

An Analysis on Evolving Legal Framework on Transgender's Rights in Pakistan: Its Progress & Pitfalls

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ABSTRACT

The research paper probe in to the legal status, rights, and societal challenges faced by the transgender community in Pakistan. Despite being an integral part of society, transgender individuals continue to experience systemic discrimination, exclusion, and stigmatization, particularly in education, employment and healthcare. The research aims to explore the legal status and rights of transgender individuals in Pakistan, identify the major social, legal, and cultural issues they face and suggest effective strategies for bridging the gap between legal provisions and practical enforcement. Using a descriptive research methodology, this study relies on secondary data gathered from legal texts, academic journals, court decisions, and relevant articles to analyze the transgender community's current condition in light of national laws and Islamic interpretations. The results highlight that although Pakistan enacted the Transgender Persons (Protection of Rights) Act in 2018, its implementation remains weak. Discriminatory practices continue due to social taboos, poor awareness, outdated policies, and a lack of political will. Key areas such as CNIC (Computerized National Identity Card) registration, workplace harassment protection, educational quotas, and media representation remain unheeded. In conclusion, while some legal reforms exist on paper, Pakistan has a long way to go in translating legislation into action. Recommendations include reviewing existing laws, ensuring provincial implementation, creating representation quotas, recognizing international conventions, and involving media in reshaping public perception. This research underscores the need for comprehensive legal, social, and institutional reforms to secure equality, dignity, and justice for transgender people in Pakistan.

Keywords: Transgender Rights, Discrimination Legal Status, Social Inclusion, Transgender Persons, Gender Equality, Policy Implementation, Human Rights

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INTRODUCTION

Transgender individuals represent a diverse and historically marginalized segment of society, spanning all ages, ethnicities, and socio-cultural backgrounds. They are sons, daughters, coworkers, and community members whose existence challenges the conventional binary view of gender. Despite their presence across societies and time periods, transgender individuals have long faced systemic stigmatization and exclusion. Historically, being transgender was medicalized and classified as a psychological disorder under the label “gender identity disorder.” This pathologization has led to widespread transphobia, discrimination, and social alienation. With progressive shifts in global attitudes towards gender diversity, significant advancements have been made in the field of healthcare and human rights.

The World Health Organization (WHO), recognizing these developments, has removed the classification of gender identity as a mental illness from its diagnostic manuals. In Pakistan, transgender individuals are often called “khwaja-sira,” a term used in respectful discourse. However, they are more commonly and pejoratively referred to as “hijra” or “chakka,” words laden with derogatory implications such as impotency or abnormality. From childhood, transgender individuals face ridicule and social isolation due to their gender expression, often being coerced into traditional roles associated with the “hijra” identity. As a result, they are frequently denied access to education, employment, and basic human rights, pushing many into marginalized professions for survival.

Although the enactment of the Transgender Persons (Protection of Rights) Act, 2018 was a landmark legal step in Pakistan, its implementation remains superficial. Despite judicial support and civil society advocacy, the community continues to face discrimination in institutions and society at large. Existing studies have discussed the legal recognition of transgender individuals, yet few have deeply explored the gap between legislative frameworks and on-ground realities. This study aims to bridge this gap by critically examining the legal, social, cultural, and religious dimensions that shape the lived experiences of transgender individuals in Pakistan. The research seeks to highlight the failure in implementing protective laws and suggest ways to ensure these individuals are fully integrated into society with dignity and equal rights. By addressing these overlooked areas, this study aspires to contribute meaningfully to both academic literature and policy reforms.

The primary aim of this research is to explore the legal status and rights of transgender persons in Pakistan, particularly in light of the Transgender Persons (Protection of Rights) Act, 2018. It seeks to understand how effectively these rights are being implemented and protected. In addition, the study focuses on identifying the core challenges and social evils faced by the transgender community, including discrimination, marginalization, and lack of access to basic services. Based on the findings, the research also intends to offer practical recommendations and suggestions to help bridge the gaps in government efforts and ensure that the rights of this vulnerable community are safeguarded in both law and practice.

Research Questions

1. Analyzing the current legal perspective and status of transgender individuals in Pakistan?
2. How can the law be effectively utilized to safeguard transgender individuals from harassment and discrimination?

LITERATURE REVIEW

The topic “Legal Rights of Transgender and Its Violation in Pakistan” is relatively under-researched in academic literature, especially within the Pakistani context. While many global studies focus on transgender rights, discrimination, and marginalization, there is a clear gap in region-specific research that examines how legal recognition in Pakistan translates (or fails to translate) into real-world protections and dignity for the transgender community.

Globally, transgenders face systemic violations of their rights. Studies reveal that 62% of transgender individuals face transphobic harassment, with 40% reporting threats, 17% physical assault, and 4% sexual abuse (Alliance, 2008). These patterns are echoed in both Western and Asian contexts, despite increasing visibility and advocacy efforts. For instance, the 2015 U.S. Transgender Survey reported that 77% of transgender individuals experienced discrimination or mistreatment (James, 2016).

In Pakistan, it is estimated that at least 50,000 transgender individuals live without enjoying basic rights or social dignity. Despite the enactment of progressive laws, such as the Transgender Persons (Protection of Rights) Act, 2018, implementation remains largely symbolic. Trans individuals often become victims of honor-based violence, social exclusion, and lack of access to healthcare and education. Internationally, research has investigated the broader socio-political context of transgender rights. Ortiz, 2016 in a study based in Bangalore, highlighted how political exclusion and health inequities intersect. Flores observed that legal protections vary widely across countries, with policies often failing to bridge the gap between legal recognition and lived realities (Flores, 2015). Similarly, Watan emphasized the insufficient training of healthcare providers as a barrier to equitable treatment (Watan, 2017).

In Asia, the legal landscape is diverse. India, for example, has enacted protective laws (Duhan, 2020), while Bangladesh legally recognizes the third gender but struggles with social implementation (Islam, 2019). Thailand shows higher societal acceptance but lacks legal frameworks (Suriyasarn, 2016). Japan imposes medical requirements that infringe on personal freedoms (Ripley, 2019), and Malaysia criminalizes transgender expression under Islamic law (Zainol, 2022).

Despite global efforts, there remains a lack of comprehensive cross-national data specific to transgender rights. The Trans Rights Indicator Project (TRIP), offering a global comparison across 173 countries based on criminalization, legal gender recognition, and anti-discrimination

protections. However, such global studies often miss the nuance of local implementation, particularly in conservative societies like Pakistan (Williamson, 2023).

Thus, a clear research gap exists in examining how Pakistan's legal protections for transgender individuals interact with cultural, religious, and economic structures to either support or hinder rights. This study seeks to fill that gap by analyzing not only the legal framework but also its ground-level application in Pakistan.

The evolving Transgender Persons (Protection of Rights) Act, 2018 was approved in Pakistan to safeguard the rights and dignity of transgender individuals. One of the most progressive laws in South Asia is the Act, 2018 which was created to shield transgender individuals from discrimination, social exclusion, and abuse. The foundation of this rule is the acceptance of one's own self-perceived gender identity. People have the ability to choose how they want to be identified by changing the sexual orientation markers on identification documents such as passports and CNICs, as per Section 3 of the Act. This provision brings Pakistan into compliance with international human rights norms, specifically the Yogyakarta Principles and other United Nations declarations that support gender identity rights (Arqum, 2023).

The law affirms the right of transgender persons to education, employment, healthcare, inheritance, and protection from harassment and discrimination in both public and private spheres. It explicitly protects transgender individuals from being denied access to any service or facility based on their gender identity. Additionally, the Act obligates the state to take affirmative steps to support this marginalized community. It mandates the establishment of protection centers, safe houses, vocational training facilities, and separate cells in prisons to accommodate transgender individuals according to their gender identity. However, while these measures are ambitious, their implementation remains limited due to resource constraints, institutional neglect, and prevailing societal prejudices (ul Mustafa, 2024). The Act also criminalizes exploitation, including forcing transgender individuals into begging, that was an issue which long plagued the community in Pakistan. While these protections exist on paper, the law relies heavily on existing provisions of the Pakistan Penal Code for enforcement, without creating a specialized legal or procedural framework to address violence and discrimination specifically against transgender persons.

As a result, access to justice remains inconsistent and often ineffective. Moreover, despite the law's progressive language, it has faced significant backlash from religious segments of society. In 2022, the Federal Shariat Court raised objections to certain clauses, particularly the right to self-identify gender, stating that these may conflict with Islamic teachings. This legal and ideological conflict has created confusion regarding the implementation and scope of the Act (Riaz, 2023). In practice, transgender individuals in Pakistan still face numerous challenges, including widespread social stigma, lack of awareness among government officials and law enforcement agencies, and minimal representation in policy making. Many transgender persons remain unaware of their legal rights or lack the confidence to assert them due to fear of backlash or humiliation. Furthermore, while the Act calls for comprehensive state support, shelters, medical care, and legal aid services remain grossly underdeveloped or inaccessible (Noor, 2024).

Theoretical Framework

The present study is grounded in two primary theories of rights that help conceptualize the legal and moral dimensions of transgender rights:

Interest and Benefit Theory

Developed by Jeremy Bentham and later expanded upon by scholars like Joseph Raz, this theory defines rights as interests that are recognized and protected by law. According to this view, transgender individuals have rights because their well-being and dignity are legitimate interests worthy of legal protection (Flew, 1978). When the state fails to protect those interests—through inaction, weak enforcement, or discriminatory laws—it fails in its fundamental legal responsibility.

Will and Choice Theory

Advanced by H.L.A. Hart, this theory considers rights as the ability of individuals to exercise choice and control over the actions of others, particularly through the legal system (Vanberg, 2002). Applied to transgender rights, this theory emphasizes the autonomy of individuals to define and express their gender identity. Legal recognition and institutional frameworks should therefore support this autonomy, not hinder it.

These theories provide a robust lens through which the gap between legislation and implementation in Pakistan can be evaluated. While the Transgender Persons (Protection of Rights) Act may recognize the interests and choices of transgender individuals on paper, real-world application reveals a failure to uphold these theoretical principles

The reviewed literature and theoretical approaches underline a global and local disparity between the recognition of transgender rights and their implementation. Although some progress has been made, particularly in lawmaking, cultural norms, societal prejudice, and bureaucratic hurdles continue to obstruct meaningful change. This study is thus timely and essential in identifying the barriers to legal enforcement and proposing ways to bridge the implementation gap in Pakistan's transgender rights framework.

RESEARCH METHODOLOGY

This study adopts a descriptive research design, focusing on the legal and cultural status of transgender rights in Pakistan. It utilizes secondary data collected from legal documents, reports from NGOs, academic articles, and case studies. The data collection involves an in-depth review of Legal Documents i.e. Transgender Persons (Protection of Rights) Act 2018, court rulings, and government policies. NGO Reports and Academic Journals, Documenting the rights, challenges, and societal attitudes toward transgender individuals. Real-life instances of rights violations faced by transgender people. Content and thematic analysis of the data to identify legal gaps, cultural influences, and implementation challenges. Comparing Pakistani transgender laws with those from other countries to highlight strengths and weaknesses.

The adopted methodology in paper will provide insights to analyze the gaps in legal protection, the role of culture, and how transgender rights are currently upheld or violated in Pakistan.

DISCUSSION

The results of this study highlight that despite some legal advancements, transgender individuals in Pakistan continue to face widespread social, cultural, and institutional discrimination. Historically, they held respectable positions during the Mughal era, but colonial laws like the Criminal Tribes Act of 1871 began their systematic marginalization. Islam, while acknowledging naturally born gender non-conforming individuals, discourages gender alteration through surgical means; yet, it emphasizes respectful treatment for all. The Transgender Persons (Protection of Rights) Act, 2018, granted legal rights such as self-identification, inheritance, and protection from discrimination, but practical implementation remains limited. Socially, transgender individuals are often rejected by their families and face harassment, verbal abuse, and violence in public spaces.

Terms like hijra, khusra, and chakka are used pejoratively, further alienating them. Census data from 2017 recorded only 10,418 transgender persons nationwide a figure believed to be grossly underreported due to stigma and fear of exposure. Provincial data shows the highest concentration in Punjab, followed by Sindh, Khyber Pakhtunkhwa, and Balochistan, with most living in urban areas under a “Guru-chela” system. Despite constitutional guarantees, the lack of awareness among transgender individuals regarding their legal rights, combined with weak law enforcement and societal biases, results in continued violation of their basic human rights. Cultural taboos and religious misinterpretations further contribute to their exclusion. Therefore, while legal recognition exists, its impact is minimal without societal acceptance, awareness, and institutional reforms. Addressing these challenges requires multi-level strategies involving education, religious dialogue, legal enforcement, and active inclusion policies to ensure dignity and equality for the transgender community.

CONCLUSION

This research explores the legal, cultural, and societal challenges faced by the transgender community in Pakistan. It highlights the gap between the legal recognition of transgender rights, especially through the Transgender Persons (Protection of Rights) Act 2018, and the actual implementation of these rights in everyday life. Despite some progress, transgender individuals continue to face discrimination, lack of access to education, employment, and healthcare, as well as social exclusion. The study also examines historical and Islamic perspectives, showing that prejudice against transgender people is rooted in long-standing traditions and misinterpretations. It concludes by emphasizing the need for both legislative enforcement and a shift in public attitudes to ensure real equality and dignity for the transgender community in Pakistan.

Recommendations & Suggestions

To ensure the effective protection and promotion of transgender rights in Pakistan, a number of important recommendations should be considered. First, a comprehensive review of existing laws, particularly the Pakistan Penal Code (PPC), is essential. Provisions such as Section 375 should be amended to adopt a gender-neutral definition of rape, while Section 377 requires reevaluation to eliminate discriminatory interpretations. Additionally, laws addressing harassment and assault, like the Prevention and Protection from Harassment of Women at the Workplace Act and relevant PPC sections, must be revised to explicitly include transgender individuals. For instance, Section 337, which addresses bodily harm including the act of shaving hair (Arsh for Hair), should be enforced inclusively to prevent such violence against transgender people.

Reforms are also needed in the NADRA Ordinance, 2000 to remove bureaucratic and procedural hurdles that hinder transgender persons from acquiring accurate and respectful identification through CNICs. To promote political inclusion and equitable representation, the state should allocate reserved seats for transgender people in the National and Provincial Assemblies, as well as provide employment and educational quotas across state institutions. Since the federal transgender rights legislation does not automatically apply to the provinces, provincial governments must be encouraged and supported in enacting their own comprehensive laws to uphold the rights of transgender citizens.

Furthermore, national and provincial commissions should be established for the protection of transgender rights, and existing bodies like the National Commission on the Status of Women should expand their mandates to include trans-women. International human rights conventions such as the Yogyakarta Principles should be formally acknowledged and integrated into domestic frameworks, as they align with constitutional guarantees of fundamental rights. To ensure the effective implementation of these laws, detailed rules, policies, and mechanisms must be developed, particularly for law enforcement agencies. Lastly, the media plays a critical role in shaping public perception; therefore, it must actively work to educate society, challenge stigma, and promote inclusivity for transgender individuals, despite constraints on freedom of speech and press.

Based on the findings of this research, it is evident that while Pakistan has taken important legislative steps most notably through the Transgender Persons (Protection of Rights) Act, 2018, the practical enforcement of transgender rights remains limited. To bridge the gap between legal recognition and ground realities, several key recommendations must be considered. Firstly, there is a pressing need to reform existing laws, particularly the Pakistan Penal Code. Sections 375 and 377 of said Act must be revised to include gender-neutral language and address sexual violence against all individuals, regardless of gender identity. Moreover, laws concerning workplace harassment and physical violence, like the Protection against Harassment of Women at the Workplace Act and Section 337 (Arsh for Hair), should be expanded to explicitly protect transgender individuals. Similarly, reforms in the NADRA Ordinance, 2000 are essential to facilitate smooth and respectful CNIC registration processes for transgender persons, ensuring their access to legal identity and associated rights.

In addition to legal reforms, political inclusion must be prioritized through the allocation of reserved seats for transgender individuals in both national and provincial legislatures, along with educational and employment quotas across public institutions. Since federal legislation alone cannot guarantee protection, provincial governments should be encouraged to enact parallel laws tailored to their local contexts, ensuring uniform legal safeguards throughout the country. Furthermore, the establishment of independent national and provincial commissions for the protection of transgender rights is crucial. Existing institutions, such as the National Commission on the Status of Women, should also expand their mandates to include trans-women.

To align with international standards, Pakistan should formally recognize global human rights instruments like the Yogyakarta Principles and integrate them into its domestic legal framework. Implementation of these laws must be supported by detailed rules, standard operating procedures, and institutional training, particularly for law enforcement and service providers. The media also holds a transformative role in shaping public attitudes. It must be mobilized to challenge harmful stereotypes, promote awareness, and encourage acceptance of transgender individuals through inclusive and responsible representation.

Lastly, long-term societal change requires investment in public education and engagement with religious scholars to promote inclusive interpretations of Islamic principles. Addressing deep-rooted cultural stigma demands a multi-level approach combining legal action, policy reform, social education, and community engagement. Only through such comprehensive efforts can Pakistan move toward securing dignity, equality, and full citizenship for its transgender population.

REFERENCES

- Alliance, S. T. (2008). Transgender experiences in Scotland. Edinburgh: *The Equality Network*.
- Arqum, L., Mushtaq, S., & Yunus, A. (2023). An analysis of Pakistan Transgender Persons Act 2018: a sociological perspective. *Journal of development and social sciences*, 4(2), 454-463.
- Duhan, K. (n.d.). International Journal of Home Science 2020; 6(2): 126-131 Status of transgender in India: A review Pinki, Poonam Malik, Krishna Duhan and N Pavithra.
- Flew, A. (1978). What is a Right? Ga. L. Rev., 13, 1117.
- Flores, A. R., Herman, J. L., & Mallory, C. (2015). Transgender inclusion in state non-discrimination policies: The democratic deficit and political powerlessness. *Research & Politics*, 2(4), 2053168015612246.
- Islam, S. (2019). A theoretical analysis of the legal status of transgender: Bangladesh perspective. *International Journal of Research and Innovation in Social Science*, 3(3), 117-119.
- James, S., Herman, J., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. A. (2016). The report of the 2015 US transgender survey. *National Center for Transgender Equality [CTE]*.

- Noor, S., Ullah, I., Hassan, M., Yasir, M., & Ahmad, F. (2024). Rights of Transgender in Islam and Contemporary Practices in Pakistan: An Analytical Study. *Social Science Review Archives*, 2(2), 1212-1227.
- Ortiz, Z. (2016). The transgender community in Bangalore: Health issues and factors negatively affecting outcomes.
- Riaz, M. M. A., & Awan, M. M. (2023). Transgender rights in Pakistan: implications of Federal Shariat Court ruling. *The Lancet Psychiatry*, 10(8), e20.
- Suriyasarn, B. (2016). Discrimination and marginalization of LGBT workers in Thailand. Sexual orientation and transgender issues in organizations: Global perspectives on LGBT workforce diversity, 197-215.
- Ul Mustafa, Atta; Munir, Muhammad. (2024). Pakistan's National Commission for Human Rights' Engagement with the United Nation's Human Rights Monitoring Mechanisms: Law, Practice, Challenges and Way Forward. *Pakistan JL Analysis & Wisdom*, 3, 210.
- Vanberg, V. J. (2002). Rational choice vs. program-based behavior: alternative theoretical approaches and their relevance for the study of institutions. *Rationality and Society*, 14(1), 7-54.
- Wanta, J. W., & Unger, C. A. (2017). Review of the transgender literature: where do we go from here? *Transgender health*, 2(1), 119-128.
- Williamson, M. (2023). A global analysis of transgender rights: Introducing the Trans Rights Indicator Project (TRIP). *Perspectives on Politics*, 1-20.
- Zainol, N. Z. N., Johar, S. S., Rosman, A. S., Khan, A., & Mahmud, M. (2022). Third Gender from Islamic Law and its Impacts towards Muslim Culture in Malaysia. *NeuroQuantology*, 20(1), 189.