

## White Gaze Saving Brown Queers: Homonationalism Meets Imperialist Islamophobia

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*In asylum cases, some western countries use global gay discourses and teleological developmental narratives to (mis)recognise non-Western queerness. This paper investigates a number of queer asylum cases to explain how the set conditions for a queer asylum status in those countries tend to reinforce homonationalist ideologies underpinned by global gay discourses. Consequently, some non-Western queers are compelled to bring forth a particular brand of personal disaster spectacle that validates ingrained imperialist Islamophobia in host countries and beyond. The paper argues that under the rubrics of provable persecution, the shock value in the personal disaster spectacle of Muslim queers in their home countries is utilized to validate another pervasive violence: reinforcement of Islamophobic ideologies that are used to justify the 'war on terror'.*

In September 2012, an Afghan man who had converted from Islam to Christianity was granted asylum in Denmark.<sup>1</sup> This set a new precedent, because the man in question was not persecuted in Afghanistan before seeking asylum; historically, tribunals assessing asylum cases have refused asylum to applicants without persecution stories. In this case, the refugee appeals board in Denmark argued that it is a basic human right to practice Christianity openly, rather than reiterating the commonly used prescriptive direction to asylum seekers that they maintain discreet practice in order to avoid persecution in their home country. This stands in stark contrast to the treatment of brown queers seeking asylum in Western countries, where they must show evidence of persecution before their cases can be considered. In the case of the Afghan Christian, the refugee appeals board in Denmark gave asylum as a means to avoid persecution.

This article demonstrates the bias of some Western nations' asylum processes against brown queers, and argues that this is tied to Western preconceptions about what it means to be queer. Methodologically, it positions itself at the intersections of sociological and legal analysis which brings into conversation laws regarding homosexuality in Bangladesh, asylum laws to protect homosexuals in some developed countries and the lived realities and miseries of brown queers both within and outside legal frames. Some case studies of queer asylum cases are presented as an attempt to examine this tripartite dialogue.

Global gay discourse and teleological developmental narrative of queerness situate non-Western queerness as not queer enough. The case studies presented show that both global gay discourse and teleological developmental narratives tend

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<sup>1</sup> R. Højmark, 'Converted Refugee is Granted Asylum',

to play a decisive role in the perception of non-Western queerness as an *inadequate* queerness. The case studies also suggest that to compensate for this inadequacy, Muslim queers are encouraged to come up with Islamophobic persecution stories, which demonize their native countries and religion by portraying them as homophobic. This demonization should be examined critically, since it often goes unnoticed due to the easy acceptability of the binary juxtaposition between progressive West and homophobic Islam. Some Western nations use personal disaster narratives of queer asylum seekers to reinforce Islamophobia. The treatment of the Afghan Christian discussed above when compared to the treatment of gay asylum seekers reveals a double standard in some Western nations' designation of refugee status. This article asks: is freedom of sexuality given the same protections as freedom of religion in the United Nations' (UN) Charter of Human Rights? Does this double standard manifest any hierarchic prioritizing of freedom of religion over freedom of sexuality in assigning asylum status to refugees?

This logic of binary association and hierarchic prioritizing can also be traced in queer asylum tribunals' frame of credibility: for them, brown queers presenting personal disaster spectacles pass the test of immutable sexuality while other brown queers, who go through persecution but do not have evidence of personal disaster, fail. This creates a demand for disaster stories in places where such disaster is less likely to emerge, because the distinctive homophobic contexts in those places do not follow the simplistic pattern from homophobia to disaster and death. However, between the poles of homophobia and death, what determines the living conditions of brown queers are extreme social harassment, total isolation and abandonment by friends and family, which can be equally devastating. When asking for persecution stories, immigration officials often do not consider the diverse living conditions and socio-cultural backgrounds brown queers come from. Bangladesh, for example, is yet to abolish the British colonial law, which criminalizes all other sexual acts except heterosexuality:

Penal Code, 1860 (Act XLV of 1860, Section 377). Whoever voluntary has carnal intercourse against the order of nature with man, woman, or animal, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.<sup>2</sup>

Here only heterosexuality among humans is considered natural and thus homosexuality, bisexuality, and any other sexual acts are subject to fine and imprisonment, from ten years to life. It should also be noted that no one has been penalized under this law in Bangladesh. There are two possible reasons behind this. First, homosexuals in Bangladesh usually lead a discreet life. Second, governments want to protect homosexuals when their homosexuality becomes an issue for public

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<sup>2</sup> 'Laws of Bangladesh', [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=11&sections\\_id=3233](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11&sections_id=3233), 2014, (accessed 1 August 2015).

discontent. This attitude is reflected in their stance on Fatwas, verdicts supposedly based on interpretations of the Holy Quran. In Bangladesh, issuing a Fatwa is not illegal, but the execution of a Fatwa is illegal.<sup>3</sup> It provides some security to Bangladeshi homosexuals. But legal reform banning Fatwa is not always reflected in societal values, beliefs, prejudices and stereotypes. Thus, despite the reduced likelihood of Bangladeshi queers facing the death penalty, living with queer identity in Bangladesh is challenging enough to warrant claims for asylum in some cases. Queer individuals face social stigmatization and persecution which prevent them from living normal, fulfilled lives and can lead to degenerating mental health and suicide. A recent survey shows that 32% of homosexual men have a history of suicide attempt while 47% reports that they have considered committing suicide at least once.<sup>4</sup>

Instead of considering these factors, queer asylum tribunals in Western countries seek persecution stories that prove immutable homosexuality. In cases of Muslim queer asylum seekers, the expectation for personal disaster spectacle has been so normalized that it is not critically questioned. Queer asylum tribunals' reliance on global gay discourse brings into question whether there any correlations between this bias in favour of the disaster spectacle and a requirement to prove homophobia in Muslim majority countries.

Western asylum tribunals tend to define homosexuality within the confines of global gay discourse, which views white queers as the archetype of homosexuality, ignoring potential differences in the identity and appearance of brown queers. Consequently, tribunals look for the 'right' appearance of homosexuals in the bodies of brown queers, which are usually based on the appearance of white queers. In this way, the tribunals work within teleological developmental narratives, which assume Western homosexuality to be more progressive and evolved than non-Western practices of homosexuality. As Manalansan argues, 'all same sex phenomena are placed within a developmental and teleological matrix that ends with Western "gay" identity'.<sup>5</sup>

Arnaldo Cruz-Malave and Martin Manalansan critique the teleological developmental narrative, as it conceptualizes non-western queer formations as not-yet appropriately lesbian or gay. They challenge global developmental narrative because it is 'developmental narrative in which a premodern, pre-political, non-Euro-American queerness must consciously assume the burdens of representing itself to itself and others as 'gay' in order to attain political consciousness, subjectivity, and global modernity'.<sup>6</sup> Thus, they identify a challenge for brown queers who must await Euro-American legitimization to get considered as right-bearing subjects in the first place. Puri critiques the global gay discourse as she argues,

<sup>3</sup> A. Sarkar, 'Fatwa Illegal', <http://archive.thedailystar.net/newDesign/news-details.php?nid=146004>, 2010, (accessed 16 March 2015).

<sup>4</sup> R. Ebert, 'Bangladesh's Invisible Minority', <http://www.pinknews.co.uk/2012/01/30/comment-bangladeshs-invisible-minority/>, 2012 (accessed 1 August 2015).

<sup>5</sup> M. Manalansan, 'In the Shadows of Stonewall: Examining gay transnational politics and the diasporic dilemma', *GLQ: A Journal of Lesbian and Gay Studies*, vol. 2, no. 4, 1995, pp. 425-438.

<sup>6</sup> A. Cruz-Malave and M. Manalansan, *Queer globalizations: citizenship and the afterlife of colonialism*. New York, New York University Press, 2002, p.5-6.

Shaped in the aftermath of the post-Stonewall era in the United States, gay takes the meaning within this developmental frame that originates with an unliberated, prepolitical, homosexual practice and culminates in the liberated, politicized, out, modern gay subject. In so far as gay is singularly understood within the framework of bourgeois civil society and individual subjectivity, homosexuality and gayness in non-western contexts are found wanting.<sup>7</sup>

Both Manalansan and Puri argue how the imperial gaze of the West finds non-Western queerness as either inappropriate or non-existent.

Jasbir K Puar in *Terrorist Assemblages* similarly argues that the politics of homonormativity normalize western homosexuality and homonationalism marginalizes non-western queers as inappropriate. Homonationalism is 'a form of sexual exceptionalism – the emergence of national homosexuality'.<sup>8</sup> Puar goes on to argue that homonormativity is the assumption that homosexuality is normal and common in western countries and these countries use homonationalism 'as a regulatory script not only of normative gayness, queerness, or homosexuality, but also of the racial and national norms that reinforce these sexual subjects'.<sup>9</sup> For Puar, homonationalism implicates 'a collusion between homosexuality and American nationalism'<sup>10</sup>, in which the production and display of domesticated homosexual bodies makes claims for national progress, which in turn provide legitimacy to civilize other non-homonational countries by declaring war on them. Puar here builds upon Lisa Duggan's identification of an emerging trend within neoliberal sexual politics that does not 'contest dominant heteronormative assumptions and institutions...but upholds and sustains them while promising the possibility of a demobilized gay constituency and a privatized, depoliticized gay culture anchored in domesticity and consumption'.<sup>11</sup>

While Duggan recognizes homonormativity as a new sexual politics, Puar extends it first to nation-state and then to transnational contexts. Puar argues that 'homonationalism is not property of any nation-state'<sup>12</sup>; it is a field of power which more and more western countries want to possess, deploy and benefit from. In this configuration of homonationalism as field of power, the spectre of the terrorist within the orientalist representation of Muslims as essential other has always provided legitimacy to any homonationalist project. Assigning asylum status to non-

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<sup>7</sup> J. Puri, 'Gay Sexualities and Complicities: Rethinking the Global Gay', in K. Ferguson and M. Mironesco, (Eds.), *Gender and Globalization in Asia and the Pacific Method, Practice, Theory*. Honolulu, University of Hawaii Press, 2008, p.68.

<sup>8</sup> J. Puar, *Terrorist Assemblages: Homonationalism in Queer Times*, Durham, Duke University Press, 2007, p.2.

<sup>9</sup> Puar, 2.

<sup>10</sup> Puar, 39.

<sup>11</sup> L. Duggan, 'The Now Homonormativity: The Sexual Politics of Neoliberalism', in R. Castronovo and D. Nelson. (Eds.), *Materializing Democracy: Toward a Revitalized Cultural Politics*. Durham, Duke University Press, 2002, p.179.

<sup>12</sup> J. Puar, 'Homonationalism as Assemblage: Viral Travels, Affective Sexualities'. *Jindal Global Law Review*. Volume 4, Issue 2, November 2013, p. 25.

western queers is one such homonationalist project in which the myth of sexual exceptionalism, the freedom for people of all sexual orientations and practices is invested upon to gloss the atrocities in the war economy of homonationalist countries.

Using these insights to examine queer asylum cases, it is possible to argue that in deciding queer asylum cases for non-western Muslim queers, some western countries use a combination of the following three frames: global gay discourses, teleological developmental narrative, and evidence or threat of persecution in home countries, following the logic of homonationalism that tends to discover homophobia and transphobia always elsewhere. I argue that within this tripartite framing of non-western Muslim queers, two problems often go unaddressed: misrepresenting non-western queerness, and reinforcing binaries between the progressive west and barbaric Islam. To make queer-friendly western countries go beyond these binaries, queer studies must attempt to recognize queerness outside the normative boundaries of global gay discourses, and to end the participation of queerness in reinforcing ideologies of Islamophobic imperialism.

This article analyses a number of queer asylum cases to demonstrate that when Muslim queers from Bangladesh and India are granted asylum in Australia and the US, they have been asked to perform Islamophobic personal disaster spectacles, meaning that narratives provided in seeking asylum are unlikely to result in success, unless they are shaped by the frames of Islamophobic persecution. This drama is often enacted when queers from Muslim majority countries appeal for queer asylum status.

The argument is presented in two parts: Part I outlines the legal requirements for queer asylum status in 'queer-friendly' Western countries. Part II analyses some queer asylum cases – two from Australia and two from the United States of America (USA) – to illustrate the circumstances under which these legal requirements have been considered fulfilled, resulting in Muslim gays being granted asylum. In these cases, asylum-seekers have performed a particular interstice of universal gay discourses, teleological developmental narratives, and Islamophobic persecution stories. However, this demand in itself reinscribes homonationalist ideologies and teleological development narratives of global gay discourse. In the process, the politics of invisibility practiced by Muslim queers in their home countries become occluded. Furthermore, brown queers' tactics to navigate diverse sexual geopolitics – in their home countries, in satellite towns, where their cases are considered, and in host countries – are much more enlightening than homonationalist countries and human rights discourses would like to interpret. This point will be revisited in the final section of this paper.

Queer asylum is granted on the basis of refugee status as defined by The UN High Commission on Refugees (UNHR) under the 1951 Convention Relating to the Status of Refugees.<sup>13</sup> Refugee status was amended by the 1967 Protocol relating to the

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<sup>13</sup> 'Convention and Protocol Relating to the Status of Refugees', <http://www.unhcr.org/3b66c2aa10.html>, (accessed 30 January 2015).

Status of Refugees.<sup>14</sup> A total of 136 states now follow the Convention and the Protocols of the 30<sup>th</sup> September 2002.<sup>15</sup> According the 1967 protocol, a refugee is someone who:

Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is *unwilling to avail himself of the protection of that country*; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>16</sup>

In 1951, the UN held the Convention Relating to the Status of Refugees to provide protection for war refugees, an initiative later used for providing asylum to queers as well. The US acceded to the Protocol in 1967, but Congress did not enact its own Refugee Act until 1980. The US government codified the Protocol such that an applicant for asylum: (1) must have ‘a well-founded fear of persecution’; (2) the fear must be based on past persecution or the risk of future persecution; (3) the persecution must be ‘on account of race, religion, nationality, membership in a particular social group, or political opinion’; and (4) the persecutor must be the government or someone whom the government is unwilling or unable to control. Subsequent case law has defined the category ‘particular social group’ to include homosexuals.

Asylum decisions are heard by individual asylum officers (AOs), with administrative appeal to an Immigration Judge (IJ) and, later, to the Board of Immigration Appeals (BIA). Further appeals may be referred to the federal Courts of Appeal and the Supreme Court, but queer asylum cases have not yet been decided at this level. Over decades, it has been found that a successful sexual orientation asylum claim depends on establishing two primary elements:

(1) Nexus with group: It has to be established in the court that asylum applicants have suffered persecution because of their affiliation with a ‘particular social group’ whose members possess ‘common, immutable characteristics’ fundamental to their identity. The sexual orientation asylum applicant must establish ‘a well-founded fear of persecution ... because of his [or] her membership’ in the ‘particular social group’ of homosexuals. This element can be called ‘nexus with group’ requirement.

(2) Personal disaster spectacle: An asylum applicant must demonstrate a fear of persecution on the basis of their identity and establish a link between the persecution and their group membership. Thus, a sexual orientation asylum applicant must explain the basis of his or her fear with personal testimony and

<sup>14</sup> ‘Protocol Relating to Status of Refugees’, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-5&chapter=5&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&lang=en), (accessed 30 January 2015).

<sup>15</sup> ‘Current Information on the Agenda items allocated to the Sixth Committee’, <http://www.un.org/law/cod/sixth/57/current.htm>, (accessed 30 January 2015).

<sup>16</sup> ‘UNHCR: the UN Refugee Agency’, <http://www.unhcr.org/pages/49c3646c125.html>, (accessed 30 January 2015). (Emphasis added)

supporting evidence that proves he or she is homosexual and that he or she was persecuted on account of that homosexuality. This element demands what this article describes as a 'personal disaster spectacle' from queer asylum seekers. This demand must be shown fulfilled to carry out 'the burden of proof'.

Australia also requires the above, and additionally applies a third element:

(3) Discretion test: Australia considers whether applicants, if returned to their country of origin, could avoid persecution by hiding their sexuality.

### **Case 1: Bangladeshi Muslim Gays in Australia<sup>17</sup>**

K and R, two Bangladeshi gays in Australia had to fight almost ten years to receive political asylum status. This unusually long duration and the asylum process itself demand a scrutiny which can be twofold: first, the legal procedures and practices in these cases show a pattern of racial and sexual stereotyping, especially in terms of the appearance of typical gays, in and through foregrounding global gay discourses both by adjudicators' attempts to fit into precedents and the applicants' struggle to prove themselves 'gay enough'. But in such procedures of fulfilling requirements, there is a blind spot that precludes consideration of the politics of visibility Bangladeshi queers must negotiate within their home countries. This blind spot will be illustrated through the following cases.

In the first case, K (32) and R (51), residents of southwest Sydney, fled Bangladesh in 1999 after being subjected to stoning, kicking and other frequent violent attacks, both verbal and physical. In their first hearing, K and R claimed that they lived monogamously in respective heterosexual relationships for fourteen years. Later, K and R had lived together for four years in Bangladesh. During their gay life in Bangladesh, they had experienced a variety of violent and harassing incidents and they expressed their fear that they would encounter similar persecution if they went back. The tribunal expressed serious reservations about the applicants' credibility and did not believe a number of their claims of experiences of persecution. The tribunal disbelieved K's evidence that he had complained to the police of harassment on the basis that it was 'not plausible' that he would have sought police assistance in the first place, 'given the attitudes towards homosexuals in Bangladesh'. While the tribunal accepted that the couple was genuinely gay and in a long-term cohabiting relationship, they did not believe that this gay couple had any reason to face harassment in Bangladesh.

On the basis of these findings, the tribunal concluded that the applicants did not have a well-founded fear of persecution as they had lived together for over four years without experiencing any more than minor problems with anyone outside their own families. They lead a discreet life style and would be able to continue with the same if they went back to their own country. The tribunal also used country evidence and found that there are no openly gay men or lesbians in Bangladesh. It added that gay men having relationships usually do not to live together. Public places like parks

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<sup>17</sup> D. Fickling, 'Victimised gay couple contest refugee refusal', <http://www.guardian.co.uk/world/2003/apr/09/gayrights.australia>, 8 April 2003, (accessed 30 January 2015).

are available to have discreet male–male sex though gay partners are likely to experience police bashing and extortion. The tribunal categorically mentioned that men can easily continue male to male sex if they conform outwardly to social norms, most importantly by marrying women and having children while keeping their homosexuality secret. The tribunal concluded that:

[i]t is clear that homosexuality is not accepted or condoned by society in Bangladesh and it is not possible to live openly as a homosexual in Bangladesh. To attempt to do so would mean to face problems ranging from being disowned by one's family and shunned by friends and neighbours to more serious forms of harm, for example the possibility of being bashed by the police. However, Bangladeshi men can have homosexual affairs or relationships, provided they are discreet.<sup>18</sup>

### Analysis:

In case 1, the tribunal's argument that Bangladeshi gays can continue with homosexuality by hiding their sexual orientation is problematic in that the queer relation in this case has been conceptualized by confining it only to sexual orientation. This assumes that K and R would not need any social life or public culture of their own choice. Such a reduction of queer identity to the sex act shows how the west uses homonationalism as a script to define and control homosexuality for brown queers. Such racialized considerations are further made obvious by distorting facts in the original appeal made by K and R: that they were openly 'non-conforming' as they were cohabiting as a gay couple. A localized understanding of conformity/non-conformity would have accelerated the case in a proper direction. That understanding would have revealed that maintaining a discreet gay relationship forever within the heterosexual spheres of family, society, and state is almost impossible in Bangladesh. There is a constant fear of physical assault, criminalization through fatwa if homosexuals live in the remote areas, fear of seclusion from the family and different ranges of psychological and social harassment and abuse by neighbours and acquaintances. That K and R have maintained their relationship for four years is no guarantee that they would be able to do the same for the rest of their lives.

The prescription to maintain a discreet life is indifferent to local realities and societal norms, which often deviate from the common patterns of such socio-cultural formation in western countries. In the Bangladeshi socio-cultural environment, it is almost impossible to lead a discreet life as social atmosphere formed in one of the densest demographic formation necessitates close interaction between family members, neighbours, and other community members. It is worth noting that because of the problematic approaches to the 'discretion' requirement applied in case of Bangladesh, one man in a gay couple received refugee status while his partner has been denied the same.<sup>19</sup>

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<sup>18</sup> C. Dauvergne and J. Millbank, 'Before the High Court Applicants S396/2002 and S395/2002, a gay refugee couple from Bangladesh', *The Sydney Law Review*, 25 Sydney L., Rev 97, 2003, [http://sydney.edu.au/law/slr/docs\\_pdfs/editions/slr\\_v25\\_n1\\_bhc.pdf](http://sydney.edu.au/law/slr/docs_pdfs/editions/slr_v25_n1_bhc.pdf), (accessed 30 January 2015).

<sup>19</sup> Dauvergne and Millbank.



Worse, a subsequent tribunal told K and R that ‘you don’t look like homosexuals’. This is evidence of how the politics of visibility marginalizes non-western queers. Even in the context of western queer formation, identifying visible markers of sexual orientation is problematic: not all queers necessarily follow the same life style, wear distinctive dress or carry any other fixed visible markers of their sexual identity on their bodies. The adjudicators are not so naïve as to be ignorant of this, but the logic of visibility has still been routinely applied, and is underpinned by their racialised perception of non-western queers, which is further reinforced by global gay discourse and the teleological development narrative.

The same tribunal also used an anonymous phone call to contest the men were brothers, a claim later disproved by DNA testing. In deciding the asylum status, using the anonymous phone call without any requirement to contest its reliability once again constitutes a racial discrimination against K and R. At this K and R became frustrated and in a submission they appealed: ‘we are prepared to have an adult witness view us engaged in an act of homosexual intercourse and then attest before you to that fact.’ This is how the demand for visible proof has been stretched to harassment and sheer absurdity in the name of undeniable evidence. Furthermore, in a 2007 hearing, the tribunal asked K ‘if he and the second applicant have sex in the morning’ and ‘if they used a lubricant.’ The 36-year-old K said he had been ‘too embarrassed to answer the personal questions’, but this refusal was later used as proof he was not a credible witness. This shows how the tribunals tend to ignore the difficult psychological conditions brown queers experience. By asking personal questions, they infiltrate the private sphere and deny applicants dignity, as though dignity were necessary only for heterosexual people. The tribunals consider both honour and dignity as heteropatriarchal prerogatives.

Furthermore, questions like these are symptomatic of the pathologized queer body, which in this case has also been hyper-sexualized. The refusal to answer embarrassing questions is not convincing proof of their deceitfulness. It appears that adjudicators often do not consider queer asylum applicants deserving of delicate or sympathetic treatment, even though they are often in the process of recovering from trauma caused by the stigmatization and criminalization of their sexual orientation in their home countries. They also fear future miseries either in home or host countries, as homophobia is still endemic all over the world. Instead of being shown a caring attitude, queer asylum applicants are verbally forced to infiltrate self-esteem or dignity as if these are heteropatriarchal prerogatives. The questions K and R were asked were offensive. In a hearing held in 2007, an asylum tribunal asked K and R if they had sex in the morning and if they used a lubricant. Questions like these were really offensive to K and R. Their lawyer Bruce Levet also believed that the tribunal’s conduct was disgraceful and added ‘I was ashamed to be a lawyer.’<sup>20</sup> For Levet, witnessing how a legal procedure can be offensive and self-degrading for asylum applicants was embarrassing to say the least.

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<sup>20</sup> H. Byrnes, ‘We’ll have sex to prove we’re gay, says Bangladesh refugees’, <http://www.couriermail.com.au/news/well-have-sex-to-prove-were-gay-says-bangladesh-refugees/story-e6freon6-1225787718526>, 16 October 2009, (accessed 23 July 2015).

According to Levet, because K and R had lived monogamously for 14 years and neither frequented gay bars nor taken any active part in the gay community, they had struggled to convince the tribunals of their sexuality claims. Clearly, the 'nexus with group' requirement – a reinforcement of global discourses – in this case has been shown unfulfilled. This ignores the fact that not all gay people maintain group affiliation or visit gay bars. In Bangladesh, for example, there are no gay bars and gays don't openly organize because of fear of persecution. Similarly, the legal requirement that there should be either a record of persecution or a provable threat of such persecution is sometimes difficult to fulfil. Unfortunately, this does not mean that gays in Bangladesh are not persecuted.

### **Case 2: Indian Muslim Gay in Australia**

In April 2014, Australia's Refugee Review Tribunal granted an Indian Muslim asylum.<sup>21</sup> He was identified as a 25-year-old commerce graduate student who came to Australia in 2009. In his visit to India in 2011, he reported intense suffering, including torture by family members and close relatives. His father locked him in a room and pressured him to get married to a woman. His cousins twisted his nose and threatened him with a knife. The student eventually escaped that room and returned to Australia.

In July 2012, Australia's immigration department refused to give him asylum status. They argued that though the asylum seeker was gay, mistreatment towards him did not take the form of any life-threatening persecution. Also, it was emphasized that he could go to other Indian cities to avoid danger. Here the discretion test was applied which disfavoured his cause. On the other hand, it is possible that since the personal disaster narrative was not foregrounded, it was not possible for him to gain asylum status.

The situation changed radically in 2014, when his appeal for review became successful. The Refugee Review Tribunal now emphasized the student's previous claim that he was threatened by a local Islamic cleric and they ruled that it was 'reasonable to believe he would be assaulted and probably forced to marry, and if he were to refuse, he would probably face more serious harm and be killed'.

### **Analysis:**

Case 2 is significant as it shows how the use of homonationalism as script (Puar) demands the Islamophobic construction of queer presence in non-western countries. This is the logic of empire that is promoted and gains credibility to reinforce the assumption that barbaric Islam makes the lives of its followers dangerous, and it is the sacred responsibility of the West to save these Muslims. The above queer asylum case in which an Indian Muslim was given status shows how the threat of personal disaster narrative when filtered through Imperialist Islamophobia achieves credibility.

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<sup>21</sup> A. Potts, 'Gay Muslim Indian man granted refugee status in Australia', <http://www.gaystarnews.com/article/gay-muslim-indian-man-granted-refugee-status-australia230414>, 23 April 2014, (accessed 30 January 2015).

### Case 3: A Gay Bangladeshi Muslim in the United States

Another Bangladeshi gay received political asylum in the USA.<sup>22</sup> *The Washington Blade*, a gay and lesbian publication in Washington DC, reported in August 1997 that the (formerly known as) Immigration and Naturalization Service granted political asylum to a Bangladeshi gay man who was threatened with stoning by Islamic extremists in his home city of Dhaka. In his affidavit, the man reported that he had been raped by police, forced into electroshock treatment and ordered by his family to enter into an arranged marriage.

The country information evidence utilized in the cases from Bangladesh is very general in tone and much of it is very dated. In this particular case, most of the country evidence was five years old at the time of tribunal decision. More recent and more detailed evidence would have challenged the tribunal's repeated findings: whereas the tribunal finds that Bangladeshis are tolerant of male homosexual behaviour, a study reflecting the time when the case was in operation shows otherwise—homosexuals going through widespread violence at the hands of police and others. The study found that 64 per cent of respondents had faced police harassment, 48 per cent had been sexually assaulted by police and a further 65 per cent had been sexually assaulted by mastaans (thugs, who are often involved with the police through bribery and other practices) while 71% had experienced other forms of harassment, such as extortion and bashings.<sup>23</sup>

#### Analysis:

In this case, success for queer asylum applicants came through only relying on the homonationalist ideologies where the role of stoning, fatwa, Islamic fundamentalists' abuse of minorities, etc. have been foregrounded. In successful asylum cases, both the personal disaster spectacle and discretion test are encouraged to form around such homonationalist formation.

While the sources of persecution through fatwa may still exist in the rural areas, it is also an undeniable fact that the fatwa or stoning until death is highly condemned in Bangladesh. Since 2011, any enforcement of fatwa has been ruled as illegal in Bangladesh. Because of public awareness against the fatwa, Bangladeshi gays are less likely to be faced with it, but it doesn't imply that other forms of sociocultural obstacles—as I have outlined above—have also vanished.

However, it is possible that the ruling against enforcement of fatwa in Bangladesh will now be used to argue for the validity of the discretion test that recommends hiding sexuality and continuing to live in home countries. Ironically, this recommendation reinforces both heteropatriarchal and homonationalist hegemonies, suggesting that in the hierarchic conceptualization of sexuality and

<sup>22</sup> V. Neilson, 'Homosexual or female? Applying Gender-Based Asylum Jurisprudence to Lesbian Asylum Cases', <http://www.immigrationequality.org/wp-content/uploads/2011/08/Neilson-Website-Version-Lesbian-article.pdf>, volume 16, Number 2, 2005, p. 14, (accessed 2 August 2015).

<sup>23</sup> C. Dauvergne and J. Millbank, 'Before the High Court Applicants S396/2002 and S395/2002, a gay refugee couple from Bangladesh', *The Sydney Law Review*, 25 Sydney L., Rev 97, 2003, [http://sydney.edu.au/law/slr/docs\\_pdfs/editions/slr\\_v25\\_n1\\_bhc.pdf](http://sydney.edu.au/law/slr/docs_pdfs/editions/slr_v25_n1_bhc.pdf), (accessed 30 January 2015).

nationality 'Bangladeshi homosexuality' is to be kept under the rug while 'western homosexuality' is to be publicly practiced. The recent ruling will only worsen the situation, because Bangladeshi queers will lose any convincing ground on which they can perform personal disaster spectacles to reinforce homonationalism. The fact that changes in law will not necessarily stop those 'intense but unspectacular' miseries – rejection by family members, social taboos and stigmas that are also present in some western countries like the US – will be ignored.

In order to avoid this outcome, instead of demanding personal disaster spectacles or evidence of persecution, other sociocultural factors should be taken into consideration. These include the impossibility of maintaining discreet relationships in asylum seekers' countries of origin. Unfortunately, because of the heightened significance of visibility in proving their queerness, and the privileging of provable persecution over unprovable and unspectacular suffering, personal disaster spectacles will continue to be sought out during the legal procedures of queer asylum cases.

### **Dealing in cracks and fissures: privileges or problems?**

Queer asylum tribunals apply country evidence in Bangladesh and India to argue that it is possible to live in these countries if homosexuality can be kept hidden. Since there are similarities in the reception of queerness in Bangladeshi and Indian contexts, it would be helpful to use Gayatri Gopinath's arguments in representing the contexts of homosexuality in non-western countries, especially how it goes beyond western discourses and teleological developmental narratives. Gopinath argues that non-western homosexuality should be understood beyond the dominant notion of western homosexuality. She argues that the representation of lesbianism in Dipa Mehta's *Fire* challenges those dominant discourses: '[...] *Fire* challenges a developmental narrative of gay and lesbian identity, which underlies dominant Euro-American discourses on non-western sexualities'.<sup>24</sup> By the dominant discourses Gopinath refers to global gay discourses and teleological developmental narratives. Problems arising from this dominance include the occlusion of the very context within which non-western homosexuality can to emerge and flourish:

*Fire* interrogates the notion that the proper location of lesbianism is within a politics of visibility in the public sphere... it is precisely within the cracks and fissures of the rigidly heteronormative arrangements that queer female desire can emerge...enabled by those spaces of sanctioned female homosociality legislated by normative sexual and gender arrangements.<sup>25</sup>

Here, understanding the 'sanctioned female homosociality' is important. Holding hands while walking along the streets or showing intimacy between the same sex in Bangladesh or India does not necessarily indicate any homosexual relationship

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<sup>24</sup> G. Gopinath, *Impossible Desires: Queer Diasporas and South Asian Public Cultures*. Durham, Duke University Press, 2005, p.140.

<sup>25</sup> Gopinath, 153.

between persons engaged in such activities. Thus homosexuals in Bangladesh get interested in concealing their relationship by using such acceptance of homosociality as cover for their homosexuality. Homosexuals do it as a tactic for security because they know that they will face persecution once their homosexuality is discovered. This possibility of leading a discreet homosexual life within a heterosexual ambience is something the 'discretion test' in asylum case invests hugely. In considering asylum status for queers, it is sometimes argued that since queers can hide their sexuality in their home countries without facing persecution, asylum status is not required for them. But such argument relies on a partial reality. Maintaining a discreet life in the densest demographic spaces is almost impossible. Thus the security in the tactic of discreet relationship is only illusory: homosexuals get exposed within a short span of time.

When considering queer asylum cases, global gay discourses are often played out in the asylum laws that recognize non-western queerness. Consequently, it becomes easier to occlude and erase some sociocultural realities non-western queers experience while living in their home countries: stigma, harassment, isolation, humiliation leading to suicides and others. These forms of suffering are unspectacular compared to the shock value of the homophobic narrative or the personal disaster spectacle queer asylum seekers are expected to produce. But the unspectacular forms of suffering are no less detrimental to the wellbeing of non-western queers. Nevertheless, when asylum tribunals advise non-western queers to live discreet lives in their home countries, they misunderstand the tactic of invisibility, living within 'cracks and fissures' of the heteronormative social constructions of everyday life experiences. Tribunals tend to ignore the fact that living a discreet life is a survival tactic, but neither easy nor desirable to a non-western queer.

Queers have the right to exist outside these cracks and fissures; not that non-western queers wish to confine themselves within hidden spaces, and one could argue that it is homophobic of Western asylum tribunals to expect this of them. This brings us back to the case of the converted Christian who was granted asylum on the grounds that he has the right to practice religion openly. No evidence of threat of persecution in a Muslim majority country was required to achieve asylum status in that case. By the same token, it can be argued that non-western queers have rights to practice homosexuality openly and hence they should be provided with asylum. The fact that they are often denied asylum is revelatory of the attitudes towards homosexuality in Western nations: many are ambivalent towards homosexual identity, and still consider it a lifestyle choice. However, that does not stop them from coming up with homonationalist claim. This contradiction between their rhetoric of homonationalism and their understanding of brown queers' sexuality finds an easy solution in their demand for personal disaster spectacle from brown queers. For gaining credibility, brown queers then must demonize their home countries as homophobic. Such demonization leads to exaltation of western countries as comparatively less homophobic and, by implication, comparatively more progressive. Within such simplistic play of binary logics, the homonationalist countries then tend to self-appoint themselves to spread the civilizing mission in the countries of those brown queers. These missions constitute the 'war on terror'.

Therefore, it can be argued that giving asylum for brown queers has thus far been nothing other than an attempt to pink wash the collateral damage in the 'war on terror'.

### **Geopolitical Distribution of Homophobia and Transphobia**

Within the representational economy of homonationalist countries, homophobia and transphobia are located as *always elsewhere* – most importantly, beyond the boundaries of the west, and especially in Muslim-majority countries. In other words, homophobia and transphobia in Muslim-majority countries are easily identified, exoticized, and preached about following the logic of homonationalism. This sense of urgency in finding homophobia elsewhere helps people to overlook the existence of homophobia and transphobia within homonationalist countries, at the cost of making queer lives in homonationalist countries precarious. For brown queer refugees, this becomes even more problematic when they are eventually granted asylum and struggle to settle in host countries vulnerable to the challenges of racism, homophobia, and transphobia. Sima Shakhsari argues:

Nor is the promise of rights and freedom in the teleological developmental narratives of refugee discourse quite achievable for queer and trans people who arrive in the 'third country of asylum', which is often Canada, the USA, or Australia. Disillusioned with the promise of rights and equality, Sayeh, an Iranian transgender refugee woman committed suicide less than a year after arriving in Toronto in 2008.<sup>26</sup>

Within the combination of homophobia, transphobia and the mismanagement of life chances embedded in neoliberal homonationalist countries, it becomes difficult to manage housing, employment, and healthcare in Canada. Shakhsari reports in the same article:

[a]nd, even as the geopolitical and the developmental logic of human rights regimes assume transphobic and homophobic violence to be particular to the Middle East, the story is not that different for racialized queer and trans people in final refugee destinations such as the USA, where three black trans women were murdered in April of 2013 alone.<sup>27</sup>

Given the homonationalist representational economy and geopolitical distribution of homophobia and transphobia within the western human rights regimes, granting refugee status to black trans women would appear illogical. However, contrary to the homonationalist claim, homophobia and transphobia do affect queer lives in the West. Michael Flood and Clive Hamilton write: 'One-third of

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<sup>26</sup> S. Shakhsari, 'The Queer time of death: Temporality, geopolitics, and refugee rights', *Sexualities*, volume 17, number 8, 2014, p.999.

<sup>27</sup> Shakhsari, 999.

the Australian population believe that “homosexuality is immoral”.<sup>28</sup> Also, in “Homophobia: Towards an Australian History”, Shirleene Robinson reports a severe homophobic attack on Craig and Shane as they were walking home along Sydney’s Crown Street from a local nightclub in 2007. The police at Surry Hills police station discouraged them from reporting the attack or making any formal statement. Robinson argues:

Given the visibility and apparent popularity of gay culture and gay public figures, it might be easy to feel that homophobia is no longer an issue for the majority of the queer population, and that the gay and lesbian liberation movement has successfully eradicated prejudices once so strongly held.

The horrifying assault on Craig Gee and Shane Brennan is a salutary reminder that this is not the case. This is only one of many anti-homosexual attacks in recent years.<sup>29</sup>

To question the mythical portrayal of the west as ‘queer heaven’, it is important to investigate how migration to homonationalist countries affects the lives of brown queers. On their arrival in host countries, Muslim brown queers’ lives remain as disposable as they had been in their home countries. In fact, their situation may become worse as they get separated from their families, friends, and communities. On their arrival to the lands of asylum, brown queers become victims of racism on top of homophobia and transphobia they suffered in their home countries. Homophobia, transphobia and racism experienced in their everyday life in the lands of freedom tend to lead brown queers to multifarious miseries in a wide range from unemployment and poverty to total abandonment and death. Shakhsari presents such case studies and argues that the death of brown queers in the lands of rights and freedom becomes ‘unspeakable’ because of an easy and uncritical acceptance of the queer heaven myth about the West spread out by governments of the west countries and their media. Death as final consequence of asylum process is what Shakhsari calls ‘rightful killing’.<sup>30</sup> By ‘rightful killing’, she refers to the systemic death of queers in western countries despite of having asylum status. Thus she shows how despite receiving asylum status in western countries, certain queers find their death ‘sanctioned in the name of rights’. Shakhsari also brings the concept of ‘slow death’ to explain this rightful killing, killing with rights. She uses the example of Mahtab, a transsexual Iranian who left Iran, waited several years in a satellite city in Turkey, where he was trying to prove himself as a legitimate queer and get recognized ‘as a legitimate refugee by the UNHCR and the Canadian embassy’.<sup>31</sup> Mahtab received asylum status and moved to Canada. However, Mahtab’s success in gaining asylum status becomes ultimate failure as he commits suicide at his rented

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<sup>28</sup> F. Michael and C. Hamilton, ‘Mapping Homophobia in Australia’ in S. Robinson (ed.), *Homophobia: An Australian History*, Sydney, Federation Press, 2008, p.16.

<sup>29</sup> S. Robinson (ed.), *Homophobia: An Australian History*. Sydney, Federation Press, 2008, p.2.

<sup>30</sup> S. Shakhsari, ‘Killing me softly with your rights: queer death and the politics of rightful killing’ in J. Haritaworn, A. Kuntsman and S. Posocco (eds.), *Queer Necropolitics*. New York, Routledge, 2014, p. 103.

<sup>31</sup> Shakhsari, ‘Killing me softly’, 93.

apartment in Canada in 2008. Shakhari refers to his financial hardships in Canada as the reason of his suicide, and argues that

the politics of rightful killing explains the contemporary political situation in the “war on terror” where those whose rights and protection are presented as the *raison d’être* of war, are sanctioned to death and therefore live a pending death exactly because of those rights.<sup>32</sup>

It is important to destabilize the myth of ‘queer heaven’ in the western countries which brown queers uncritically believe in. Gaining asylum status in the western countries does not mean the end of homophobia and transphobia. Brown queers may escape their home countries in an attempt to escape homophobia, transphobia, poverty, and war, but life in the ‘lands of rights and freedom’ may also make their life vulnerable, although in a roundabout way.

### **Translation of Tactics by Queers across Diverse Transnational Contexts**

The hegemonic narrative of homophobia being *always elsewhere* is given credibility by managing evidences of persecution presented by brown queers in their personal disaster spectacles. Because of the inevitable influence of the hegemonic narrative in political asylum cases, brown queers are forced into a position in which it becomes more pragmatic to show evidence of persecution than doing anything else. Whether the brown queers have really gone through persecution or not becomes an irrelevant issue to them. This is how brown queers take birth as rightful individuals within the discourses of protection in the West and within the discourses of human rights.

To question the myth of homophobia’s eternal absence from western nations, it is helpful to understand brown queers’ struggles for sexual and political representation. They must apply diverse tactics to negotiate power structures in their home countries, their host counties, and in-between spaces, the satellite towns and asylum courts. Queers keep changing their tactics of representation and negotiation with structures of power as they move across different nodal points in the circuit of homonationalist human rights regimes.

Driven by the logic of survival, for example, brown queers in their home countries tend to conceal their sexual desire and practices within cracks and fissures of the heteropatriarchal power structure – this can be described as a form of ‘hidden transcript’.<sup>33</sup> In *Domination and the Arts of Resistance: Hidden Transcripts*, James C. Scott introduced the idea of *infrapolitics*, an everyday form of resistance that falls short of openly declared contestations. Scott attempts to foreground the superior-subordinate relations in which the subordinate appears to acquiesce willingly to the stated and unstated expectations of the dominant, and argues that the weak and oppressed of a

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<sup>32</sup> Shakhari, ‘Killing me softly’, 103.

<sup>33</sup> J. Scott, *Domination and the Art of Resistance: Hidden Transcripts*. New Haven, Yale University Press, 1990.



society are not free to speak in the presence of power. Instead, these subordinate groups create a secret discourse that Scott calls a 'hidden transcript', which represents a critique of power spoken behind the backs of the dominant. Brown queers, while living in their home countries, do not directly confront homophobic power structures and entities. They simply try to avoid or evade the vigilance of the punitive system. Evasion and concealment thus constitute brown queers' tactics of negotiation in their home countries.

In order to escape the homophobia and transphobia of their home countries, and in response to the belief in the possibility of a better life in the west, brown queers hope to leave their home countries and find sexual freedom in the 'progressive' and 'queer friendly' west. However, to get there they must go through the discursive and institutional zones of satellite cities and courts, in which they must perform the features of rightful individuals to prove the validity of their asylum claims. Becoming rightful applicants involves proving immutable sexualities and other features as explained in part I. In short, brown queers are expected to perform personal disaster spectacles. In their attempt to emerge as rightful subjects, brown queers find demonizing their home countries as homophobic, barbaric, and persecutory to be a quick and effective tactic of gaining the strategic sympathy of homonationalist host countries. However, any features of brown queers that deviate from the western, the normative and standard visible markers of queerness are taken as signs of improper queerness. An anxiety of deviance from the normative queerness in brown queers waits for the white protectoral gaze which, from the very beginning, also looks for evidence of barbaric and homophobic socio-cultural practices in brown bodies. In this politico-emotional bargaining, the stories of homophobic and barbaric Islam emerge as the most convincing evidence which ultimately satisfies both brown queers and their homonationalist hosts.

In the in-between phase, from the moment brown queers decide to leave their home countries and become right-bearing individuals or asylum applicants, they must apply tactics to get approved as legitimate asylum seekers. In the process of getting recognized as valid applicant, brown queers often inadvertently participate in the project of imperialist Islamophobia. The project hinges on the linear hegemonic narrative that sets queers as victims of homophobic and barbaric in Muslim-majority countries. However, brown queers are also victims of global capitalism; the warfare imposed on their countries under the aegis of the 'war on terror', economic sanctions imposed by the imperialist countries, and similar.

Since the success in queer asylum cases depends on brown queers' testimonies of persecution in their home countries, asylum applicants must fabricate stories of persecution if they don't have any. Pejman, for example, reveals his tactic of fabrication as he also critiques the hegemonic narrative of queer persecution as the only believable stories:

I left because I was fed up with the situation in Iran. I knew that you could become a refugee for being gay. Many of my friends had left. I didn't have problems with the state for being gay. So, I made up a story in my interview, just to make sure that the UN would not reject me. But it doesn't mean that I didn't have a good reason to leave. In

fact, the way that this [economic situation in Iran] is going, all 70 million Iranians have legitimate cases to become refugees!<sup>34</sup>

Brown queers must apply different tactics for survival and for accessing opportunities. They must successfully navigate different challenges depending on the geopolitical context in which they find themselves. Once they are granted asylum in homonationalist countries, their struggle is not over. They must continue attempting to manage life chances in search of housing, employment, healthcare, and other necessities.

Victor Mukasa, a transgender person from Uganda reveals the challenges queers face when they become right-bearing queers and try to settle in host countries as asylees. Victor states:

When people want to come here, I am like, "I don't know"... but if you know that your life is really, really, in trouble... take off for your life. Exit. Then Immigration equality is your brother and sister at that point.

Imagine if you just left your country and came here... then there is no group like Immigration Equality. You're not sure about where you're going to sleep. You're not sure about the food you're going to eat. You don't have the money most of the time. How are you going to find a lawyer in a strange country? And how are you going to pay them?<sup>35</sup>

Victor was lucky to have support from Immigration Equality, a group supporting queer asylees in the US. But groups like this barely exist thanks to neoliberal economic mismanagement across homonationalist countries.

Brown queers' diverse tactics for survival thus helps formulate a more critical understanding of the contexts in which the hegemonic narratives of homophobic, transphobic, barbaric and regressive cultures of the orient get produced which in turn tends to justify the imperialist civilizing mission of homonationalist countries, "the war on terror".

### Conclusion:

Why is it hard to imagine that queers can seek asylum when they don't have personal disaster narratives but find some western countries queer-friendly? And why is it hard to imagine that queer-friendliness doesn't necessarily absolve any country of Islamophobia? The homophobic, torturous, barbaric Islam versus tolerant, progressive, and queer-friendly west binary is promoted, willingly or unwillingly, to mobilize an imperialist logic to (neo)colonize the expanding regions of the world which are increasingly becoming sites of the 'war on terror'. This article shows how queer asylum applicant's survival tactics get utilized for the imperialist project. A recurring demand for personal disaster spectacle demonizing Muslim-majority

<sup>34</sup> S. Shakhari, 'The Queer time of death: Temporality, geopolitics, and refugee rights', 104.

<sup>35</sup> 'Asylum: Three Stories', <http://www.immigrationequality.org/>, (accessed 22 July 2015).

countries has put queer asylum applicants in a difficult situation. Meghana Nayak believes that queer asylum applicants are inspired to lie and exaggerate:

In order to increase their chance of receiving asylum, asylum seekers might need to participate in narratives that are traumatizing to them. Asylum seekers are also incentivized to lie and exaggerate to tell the 'right' story, which contributes to the perception that asylum seekers are fraudulent and seeking to exploit the asylum system.<sup>36</sup>

The case studies and interviews in this article finds that Nayak's concern is particularly true about Muslim brown queers. Queer scholars need to address this project of making asylum seekers look like exploiters, and ask 'what does queer studies have to say about empire, globalization, neoliberalism, sovereignty, and terrorism?'<sup>37</sup> This article responds to such queries as it presents 'conceptual crisis contradictions of global and domestic politics ... to consider areas such as South Asia [...]'.<sup>38</sup> It argues that though homophobia does exist beyond the spheres of 'Islam', 'Muslim', 'brown', 'East' and other similar categorization, these other realities are suppressed to provide authenticity to the homophobic Islam narratives. Homosexuality, as the global gay discourse and the teleological developmental narrative discussed above suggest, is claimed as a Western tradition that is being appropriated by non-western queers. This is why the deprivation of a normal social life, societal isolation, public harassment and other sources of misery for brown queers are not given credence unless the evidence is accompanied by a spectacle of imperialist and homonationalist Islamophobia. In so arguing, this article shows how global gay discourses and teleological developmental narratives meet imperialist Islamophobia as queer asylum conditions in host countries value 'provable' evidence of persecution. Ironically, in queer asylum cases, all unprovable forms of suffering, unspectacular yet severe difficulties in maintaining homosexuality are ignored in the name of scientific objectivity that can distinguish 'real' queers from 'unreal' ones.

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<sup>36</sup> M. Nayak, *Who Is Worthy of Protection?: Gender-Based Asylum and U.S. Immigration Politics*. New York, Oxford University Press, 2015, p.3.

<sup>37</sup> D. Eng, J. Halberstam, and J. Muñoz, 'What's Queer about Queer Studies Now?' *Social Text*, Vol.23, Nos.3-4, 2005, p.2.

<sup>38</sup> Eng et al., 7.