

LEGAL AND SOCIAL REFORMS TO PROTECT TRANSGENDER PERSONS IN PAKISTAN

A REVIEW OF PAKISTAN'S TRANSGENDER PERSONS ACT





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EXECUTIVE SUMMARY

Pakistan is one of the few countries in the world to recognise the self-perceived gender identity of transgender individuals and has passed a landmark legislation in this accord. In 2018, Pakistan's parliament passed the Transgender Persons (Protection of Rights) Act (TPA 2018), a law that guarantees basic rights for all transgender people and outlawed discrimination in the workplace. This historic law enshrines the right of every Pakistani citizen to self-identify themselves as male, female, or a blend of both genders. The law, a revolutionary move, is a model in terms of construction, detail, nuance, and clarity, placing Pakistan leagues ahead of her neighbours across South Asia on this issue. It recognises and asserts the fundamental rights of trans people in all spheres of life including matters of inheritance, employment, education, holding public office and voting. It upholds their right to be who they are, affirming that what matters is an individual's sense of identity whether or not it corresponds to the sex assigned at birth. iProbono, in partnership with VISION, Islamabad, and the National Transgender Network (NTN) in Sri Lanka, conducted a review of the impact and efficacy of Pakistan's TPA 2018. The objective of this paper is to guide the NTN and work with them to draft suitable legislation that will enable Sri Lanka to protect transgender rights.

This brief report (a) analyses the strengths and weaknesses of the TPA 2018 as well as other legal provisions and policies that touch upon the rights of transgender persons in Pakistan and (b) provides recommendations to improve the existing protection framework. It covers the following:

- Recommendations
- The historical context and the development of the transgender movement in Pakistan leading to the enactment of TPA 2018;
- Review of the existing legal framework including the constitutional provisions, criminal law provisions and the TPA 2018;
- Implementation challenges and practical difficulties in enforcing the law;
- The social context and current situation of the transgender community in Pakistan;
- Key successes stories of implementation and enforcement of Pakistan's TPA 2018; and
- Conclusion

RECOMMENDATIONS

- The real challenge is to initiate campaigns to sensitise people and build the capacity of government officials, law enforcement agencies, lawyers, judges, and policemen to protect the rights of transgender persons in tune with the provisions of the TPA 2018. The government should focus on awareness programmes that will generate social support and consequently remove barriers in policy making and its implementation. This also requires collaborating and engaging with the transgender community and civil society from the different provinces on a large-scale, continuing basis to develop and implement measures that will help in the integration and inclusion of transgender persons in mainstream society.
- A striking gap in the TPA 2018 is the lack of provisions for penalty and punishment that imposes fines and/or penalises anyone engaged in harassing, abusing and violating the rights of transgender persons. This hinders the overall aim, efficacy and implementation of the law. The laws and policies must be reviewed regularly and be adopted at a provincial level to ensure uniformity in implementation and enforcement. This will also aid in developing policies in the future that allow transgender persons to have free access to workplaces, offices, schools, and the health sector without the fear of harassment or stigma.
- Due to a disconnect between the State and the community, there is inadequate data about transgender persons, and their population size,

and geographical spread in Pakistan. As a result, the national and provincial budgets earmarked for the community is misallocated. Despite the inclusion of the category of 'third gender' under the National Database & Registration Authority (NADRA), their registration in the population census remains low because of the disparities in resource allocation and the lack of a strategic approach to identify transgender persons in the country. The Pakistan National Bureau of Statistics needs to streamline the collection of data and develop a strategy to effectively include transgender persons so that evidence-based policymaking can be conducted. An accurate statistical representation of the community will aid their integration in society and ensure access to resources for the community.



HISTORICAL BACKGROUND OF TRANSGENDER PERSONS IN PAKISTAN

To map the current socio-legal position of the transgender community in Pakistan, one must consider the context of a colonial legacy, religious extremism, key case law since 2009 and a long-standing rights-based advocacy movement from within the community itself. The enactment of the highly progressive TPA 2018, was the culmination of a concerted national advocacy effort bolstered by political will and judicial activism.

The transgender community of Pakistan, also referred to as *khawaja siras* or *hijras* trace their history to the courts of Mughal emperors that ruled the Indian subcontinent for almost two centuries. They thrived and served as authority figures in charge of collecting taxes and duties in the Delhi Sultanate and Mughal courts.[1] They also played a prominent role in the royal courts of the Islamic world in Medieval India.[2] They were integral in politics and society, with some members of the community rising to occupy key positions as political advisors, administrators, generals, and guardians of the harems. Historians have also noted that hijras were considered clever, trustworthy and fiercely loyal.[3]

The imposition of British colonial rule in India marks an identifiable shift in perception from about 1864. However, it was the Criminal Tribes Act of

[1] Hijraism: Jostling for the Third Space in Pakistani Politics Claire Pamment TDR (1988-), Vol. 54, No. 2 (Summer 2010), pp. 29-50 - The MIT Press <https://www.jstor.org/stable/40650610>

[2] Anjali Arondekar, "For the Record: On Sexuality and the Colonial Archive in India (Next Wave: New Directions in Women's Studies), Duke University Press Books (15 Sept. 2009

[3] M. Michelraj, "Historical Evolution of Transgender Community in India, (2015):" *The Research Publication* Vol. 4 No. 1pp. 17-19 URL: <http://www.trp.org.in/wp-content/uploads/2015/10/ARSS-Vol.4-No.1-Jan-June-2015-pp.17-19.pdf>

1871, which classified the transgender community as a 'criminal tribe', resulting in their social isolation and economic exclusion.[4] They were then treated as a separate caste or tribe that had to be 'civilised'.[5] The British colonial administration vigorously sought to criminalise the community, denying them their civil rights, and making them vulnerable to economic and social exploitation. This pre-partition history of criminalisation and marginalisation of the hijras in the Indian subcontinent has significantly influenced the discrimination they face in Pakistan and other South Asian countries today.



"Senior Wives Playing Chaupar in the Court Zenana with Eunuchs" (James Ivory Collection)

[4] British Library. 1871. Criminal Tribes' Act. Act XXVII. V/8/

[5] Khan, Liaquat, "Transgender Dignity In Islam", Huffpost. 6 December 2017.

TRANSGENDER RIGHTS MOVEMENT IN PAKISTAN

In Pakistan, the transgender rights movement gained momentum in 2009 when policemen reportedly assaulted and raped a group of transgender dancers in Taxila, a city near Islamabad.[6] Following this incident, in December that year, transgender activist Almas Bobby filed a petition for protection against violence for the transgender community in *Khaki v. Rawalpindi, Supreme Court of Pakistan*. In this case, the court held that the term hijra refers to individuals who are born male but who adopt female gender identities, typically through the choice of dress and social roles. They may or may not have had male genitals removed surgically. The Court did not focus its analysis on the surgical question when it ordered that trans persons should be permitted to register as a 'third sex'. [7] The Court stated that transgender persons are entitled to all the rights provided in the constitution including the right to live with dignity, right to inheritance, right to education, right to seek jobs and the right to vote.[8] The Court held that the transgender community is “...citizen of this country and subject to the Constitution of the Islamic Republic of Pakistan, 1973, their rights, obligations including the right to life and dignity are equally protected. Thus no discrimination, for any reason, is possible against them as far as their rights and obligations are concerned. The Government functionaries both at Federal and Provincial levels are bound to provide them with the protection of life and property and secure their dignity as well, as is done in case of other citizens.”[9]

[6] Declan Walsh, “Harassed, intimidated, abused: but now Pakistan's hijra transgender minority finds its voice,” The Guardian, 29 January 2010.

[7] Dr. Mohammad Aslam Khaki & another vs Senior Superintendent Rawalpindi & another (CP. 43 of 2009)

[8] Ibid – order dated 20th November 2009

[9] Dr. Mohammad Aslam Khaki & another vs Senior Superintendent Rawalpindi & another (CP. 43 of 2009)

Here, the Court further noted that the provinces had done nothing to protect the community from harassment or prevent others from using the status falsely to commit crimes. The Court directed the provinces to submit detailed reports on the status of their transgender populations and to draft an implementation policy for their welfare. The Court ordered law enforcement institutions to create mechanisms to prevent these problems from occurring. The reasoning of the Supreme Court was interesting because it did not require the individual seeking gender recognition as a third gender to undergo a reassignment surgery as compared to courts in other parts of the world.[10] The Supreme Court's decision and analysis was also likely influenced by the socio-cultural ethos in Pakistani society that accepts *hijras* (including those who may or may not have had male genitals removed surgically) in some clearly defined social positions.

Apart from having an active judiciary spearheaded by the then Chief Justice Iftikhar Chaudhry, who was known for taking suo moto actions on human rights violations, it was the commitment of the legislature, civil society and media that played key roles in amplifying the transgender rights movement in Pakistan. The atrocities committed against the community were extensively highlighted by the media, which then became a catalyst for change to ensure protection for the transgender community and their rights. Demonstrations and protests between 2010 and 2012, led by Karachi-based transgender activist Bindiya Rana, brought to attention the injustice of subjecting transgender persons to medical

[10] *Van Kück v. Germany*, European Court of Human Rights, Judgment of 12 June 2003, Application No. 35968/97, paras. 65 and 86.

tests to verify their genital status to attribute a gender identity; that it is humiliating and should not be mandatory. Ultimately, sustained advocacy efforts led to striking down this requirement and more importantly, paved the way for self-perceived gender identity.

By 2012, the Court in its final order in the Almas Bobby case gave legal recognition to the 'third gender' by directing NADRA to issue national identity cards. But it was only in June 2018 that suo moto notice was taken by the Supreme Court on fully resolving the issue of securing national identity cards for transgender persons. A Provincial Monitoring Committee was established that ensured prompt and proper registration of all transgender persons residing in the country. The community, however, still had to overcome opposition from religious clerics as well those who perceived their very existence as against the values of Islam.[11] Reaching consensus with the Council of Islamic Ideology (CII), a constitutional body responsible for advising the government and parliament on Islamic issues helped reinstate the Khwaja Siras as a religiously and culturally recognised community in the public consciousness.

LEGAL FRAMEWORK FOR PROTECTION OF TRANSGENDER PERSONS IN PAKISTAN

In this section, the report analyses Pakistani law concerning the protection and participation of transgender persons. It also discusses the State's obligations arising out of international treaties and conventions that call for the protection of human rights.

[11] Pakistan takes steps to protect the rights of the transgender community, Gulf News, <https://gulfnews.com/world/asia/pakistan/pakistan-takes-steps-to-protect-the-rights-of-transgender-community-1.63071900>, accessed on 2 April, 2019

I. CONSTITUTION OF PAKISTAN 1973

The Constitution of Pakistan guarantees the fundamental rights of all citizens to be treated equally, and legislatures must ensure all laws are in line with the fundamental rights provisions. The following articles ensure equality before the law without discrimination based on sex, however, they do not mention sexual orientation or gender identity.

- Article 22(4) states that *'nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens'*.
- Article 25 of the Constitution states that *'all citizens are equal before the law and are entitled to equal protection of the law and that there shall be no discrimination based on sex'*.
- Similarly, Article 26 guarantees non-discrimination *'on the ground only of race, religion, caste, sex, residence or place of birth'*, in respect of access to public spaces *'of public entertainment or resort not intended for religious purposes only'*.
- Article 27 ensures *'that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth'*.

According to Article 26(1) and Article 27(1), no one should be subject to discrimination based on sex. Despite these constitutional guarantees, transgender persons have historically faced discrimination and mistreatment in Pakistan.

II. INTERNATIONAL LAW & TREATIES

International declarations and treaties, ratified by Pakistan, strive to ensure equality for all persons irrespective of sexual orientation and gender identity. As a member of the United Nations, Pakistan is obligated to uphold the rights and principles enshrined in the Universal Declaration of Human Rights (UDHR), including the right to not be tortured or subject to cruel or inhuman punishment or degrading treatment, and the right to be free of discrimination based on gender.

Article 2 of the UDHR provides that *‘everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’*.

As of April 2008, Pakistan is also a signatory to the International Covenant on Civil Political Rights (ICCPR), which contains many provisions advocating for the rights of transgender persons. Article 2(1) provides that each State Party:

‘...undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

Moreover, Article 26 provides:

'...all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

On protection from violence resulting from transphobia, the ICCPR provides under Article 6 that:

'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

Article 9 provides that 'Everyone has the right to liberty and security of person'.

III. PAKISTAN PENAL CODE 1860

The Pakistan Penal Code (PPC) does not specifically refer to homosexuality, however, it criminalises carnal intercourse that goes against nature or 'the natural order'.

Section 377, dealing with unnatural offences, states, *'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with*

imprisonment of either description for a term which shall not be less than two years nor more than ten 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.

Further, Section 294 of the PPC that deals with obscene acts and songs, is occasionally used against transgender persons and male sex workers.[12]

Section 294 states, *‘Whoever to the annoyance of others – a) does any obscene act in any public place, or b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.’*

IV. THE ELECTIONS ACT

The Elections Act, 2017, is the first major electoral reform effort since Pakistan’s first direct election in 1970. The Act intends to:

- Empower the Election Commission of Pakistan,
- Have improved accountability and transparency, and
- Ensure participation of vulnerable and marginalised groups including transgenders, women, and people with disabilities.

[12] Immigration and Refugee Board of Canada (IRB), ‘Pakistan: Situation of sexual minorities in Islamabad ...’, 13 January 2014,

'Concerning the participation of transgender persons, the Act makes clear under Section 48 that:

(1) The Commission shall take special measures for registration of non-Muslims, persons with disabilities and transgender citizens in the electoral rolls as voters.

(2) The measures under sub-section (1) shall include coordinated action with the National Database & Registration Authority to expedite the issuance of National Identity Cards for non-Muslims, persons with disabilities and transgender citizens.

(3) No activity undertaken in connection with an election by the Commission or National Database and Registration Authority, as the case may be, shall be delayed, postponed or otherwise affected in any manner whatsoever, merely on the ground of any measure being taken under this section or section 47."

V. TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2018

Pakistan's Transgender Persons (Protection of Rights) Act, 2018, is considered the most progressive legislation for transgender persons in the South Asian region.[13] It ensures the protection of transgender persons from sexual and physical assault and harassment and guarantees their gender identity and political rights.

[13] Transgender Persons (Protection of Rights) Act, 2018. No. F. 23(20)/18. (2018)

Under the Act three categories fall under the definition of Transgender–.

- Intersex also referred to as khusra, which is a mixture of male and female genital features or congenital ambiguities
- Eunuch, which is defined as someone who is assigned male at birth, but undergoes genital excision or castration
- Transgender man or transgender woman or any person, also called 'Khawajasara', whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.[14]



Photo Credit: AP

[14] Transgender Persons (Protection of Rights) Act, 2018, section 2(n)

This definition is quite broad and uniquely innovative in terms of locating gender norms. It emphasises one's self-perceived gender expression or gender identity. This is explained further in the section titled 'Recognition of the Identity of Transgender Person' where an individual's self-perceived gender is the only identity that matters in the eyes of law.[15] While the definition is nuanced, there remains the question about how it will be implemented.

TPA 2018 is laudable to the extent that it recognises the transgender community's right to live with dignity as respectable citizens of the state. The Act prohibits discrimination and harassment and requires the government to establish protection centres, provide adequate medical facilities, establish mechanisms to create awareness, and support livelihoods. The Act grants transgender persons the right to vote, own and inherit property; right to education, healthcare and employment; right to hold public office, right to assembly, and access to public places.[16] According to the Act, kidnapping, abducting or inducing to have illicit intercourse shall be punished with life imprisonment and a fine. The Act also protects transgender persons from being deprived of inheriting property. Section 16 of the Act ensures that transgender persons shall enjoy all rights as contained in Part II of Chapter I of the Constitution.[17]

[15] Transgender Persons (Protection of Rights) Act, 2018, s 3.

[16] Transgender Persons (Protection of Rights) Act, 2018. No. F. 23(20)/18. (2018)

[17] Constitution of Pakistan 1973; Section 16. *Guarantee of fundamental rights. (1) In addition to rights mentioned in this Chapter, fundamental rights mentioned in Part II of Chapter I of the Constitution of the Islamic Republic of Pakistan shall be available unequivocally for every transgender person.*

(2) It shall be the duty of the Government to ensure that the fundamental rights mentioned in sub-section (1) are protected and there shall be no discrimination for any person on the basis of sex, gender identity or gender expression."

Across the board, it is not uncommon for members of the transgender community to be denied or face impediments in accessing health care services. Section 12 of the TPA 2018, ensures the right to safe and effective health care. In September 2018, the Lahore High Court held that public hospitals in Punjab must provide separate facilities for transgender patients to safeguard their right to privacy and protect them from discrimination and prejudice.[18] Unfortunately, social stigma still impedes access to health care for sexual minorities in Pakistan. Even after the court ruled and the Act was passed, provincial governments are yet to make separate wards to ensure the privacy of transgender persons. The Act also ensures the right to employment of transgender persons to earn a safe and dignified living. In one such positive example, transgender activist Aisha Mughal became the first transgender person to be employed by the Ministry of Human Rights.

A striking flaw of the TPA 2018 is that no penalties or fines are stipulated for violation of its provisions and/or the abuse or discrimination of transgender persons. The prohibitions against harassment are mentioned but not supported by adequate penal provisions. Penalties stipulated within the TPA 2018 only cover persons forcing a transgender person to beg, with imprisonment up to six months. This is the only penalty mentioned. The Act also falls short of recognising other forms of harassment suffered by the transgender community, thus creating a disparity in its enforcement.

[18] International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), 'State-sponsored Homophobia', (page 462), 2019.

Secondly, TPA 2018 remains silent on a transgender person's right to have a family. The law also evades the issue of abandonment of transgender children by their parents. To provide comprehensive protection, the law must ensure protection and rehabilitation of abandoned transgender children and assist gurus – leaders of eunuchs groups who take abandoned transgender persons into their care – to seek aid from the government. The Act must provide clarity on this aspect.

Most importantly, all rights contained in the TPA are contingent on transgender persons officially registering themselves with NADRA.

The TPA 2018 attempts to ensure that transgender persons in Pakistan are guaranteed their fundamental rights. However, it remains to be seen how thorough the enforcement will be given the inadequate penal provisions, lack of awareness or sensitisation among law enforcement agencies and prevalent social stigma. Ironically, during the national elections held soon after the TPA 2018 was passed, the transgender community faced problems and suspicion over the authenticity of their national identity cards and were not allowed inside the polling stations to cast their vote.[19]

[19] See Roli Srivastava & Meka Beresford, *Pakistan's transgender community says faced pushback at the general election*, REUTERS, 27 July, 2018, available at <https://www.reuters.com/article/us-pakistan-lgbt-transgender/pakistans-transgender-community-says-faced-pushback-at-general-election-idUSKBN1KG2OT>.

IMPLEMENTATION CHALLENGES AND CURRENT STATUS

While the letter of the law is strong and beneficial to the community, transgender activists and experts explain that the lack of penal provisions and social sensitisation will hinder effective implementation of the law. This section examines the concerns, ambiguities and hurdles in implementing TPA 2018, across the different provinces in Pakistan.

Under TPA 2018, for the first time, a Commissioner for Transgender Persons will join the Federal Ombudsman Secretariat. The Secretariat is a grievance redressal body before which transgender persons are allowed to file their complaints. The mandate is to identify and investigate complaints, and provide redress. The three organisations mentioned in the legislation responsible for the implementation of the law include the National Commission of Human Rights, the National Commission on Status of Women and the Federal Ombudsman. However, these institutions are not in a position to enforce the law as they are merely monitoring bodies, and both commissions have been defunct for over a year. So far, only the Ministry of Human Rights has developed guidelines for the police and is now in the process of having these notified by the Government. Similarly, the Ministry is also working closely with the Ministry of Health on policies for doctors to follow and introduce a *Sehat Sahoolat* (health benefit) card for the transgender community; it has proved rather beneficial for the community.[20]

[20] Speaking at a roundtable discussion held in Islamabad by VISION and iProbono on 25 January 2020.

According to Aisha Mughal [UNDP Expert Consultant to the Ministry of Human Rights, Government of Pakistan], the TPA 2018 has not reached some of the major stakeholders including the police and she deems this as an alarming situation. In her view, there is a duty to expedite the process of raising awareness within the Government institutions.

Official records show that there are approximately 10,000 transgender people living across Pakistan. The transgender community, however, has contested this figure as incorrect. The Commissioner for Transgender Persons at the Federal Ombudsperson assigned to validate and streamline outreach for the community has criticised Pakistan's National Bureau of Statistics. The official highlighted gaps in data collection and asserted that over 10,000 transgender persons were residing in the twin cities of Rawalpindi and Islamabad alone.[21] The recently concluded population census of 2019, which includes the third gender, recorded 10,400 transgender persons, which is again incorrect.[22] Besides individual registrations, *gurus* and their *chailas* are also being registered against each other for capturing information on their social structures. As of August 25, 2018, the number of transgender persons recognised and registered with the Social Welfare Department Punjab has exceeded 3200.[23] Of these, NADRA has issued computerised national identity cards (CNIC) to a majority of the people and the remaining cases are

[21] Pakistan Today, Call for engaging 'Gurus' to develop a transgender database, <https://www.pakistantoday.com.pk/2019/03/20/call-for-engaging-gurus-to-develop-transgender-database/> accessed in November 2019

[22] Advocacy group Trans Action has estimated that at least 500,000 of the country's 207 million population identifies as transgender.

[23] Transgender Welfare Policy pg 11 – "Transgender Persons Welfare Policy, http://www.supremecourt.gov.pk/web/user_files/File/Transgender_Persons_Welfare_Policy.pdf Ibid

under process and expected to be completed shortly. It is important to note that the lack of data adversely affects evidence-based policymaking for the transgender community and hampers the efficacy and implementation of the Act, and therefore, needs to be addressed immediately.

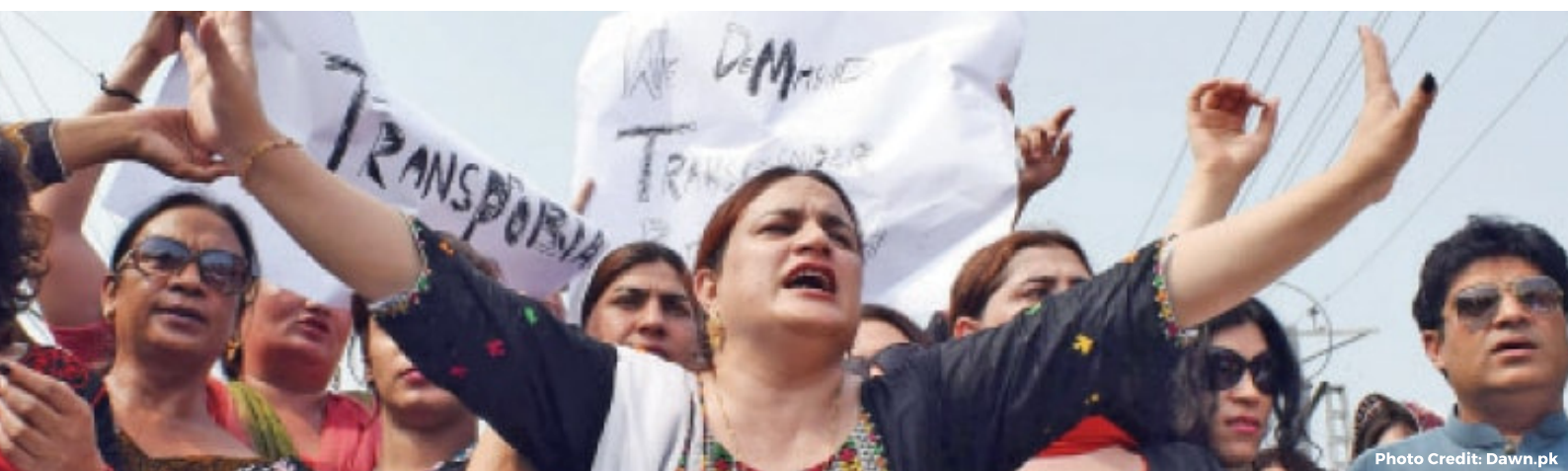
Lack of awareness about the TPA 2018 amongst the enforcement agencies, including the police, remains a challenge. In October 2019, a grassroots NGO in Punjab conducted legal awareness training on the Act for the police constables stationed in various parts of Lahore.[24] Tahir Khilji, a leading human rights activist notes, *“After the passing of TPA, we need to ensure consistent capacity building of bureaucratic institutions and the enforcement agencies so a collective change can lead to transformative change for this community.”*[25] Violence, harassment, extortion, rape and murder of transgender persons continue across the country, despite the law. The police do not file complaints and are often complicit in the extortion, harassment and sexual violence against transgender persons.[26]

[24] Legal Rights awareness training for police constables held at District Commissioner office in Lahore, Punjab, 12 October 2019

[25] Key Informant Interview held on 12 November 2019

[26] Human Rights Commission of Pakistan (HRCPP), ‘State of Human Rights in 2018’, 2018, (page 181)

MEASURES ADOPTED BY THE PROVINCES



The Punjab government enacted the Transgender Person's Welfare Policy in August 2018 to identify the factors that enable oppression and adopt measures to empower and protect the community.[27] The policy aims to lay down the guiding principles and identify priority areas to implement various programmes for the empowerment of the transgender community. The Sindh Government reserved a five per cent quota for the community in the police service in 2019, while the Khyber Pakhtunkhwa (KPK) government formed a special committee to notify and uplift the community with proper approval and mobilisation of the budget.[28]

The TPA 2018 is still in its early days and it will take time for jurisprudence to develop, and for all the provinces in the country to adopt the law into their frameworks. While it is evident that the State has taken concerted and unprecedented legal, policy, and institutional steps concerning protecting the legal and political rights of transgender persons, it is perhaps premature to judge the efficacy of these measures.

[27] Punjab Social Protection Authority,(2018). Transgender Persons Welfare Policy. Transgender Persons Welfare Policy. Government of Punjab, Pakistan.

[28] Law, Parliamentary Affairs and Human Rights Department. (2018). Khyber Pakhtunkhwa Human Rights Policy. Government of Khyber Pakhtunkhwa, Pakistan.

SOCIAL REALITY FOR THE TRANSGENDER COMMUNITY

Social stigma and discrimination against trans and gender-diverse people is real and embedded deep in the systemic cycle of oppression against sexual minorities. Historically, transgender persons are accepted in certain stereotyped roles, performing at weddings or begging and engaging in sex work, but they remain excluded from mainstream society.

Between 2007 and 2014, other South Asian countries including Nepal, Bangladesh, and India officially recognised transgender as a third gender, which benefitted the transgender rights movement in Pakistan as well. Furthermore, the media and popular culture have played an important role in raising awareness about transgender issues. Movies like Shoaib Mansoor's *Bol* and Sharmeen Obaid-Chinoy's *Transgender: Pakistan's Open Secret* have kindled a conversation around these issues. In 2019, the Pakistani movie *Darling* starred a transgender person in the leading role and has been influential in increasing visibility and acceptance of the transgender community in the public sphere.

Many transgender persons, especially those living in KPK and Balochistan province of Pakistan, are an easy target for violations. Extreme social stigma is another reason to conceal their gender identity, choose not to apply for identification cards, and avoid registering their names with NADRA.; Many who self-identify are also disowned by their families.

[27] Punjab Social Protection Authority,(2018). Transgender Persons Welfare Policy. Transgender Persons Welfare Policy. Government of Punjab, Pakistan.

[28] Law, Parliamentary Affairs and Human Rights Department. (2018). Khyber Pakhtunkhwa Human Rights Policy. Government of Khyber Pakhtunkhwa, Pakistan.

Mehlab Jameel, a transgender activist said, *“Families need to be accepting of their transgender child first so that the rest of the society does not shun them.”*[29] Some of the older transgender activists, like Almas Bobby, also argue that the new law will encourage gay men to claim to be transgender to receive benefits. She believes that only those born with both female and male genitalia truly qualify.[30]

It is imperative to engage the leaders or *gurus*, to develop a comprehensive national-level database to ensure the socio-economic welfare of the community. The fact that the TPA 2018 makes no provisions to engage with gurus, makes it difficult to extend the protection of the laws to transgender persons placed under their care. The Act must be amended to consider this and place certain obligations on the gurus to ensure that those who are under their care have been registered and that their rights are protected.

KEY SUCCESS STORIES IN THE ENFORCEMENT AND IMPLEMENTATION OF TPA 2018

The Government in Pakistan has appointed members from the transgender community in supervisory positions for a series of programmes. The focus is on providing training to other transgender persons, as the change will need to be led by the people from the community. The government consulted the transgender community in

[29] Speaking at a session on transgender law and beyond at the Asma Jehangir Conference held on 19 October 2019.

[30] Memphis Barker, Once ostracised, now Pakistani transgender people are running for parliament, The Guardian, <https://www.theguardian.com/world/2018/jul/23/pakistani-transgender-people-office-election>, 23 July 2018

their decision-making process during the drafting of TPA 2018, and this meant the development of a more nuanced law. In January 2020, for the first time in the history of Pakistan, there was an event arranged for transgender persons in the Prime Minister's house where he spoke in detail about the protection of transgender rights. The Sehat Card (health card) for the community was also officially introduced at this event.

Additionally, the Ministry of Human Rights is also working with the relevant departments to ensure proper implementation of TPA 2018, and the introduction of other policies where required. Tahir Khiliji, a senior human rights activist, who has been conducting sensitisation training for trans people for the last two decades, mentioned that it is heartening and encouraging to see how far civil society has come in ensuring that marginalised voices are heard. He emphasised that different levels of sensitisation still need to take place as the journey has just begun and that the effective implementation of the Act will unveil new challenges.[31]

CONCLUSION

Pakistan has come a long way in upholding its human rights obligations by enacting this highly progressive legislation despite facing opposition from among the more orthodox sections of society. Members of the transgender community did not believe that their generation would witness the enactment of favourable legislation that includes economic, social and cultural rights along with civil and political rights.

[31] Speaking at a roundtable discussion held in Islamabad by VISION and iProbono on 25 January 2020.

However, there are many challenges yet to be addressed to ensure that the law is effectively implemented to protect and empower the transgender community in Pakistan. While in theory, transgender people enjoy better rights in Pakistan, in practice, they are marginalised and face extreme discrimination and prejudice that alienates them from mainstream society. The lawyers, human rights and transgender rights activists and politicians who have aggressively advocated for transgender rights over the last decade have welcomed the legislation while simultaneously reminding the community that the battle is only half won. Enforcement will take time and for the law to be enforced in its true spirit, it may take another decade or two.[32]

ABOUT

iProbono's mission is to enable people to access their rights in pursuit of a just society.

By promoting active citizenship and engaging a holistic model we:

- Advance justice for all by representing people in need
- Strengthen the impact of civil society
- Advocate for policies that promote social equity and end discrimination

We believe in holistic counsel, representing clients and providing wraparound legal support, capacity building, storytelling, research, and policy advocacy to support social change.

[32] Sheikh, Sugra, Tunio, Pakistan transgender rights law- a battle half won, Reuters, May 21, 2018, <https://www.reuters.com/article/us-pakistan-transgender-rights/pakistans-transgender-rights-law-a-battle-half-won-idUSKCN1IIM1TC> accessed on December 2019

VISION Pakistan is an NGO based in Islamabad which has been working in the area of Child Rights and Transgender rights in Pakistan since 2001. In addition to lending our voice to the larger debate in Pakistan on the implementation of the Covenant on the Rights of the Child, VISION has a special focus on the sexual and commercial exploitation of children and the illegal trafficking of children and transgenders for these purposes. In the 15-year experience, VISION has seen us successfully execute projects dealing with the rehabilitation and support of street children in various parts of the country, including Swat, Murree, Abbottabad and Lahore. All of VISION's rehabilitation work through its drop-in centers, shelters and education centers has also amassed a considerable repository of research and behavioral study.

Wajood is an NGO that works to promote transgender rights. It is a registered community-based organization made for the transgender community in Pakistan. Bubbli Malik is the executive director of 'Wajood'. Their mission is to fight for the rights of Transgenders (trans men and trans women). It started in 2001 as a non-registered Civil Based Organisation and then Wajood Society was registered on 1 January 2015.