and judicial reforms. Reform-orientated activists cannot, however, contemplate change without acknowledging the need for a balancing of pluralities within a situation-specific glocalised locus in Pakistan. It is this situation-specific scrutiny that Hamzić could have encapsulated further. By focussing on LGBTI discrimination in Punjab, Hamzić fails to fully engage readers with the wider socio-cultural debate surrounding transgressional practices towards gender-variant minorities across Pakistan. By exploring transgender rights across a wider South Asian landscape, Hamzić could have further exemplified the need for situation-specificity pertaining to the advancement of LGBTI rights.

The overall structure and content of this book navigates through two millennia, resulting in a remarkable analysis of LGBTI rights in a transnational context. The contribution of this book is profound, not only from an academic but also a practical standpoint. With ground-breaking ethnographic research interwoven within a social anthropological framework, Hamzić personifies the purpose of academe, namely to disseminate knowledge of the highest calibre. The rich content of each chapter exemplifies the depth of analysis and thought-provoking semantic debates surrounding the interpretation of classical Islamic jurisprudence and international human rights law, in some sense negating but also acknowledging the need for a reinvigorated outlook on transgender rights. In doing so, Hamzić draws readers back to the wider plurality-conscious question of what it is to be human. The answer to such a question cannot be pigeonholed by simply rejecting the pollutions of various pluralities all around us, namely cultural diversity. Although largely ethnographic, this book's provocative style of questioning should appeal to a wider target demographic: practitioners, students and politicians alike can use such innovative scholarship on vernacular knowledge to their advantage. Written in a lucid style, with copious references to relevant literature and a well-developed index, this book is a fine read that further enhances the epistemological debate surrounding neo-liberal normative homo-morality. This book should be regarded as a masterful celebration of South Asian legal pluralism.

*Mohammed Subhan Hussain, London*