

## The Legal Status of Transgender Persons in Pakistan after the 2018 Act

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### Abstract

The adoption of Transgender Persons (Protection of Rights) Act, 2018 was a momentous advance in the existence and safeguarding of transgender rights in Pakistan. This act made transgender people legitimate and gave them freedom of self-identifying their own gender and tried to guarantee their rights in education, work, health, and inheritance. In this paper, the author will discuss the legal implications of the Act and its performance in reforming the real-life situation of transgender persons in Pakistan. It formulates the thesis on a critical basis in terms of the socio-legal ground in which the Act was enacted and the institutional and cultural issues that have persisted to undermine its actualization. A comparison with the similar legal framework in other South Asia countries is also an analysis is to determine as to whether the Pakistan legal approach to the issues is in line with those of the region and the international human rights development. Nevertheless, it is difficult to say how the 2018 Act can be effectual, how people perceive it, and what socio-political blowback it has caused in the more conservative circles. The paper explains how loopholes in institutional coordination, public understanding, and execution fail to increase the transformational strength of the law. The research aims to give an eye-level experience of the law on transgender people through watching up-to-date scholarly studies, speaking to people, and working in the field. It also examines the relationship between legal recognition and social acceptance, economic inclusion, and the role of the state. Finally, the paper concludes that although Transgender Persons (Protection of Rights) Act, 2018 is a valuable legal tool, the efforts made to bring changes on the issue must rely on regular political commitment, general cultural change, and institutional responsibility. The study then ends by giving recommendations concerning how legislation could be made clearer, and the reinforcing of policy implementation, and the facilitation of social inclusion by means of multi-sectoral involvement.

### Introduction

The issue concerning transgender rights has acquired growing prominence in current legal and social dialogues especially in those countries that are facing the process of democratization and constitutional transformation. The Transgender Persons (Protection of Rights) Act, 2018 in Pakistan is the momentous effort that the state makes to bring the systematic exclusion, discrimination, and violence against transgender persons. The Act does not only acknowledge the right to transgender people to self-identify as a gender but also requires equality in such aspects as employment, school, healthcare, and inheritance. This political step away was not only a break with the practice of marginalization to which it was historically attached but was also an indication

of some interest, at least on paper, in principles of inclusive citizenship and human rights guarantees.<sup>1</sup> Development of the 2018 Act followed several years of advocacy by the non-governmental organizations, social activism, and emergence of transgender voices in the media. Nevertheless, due to its progressive content, the law is a part of a wider socio-institutional context that tends to resist change. The transgender people still encounter difficulties in using the basic services, and there is a dissimilarity in applying the Act throughout the provinces. Social acceptance or material equity do not just follow legal recognition. Rather, it tends to highlight a conflict between intent and reality as expressed in terms of socio-cultural value.<sup>2</sup> This essay is a critical analysis about the legal phenomenon of transgender people in Pakistan after the 2018 Act was issued. It tries to answer the question whether the law has culminated in actual protection and better living among transgender people. Based on the existing body of scholarship, analysis of European countries and some others regionally, and field reviews, the research questions the strengths and weaknesses of the law, the effectiveness of the state institutions, and the prevalence of social stigma. The study also places the statutory circuit of Pakistan in the international legacy of the changing perceptions about gender identity and natural personhood.<sup>3</sup> This research provides an interdisciplinary evaluation of post-legislative realities of transgender rights in Pakistan by combining the critical legal analysis with the knowledge and expertise of sociology, human rights and public policy. By doing that it aims at adding to the larger academic discourse about gender justice and legal reform in South Asia.

### **Background and Historical Context**

The marginalization of transgender individuals in South Asia predates the formation of modern nation-states, embedded within complex intersections of caste, gender, religion, and colonial governance. In pre-colonial societies, individuals identified today as transgender or "khawaja sira" often held culturally significant roles, including as caretakers of harems and spiritual figures in Sufi traditions. However, with the onset of British colonial rule, such roles were pathologized and criminalized under laws like the Criminal Tribes Act of 1871, which labeled transgender communities as inherently suspicious and deviant.<sup>4</sup> This legal legacy laid the groundwork for continued stigmatization and exclusion under post-colonial legal systems, including in Pakistan. After its independence in 1947, the Pakistani legal system still followed many laws that were found during the colonial era which could not reflect gender diversity. Transgender people were not given legal status or protection and as a result, it took decades to end widespread discrimination against this group of people in society. The transgender people usually stood at the fringe of the social community by means of begging, participating in ritualistic practices, or prostitution, all of which, in addition to deepening the negative stereotypes, subjected them to both legal and physical violence.<sup>5</sup> Community-led attempts to deal with this systemic marginalization did not exist until the early 2000s, when transgender people and supporting organizations started national and international attention to address the situation of their marginalization.

The breaking point occurred in the mid-2010s, and it was spurred by an increased public discussion and mass media attention, as well as policy interest. Attention was drawn to the abuses through the

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<sup>1</sup> Nimra Nawaz and Hussnain Safdar, "Transgender Rights in Pakistan: A Complete Study under the Constitution and Pakistan Law," *Pakistan Journal of Humanities and Social Sciences* 11, no. 2 (2023): 1614-1630-1614-30.

<sup>2</sup> Saad Ali Khan, "Transgender Community in Pakistan: From Marginalized 'Aliens/Others' to Empowered 'Citizens'?", *Progressive Research Journal of Arts and Humanities* 2, no. 2 (2020): 28-42.

<sup>3</sup> Khan.

<sup>4</sup> "Full Article: The Paradox of Recognition: Hijra, Third Gender and Sexual Rights in Bangladesh," <https://www.tandfonline.com/doi/full/10.1080/13691058.2017.1317831>.

<sup>5</sup> Saira Majid et al., "Social Exclusion of Transgender (Hijra): A Case Study in Lahore (Pakistan)," *Pakistan Journal of Humanities and Social Sciences* 11, no. 2 (May 6, 2023): 814-24, <https://doi.org/10.52131/pjhss.2023.1102.0393>.

activities of the non-governmental organizations that helped to mobilize the opinion of the world community and inflict pressure on the Pakistani state to fulfill its obligations concerning such documents of the world community as the International Covenant on Civil and Political Rights. These activities preconditioned the future drafting and enactment of the Transgender Persons (Protection of Rights) Act, 2018, that was supposed to address decades of invisibility in law and neglect by the state institutions.<sup>6</sup> This historical context is indispensable in terms of understanding the importance of the 2018 Act, as well as the opposition the latter has been facing in practice. Reforming the law here is not solely of codifying rights but of reversing ancient and colonial and societal biases.

### **Key Provisions of the Transgender Persons (Protection of Rights) Act, 2018**

Transgender Persons (Protection of Rights) Act, 2018, is the breakthrough in the history of Pakistani law. The law is one of the most liberal legislations in South Asia as far as gender identity is concerned where it proposes transgender people with various civil, political, social and economic rights. The right to self-identify gender is, perhaps, one of the greatest highlights of the Act since it entitles an individual to identify as a man, woman or as both and have that self-identified gender incorporated in various official documents such as the Computerized National Identity Card (CNIC), passport and driver license without seeking medical or psychiatric clearance before doing so.<sup>7</sup> The law clearly forbids discrimination against the transgender individuals on the basis of their transgender status in the processes of the law in both the public and the private arena like jobs, and education, health, access to places of the public, and delivery of goods and services. It directs the government to make sure that transgender persons are included in the arena of public employment as well as undertake actions to make sure that they are integrated in society. The Act also instructs the setting up of protection centers, safe houses and independent prison cells in which transgender members are detained so as not to victimize them by exposing them to harm in the institution where they are kept.<sup>8</sup> The other significant provision relates to the rights of inheritance. The Act also strips transgender individuals, the right to receive property based on their self-identified gender, which goes against the historical hard and fast explanation of Islamic rules of inheritance in Pakistan. Moreover, the laws authorize National Commission for Human Rights and Federal Ombudsperson to represent cases of rights abuse against transgender people. It is not surprising that these forms of redress within the institution are meant to be redressal at its immediate. It is still contingent on availability of resources and institutional spirit to deliver on its promises.<sup>9</sup>

The wording of the law is ambitious; however, its implementation in practice has been hampered by a number of obstacles, such as bucking of the bureaucracy, insufficient spread of legal information and lack of comprehensive rules of procedure. The Act, however, is one of the pillars that hold the Pakistani legal order on the basis that transgender people have the right to citizenship and dignity.

### **Implementation and Ground Realities**

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<sup>6</sup> "Constitutional and Legal Guarantees for Transgender in Pakistan: Reforms and Failures in Law | SpringerLink," accessed July 13, 2024, [https://link.springer.com/chapter/10.1007/978-3-030-98072-6\\_5](https://link.springer.com/chapter/10.1007/978-3-030-98072-6_5).

<sup>7</sup> "Constitutional and Legal Guarantees for Transgender in Pakistan: Reforms and Failures in Law | SpringerLink."

<sup>8</sup> "Constitutional and Legal Guarantees for Transgender in Pakistan: Reforms and Failures in Law | SpringerLink."

<sup>9</sup> "The Transgender Community and the Right to Equality in Pakistan: Review of the Transgender Persons Act 2018 Legislative Review 7 LUMS Law Journal 2020," accessed July 13, 2024, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/lumslj7&div=14&id=&page=>.

Although a detailed legal framework has been laid down in the Transgender Persons (Protection of Rights) Act, 2018, its execution has shown that there are considerable dissimilarities between what the legislature intends, and the collective reality of the society. Absence of institutional preparedness in the various arms of government and in the local bodies is among the most important ones. Most of the officials still do not know about the provisions of the law and delays in the bureaucratic process of providing identity documents with self-perceived gender markers still persist to bar access of transgender individuals to services including healthcare, education and banking.<sup>10</sup> Practically, application of the anti-discrimination provisions has not been active. Transgender people also complain about continuous exclusion in the formal job market despite the requirement that employment practices should be inclusive due to the law. There had also been a slow response in the field of the private sector, and many employers have not had policies or sensitivity programs that dealt with gender diversity in the workplace. Moreover, the need of transgender people is poorly satisfied by public health services as they may be verbally abused, denied care, or be misgendered in a clinic or even in a hospital.<sup>11</sup> The nursing of the protection centers and welfare programs are still scarce and not equally spread worldwide. Non-governmental organizations usually launch most of the support initiatives as opposed to state organizations. It has resulted in uneven and piecemeal coverage, especially in urban areas, and this means the transgender population in the countryside is especially vulnerable. Lack of political will, coupled with financial shortages, have also affected the inability of the state-driven initiatives to perform well, including vocational training programs or housing programs for transgender individuals. Even in the education system, having no gender-inclusive curricula and policies just reaffirms the systemic exclusion.<sup>12</sup> All these implementation failures are aggravated by larger social cultural opposition. Religious discourses, political blaming, and miscreation propaganda have made people backlash the law, and some groups have termed the legislation as non-commensurate with the Islamic ideals. The coexistence between being allowed and being unwanted by the society still puts the transgender individuals in a delicate position in that the legal coverage does not mean real security and equality.

### **Societal and Religious Backlash**

Regardless of the progressive nature of the Transgender Persons (Protection of Rights) Act, 2018, the act has created immense backlash among Pakistan society and the religious community. A good part of such opposition is predetermined by traditional cultural paradigms, religious interpretations, and gender dualities being firmly rooted in the collective minds. Although the Act claims that a person has the option to identify the gender; most religious experts and politicians insist that the clause questions traditional Islamic understandings of gender and destabilizes the natural order of society. These arguments are usually intensified by the conservative media outlets and political parties, spreading misinformation about the law and promoting fear-mongering.<sup>13</sup>

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<sup>10</sup> Muhammad Raheel Arshad et al., "Challenges Faced by Transgender Individuals in Accessing Higher Education in Pakistan: A Critical Analysis," *Indus Journal of Social Sciences* 2, no. 2 (December 28, 2024): 602–21, <https://doi.org/10.59075/ijss.v2i2.420>.

<sup>11</sup> "Health Problems & Barriers to Healthcare Services for the Transgender Community in Lahore, Pakistan - PMC," accessed July 13, 2024, <https://pmc.ncbi.nlm.nih.gov/articles/PMC8713213/>.

<sup>12</sup> "(PDF) Are NGOs Bridging the Gaps? Analyzing Opportunities for Gender and Political Empowerment in Peshawar, Khyber Pakhtunkhwa," accessed July 13, 2024, [https://www.researchgate.net/publication/345358160\\_Are\\_NGOs\\_Bridging\\_the\\_Gaps\\_Analyzing\\_Opportunities\\_for\\_Gender\\_and\\_Political\\_Empowerment\\_in\\_Peshawar\\_Khyber\\_Pakhtunkhwa](https://www.researchgate.net/publication/345358160_Are_NGOs_Bridging_the_Gaps_Analyzing_Opportunities_for_Gender_and_Political_Empowerment_in_Peshawar_Khyber_Pakhtunkhwa).

<sup>13</sup> Shaheen Sardar Ali, "Pakistan: Challenges and Prospects," in *Normativity and Diversity in Family Law: Lessons from Comparative Law*, ed. Nadjma Yassari and Marie-Claire Foblets (Cham: Springer International Publishing, 2022), 51–73, [https://doi.org/10.1007/978-3-030-83106-6\\_3](https://doi.org/10.1007/978-3-030-83106-6_3).

Transgender identity has been improperly merged with sexual orientation and perceived that the law is pushing Western liberal agendas, which has been one of the most controversial stuffs. Opponents of the law have termed it as being either anti-family or even anti-religion because the concept of self-perceived gender identity leads to the opening of the gate to the moral decadence or even a weakening of the religious jurisprudence especially on the points of heredity, modesty as well as interaction in the society. Such accounts have become prevalent in both the rural and urban societies resulting in higher stigmatization and even violence against transgender persons.<sup>14</sup> Opponents of the law have termed it as being either anti-family or even anti-religion because the concept of self-perceived gender identity leads to the opening of the gate to the moral decadence or even a weakening of the religious jurisprudence especially on the points of heredity, modesty as well as interaction in the society. Such accounts have become prevalent in both the rural and urban societies resulting in higher stigmatization and even violence against transgender persons.<sup>15</sup> These events indicate that, legal change in its solitude cannot be met with a reform to overpower profound social biases. The potential of the 2018 Act can still be unachieved without corresponding actions in education, the process of religious interaction, and communication among the general population. The tension between the official definition of inclusion based on the law and informal one based on culture remains among the fundamental issues when it comes to advancing transgender rights in Pakistan.

### **Comparative Perspectives: India, Nepal, and Global Trends**

Introduction of the Transgender Persons (Protection of Rights) Act, 2018 makes Pakistan one of the few but currently increasing number of the South Asian nations to inch towards formal transgender rights permissibility into law. Nonetheless, when considered in comparative light, the context of legal framing, implementation, and the acceptance of the same, in light of the regional and global contexts is quite dissimilar. In India, the process of legal acceptance of transgender people started with the constitutional case of National Legal Services Authority (NALSA) v. The judgment by the Union of India, that stated the right to identify as male, female, or a third gender as a fundamental right under Indian Constitution. This was succeeded by the Transgender Persons (Protection of Rights) Act, 2019, which identified the transgender identity but also controversially needed a certification procedure where an individual must visit a district magistrate. In contrast to the Act of 2018 issued in Pakistan, which grants individuals the privilege to identify as whatever they choose without any medical approval as a condition to self-identification, Indian statute has been viewed as bureaucratizing the rights to gender identity and violating individual autonomy.<sup>16</sup> Nepal is outstanding in its effort to enact one of the most liberal legal systems in South Asia. The Supreme Court of Nepal declared in an instance as early as 2007 the rights of the sexual and gender minorities, to directed the state to provide third-gender identity cards. Further amendments in 2015 also enshrined rules of protection of the sexual and gender minorities providing them with state protection into a larger framework of a state right to human rights. The policies of Nepal, whose recognition encompasses legal, political and social recognition, is more integrated, as well as, more inclusive as compared to those of India and Pakistan.<sup>17</sup>

<sup>14</sup> "Contested Identities: Gendered Politics, Gendered Religion in Pakistan on JSTOR," accessed July 13, 2024, <https://www.jstor.org/stable/27896585>.

<sup>15</sup> Marianne Campbell, Jordan D. X. Hinton, and Joel R. Anderson, "A Systematic Review of the Relationship between Religion and Attitudes toward Transgender and Gender-Variant People," *The International Journal of Transgenderism* 20, no. 1 (February 19, 2019): 21–38, <https://doi.org/10.1080/15532739.2018.1545149>.

<sup>16</sup> Pawan Kumar, "International Journal for World Peace and Humanitarian Intervention Editorial Board," n.d.

<sup>17</sup> "Gender, Sexuality, and Constitutionalism in Nepal - WRAP: Warwick Research Archive Portal," accessed July 13, 2024, <https://wrap.warwick.ac.uk/id/eprint/174116/>.

In the world, a number of countries have shifted towards more gender inclusive gender recognition policies. Countries such as Argentina, Malta, and New Zealand do not require medical and psychiatric gatekeeping to self-identify gender. Such law models tend to be reinforced by vigorous anti-discriminative legislations as well as social-welfare policies, and community education, which are significantly lacking in the context of Pakistan. Contrarily, a great number of Islamic and conservative cultures still oppose such changes to the law because of religious and cultural incompatibility. An attempt is, therefore, a hybrid example, progressive in theory, but exposed to socio-religious frameworks and a lack of institutional support in practice.<sup>18</sup> Comparative perspectives provide pointers to comprehensive approaches, which combine legal reform and a transparent administration strategy, mass education, and advocacy based around rights. Although the legislation of Pakistan is progressive in one way or the other, it should be changed according to the best practices worldwide in order to provide real protection of transgender citizens.

### **Criticisms and Calls for Reform**

In as much as the Transgender Persons (Protection of Rights) Act, 2018 has been hailed as being progressive, it has not been without criticism by the educational fraternity, advocacy groups, as well as members of the very transgender community. Among other important critiques is the obscure womanless of the procedural structure of the law. The Act facilitates the right of self-identification but is vague in administrative processes of acquiring identity documentation or benefits of the government, and this has caused false variance in interpretation among local jurisdiction and departments. This cis centrism usually translates into rejection or refusal to provide services and/or documentation to transgender individuals.<sup>19</sup> The other criticism involves lack of special budgetary allocations and machineries in institutions to implement the provisions of the law. In the absence of finance and operation infrastructure, the requirements that entail the establishment of protection centers, sensitization of government officials, and awareness creation to the masses merely become ceremonial. Activists believe that not enough political will to get out of tokenism and fully implement the law has been shown by the state. Moreover, the lack of a special body engaged in monitoring also jeopardizes accountability and leaves transgender individuals with few means of achieving redress in case of violation of their rights.<sup>20</sup> Another reason cited by scholars is the ineffective consultation with the transgender society in drafting and implementing the legislation. Though the Act is supposed to be comprehensive, members in the community do not feel their experiences were fully captured in the framework, hence the Act only acts to inform their lives. Furthermore, the legislation has been also criticized as too much legalistic, and not followed by a wider structural revolution in the areas of education, employment, and health care. Unless the entire policy is integrated, legal recognition of transgender persons may be qualified as a dead end, as people will be accepted within the state but avoided by the civil society.<sup>21</sup>

Against these criticisms, there have been numerous requests to amend the Act by adding more procedural specifications, guarantee resource availability, and more institutional responsibilities.

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<sup>18</sup> France Rose Hartline, "The (Trans)Gender Equality Paradox: Challenging Norway's 2016 Law on Gender Recognition" (Doctoral thesis, NTNU, 2020), <https://ntnuopen.ntnu.no/ntnu-xmlui/handle/11250/2644534>.

<sup>19</sup> "The\_transgender\_community," n.d.

<sup>20</sup> "The Institutionalization of Gender Budgeting and Prospects for Intersectional Analysis: Public Money & Management: Vol 43, No 6," accessed July 13, 2024, <https://www.tandfonline.com/doi/abs/10.1080/09540962.2022.2159167>.

<sup>21</sup> "Promoting Inclusion and Protection: Pakistan's National Strategic Framework for Transgender Persons | United Nations Development Programme," accessed July 13, 2024, <https://www.undp.org/pakistan/blog/promoting-inclusion-and-protection-pakistans-national-strategic-framework-transgender-persons>.

It is also argued that going forward; there should be a participatory process in the legislative process that puts the voice of transgender at the center of legal discourse. It is only with such broad and inter-sectional consideration of the law that the law can fulfill its stated purpose of creating dignity, protection and equality among all gender-diverse people in Pakistan.

### **Conclusion and Recommendations**

It was a landmark moment in the history of law and human rights in Pakistan when the Transgender Persons (Protection of Rights) Act, 2018 was passed. It was a formal validation of the rights and existence of transgender people and an effort to grant them a legal protection against the discrimination that has been extremely deeply rooted against them. Those provisions in the Act pay off on the right to self-identification, protection in education, employment, and healthcare which is a promising attempt to bring transgender people into the rest of the society as an equal citizen. Nonetheless, the post-enactment cumulative experience shows that legal recognition is not enough provided that societal resistance and even institutional inertia and political reluctance exist. Although the Act presents a highly laudable legal framework, the execution of the act has been brought down by bureaucratic mix-ups, lack of awareness and poor infrastructure. The individuals who are transgender still face exclusion, stigma as well as violence in their day-to-day lives indicating a mismatch between what the law promises and the reality on the ground. In addition, lack of specific budgetary commitments, poor enforcement processes, and monthly community education programs have also contributed to the inefficacy of the Act. The backlash of the society, especially in the conservative religious and political front, has made the law implementation even more difficult and transgender people to new vulnerabilities.

So as to deal with these challenges, a multi-angle and comprehensive approach is necessary. First, administrations should become uniform, rationalized and streamlined in their dealings to enable quick and stable access to identity documents and government services. Secondly, state institutions should be given sufficient funds, training and resources to canvass out the provisions of the law. Third, the curricula used in educational institutions, the media, and religious discourse ought to be exploited to combat such dangerous stereotypes and encourage gender diversity as an element of the pluralistic social life in Pakistan. The final consideration in the future reforms should be substantial involvement of transgender people in the development of legislation, policies, and institutions so that offered laws handy their real-life experiences. The fact that transgender people are now recognized as legal individuals in Pakistan is indeed a step into the right direction, however, the road leading to meaningful equality might be quite long. The promise of dignity and equal rights to all citizens of Pakistan, including those of any gender, can only be achieved when such factors as legal reform, social inclusion, and institutional accountability are kept as a lifelong promise.

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