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Transgender Persons (Protection of Rights) Act 2018: A Critical Appraisal

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Abstract: *Pakistan, since its independence, has failed to ensure fundamental rights to the transgender community. This marginalized community was deprived of their gender identity, education, health facilities, access to public rights, and employment. Although the Transgender Persons (Protection of Rights) Act 2018 is on point, various segments of society are making it controversial claiming it to be promoting same-sex marriages or LGBT. The study employs analytical and descriptive research methods to present a clearer picture of the newly enacted Transgender Persons (Protection of Rights) Act 2018. Analysis of the Act provides that Gender Identity and Gender-Self-Perception were long-awaited and most celebrated by the Transgender Community to exercise the rights enshrined under the Constitution. Moreover, there are some challenges in the effective implementation of these rights such as issues regarding voting and political participation, kinship, inheritance, gender identity and marriage. The study presents a pragmatic approach to resolving such outstanding issues.*

Key Words: Transgender Persons Act, Gender Identity, Fundamental Rights, Right to Equality

Introduction

In Pakistan, both Anglo-Saxon and Islamic Legal Systems co-exist. The Constitution of Pakistan 1973, and other laws of the Country have the reflection of Islamic traditions and British principles. Islam is recognized as a State religion of Pakistan under Article 2(A) of the Constitution, thus any action inconsistent with such principles should be *Ultra-vires* the Constitution. A comprehensive range of fundamental rights such as the right to life, right to education, freedom of speech and expression, right to a fair trial, protection from all forms of discrimination, equality of citizens etc are provided in Chapter I of the Constitution. Although the theoretical framework contains all rights and privileges for all communities and citizens, many factors hinder the uniform protection of such rights. Owing to social and cultural stereotypes, Transgender persons are the most marginalized and underprivileged members of society all around to world. Thus, there was a need to enact special laws to protect their rights that are enshrined under the Constitution ([Fazi & Bibi, 2021](#)).

The Transgender Persons (Protection of Rights) Act is praised by the International Commission of

Jurists as one of the most progressive legislations on the rights of transgenders worldwide. The Law has given the right to gender identity, a right to obtain identification documents, protection from discrimination, the right to education etc. to transgenders (Shamus Khan & Joss Greene, [2019](#)). The opposing school of thought argue that the provisions of self-gender identity are un-Islamic and will lead to same-sex marriages in Pakistan by allowing them to change or choose their gender. While the supporters of the legislation contend that it is the first step to bringing the transgender community to par with male and female citizens of Pakistan. Moreover, they claim that this Act is a revolutionary step towards ensuring the right to inheritance, access to employment and education, and discrimination-free health care (Pamment, [2010](#)).

The role of the Supreme Court of Pakistan in the protection of the rights of transgender communities is very pertinent. In *Dr Muhammad Aslam Khaki v. S.S.P(Operations) Rawalpindi* (PLD 2013 SC 188), the Apex Court gave a landmark judgment under which transgender persons received their first-ever legal status and identity rights. Consequently, the judgment

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paved the path for legislation to enact a piece of legislation that provides special protections to the transgender community in Pakistan.

The Transgender Persons (Protection of Rights) Act was passed in May 2018 by the Parliament after several years of public discussion, concerted legal actions and activism for their rights by transgender persons (Khan, 2016). The study examines and analyses the key features of this Act and significant development in the 'Law of Gender' in Pakistan. It highlights the provisions that are causing confusion in the national landscape and making this law controversial. The opinions of different schools of thought are analysed in the study. However, any concerns regarding the Act of 2018 are little compared to the concerns one would have about Pakistan's tumultuous history with gender (Jeffrey A. Redding, 2019).

Pakistan has a long history of discrimination that has contributed significantly to tarnishing its image around the globe. It is very lenient in the enactment and enforcement of human rights, especially women's rights. For instance, Pakistan's infamous "Hudood Ordinances", which harshly criminalise extra-marital sex were criticised by International Organizations and western societies because such Islamic Laws had a detrimental impact on the women of Pakistan (Jahangir & Jilani, 2003).

Pakistan's initiatives on the rights of transgender persons did not receive widespread attention but somehow, it has emerged as a global leader in protecting basic human rights for transgenders in the Transgender Persons (Protection of Rights) Act 2018 (Rimmel Mohyidin, 2019). The study not only provides an analysis of this Act but also contains the developments of transgender rights before this landmark legislation. Thus, this study also suggests the necessary amendments to resolve the controversy of different schools of thought.

Historical Background

Since the British Colonial era in the Subcontinent, transgender persons existed with various derogatory names such as *Khusra*, *Kinar*, *Khunsa*, *Mukhannas*, *Hijra* and *Khawaja Sira*. Unfortunately, the *Hijras* were considered an immoral community by the Britishers and they inflicted hardships and sufferings on them (Sarkar, 2013).

Jessica Hinchy, in his research work, has analysed the social conditions of eunuchs in India. She argued that the Colonial Courts of the pre-partitioned India criminalized this community as a whole, regarded

them as a "eunuch problem" and treated them as prostitutes. In addition, the judges perceived them as a "pollution" of society and treated their gender as morally offensive (Reddy, 2005; Saria, 2022).

On the political front, the colonial tyrants were somehow afraid and insecure about their existence. Before the advent of Britishers, the *Hijra* or transgender persons were allowed to acquire rent-free property in several small polities of Nawabs and Maharajas. Also, during the Mughal rule, transgender persons had several significant rights and they enjoyed a privileged status in Darbar (Sarkar, 2013). Afterwards, the Colonial Rule under the East India Company attempted to redefine the pact between the new colonial rule and the *Hijra* Community. These Governmental actions exacerbated the issue, especially in terms of the rights the "*Hijra Community*" was enjoying in the polities of Bombay and Maratha (Saria, 2022). Consequently, the Bombay administration repealed all rights and privileges the Transgender Community had been granted by earlier rulers, such as the right of begging, rent-free property, and other minor incentives (Fazi & Bibi, 2021).

The Discipleship system of the *Hijra Community* was wrongfully seen as a potential political entity that may threaten the colonial power. Charles Raikas, a representative of East India Company was chosen to evaluate the need for anti-hijra laws to control this community (Stephens, 2018). Resultantly, *Hijras* were seen as "Sodomites" by colonial tyrants because they opposed the English system that was based on reproductive sexuality, family system and heterosexuality (Reddy, 2005).

In this context, a discriminatory law was enacted to address the so-called "Eunuch Problem" in the Subcontinent. A "Criminal Tribes Act" (CTA) was enacted in this regard in 1871. The CTA is an important example of gender policing and sexuality, with a prime focus on the transgender community. As a result, even after the elimination of Anti-hijra provisions from the Act in 1911, hostility, hatred, and derogatory language continued to persist on the social fabric of the Subcontinent. It is important to note that transgender persons were treated as a Criminal under Part II of the CTA throughout the colonial era. The relevant provision describes as, "*An Act for the Registration for Criminal Tribes and Eunuchs*". The Act also provides "surveillance and control" over these allegedly criminal tribes. Furthermore, categorizing transgenders as "Criminal tribes" demonstrates a colonial mindset, corroborating the perception that British rules perceived them as a potential threat to their rule (Laurence W. Preston, 1987).

Section 25 of CTA provides a discriminatory registration mechanism leading to further restrictions on Transgenders, while section 26 and 28 of the Act penalizes the acts related to their way of life and their clothing. These provisions blatantly criminalized the way of living of transgender persons by limiting them to dress according to their identity and desires. Such kinds of discriminatory legislation imply that the Britishers did not recognize the rights of transgender persons and never treated them as a distinct gender and identity (Khaitan, 2018).

Even though the CTA was enforceable only in the North West Province (present-day Punjab) but its implications on the Transgender community persisted even beyond this territorial jurisdiction (Khaitan, 2018). In this context, post-independent Pakistan has carried over the colonial perception of sexual morality.

Literature Review

In Pakistan, the Development regarding the rights of transgender persons is comparatively new and evolving. Thus, limited literature is available on the study area. Some researchers observed the implications of the legislation and compared it with India. Although the current study provides a detailed analysis of the Act, its implications, challenges and suggestions for improvement.

Muhammad Abdullah Fazi and Maryam Bibi (2020) conducted a comparative study on the rights of transgender persons enforceable in Pakistan and India. They analysed the hatred of colonial roots in the subcontinent and their reflection on the social and legal framework of Pakistan and India. The significant provisions of the Criminal Tribes Act were discussed in detail and the current legislation on the issue is comparatively analysed. The researchers highlighted the discrepancies found in the law of gender and suggestions to reform them. They concluded that both countries have the same roots, culture, and social understanding, thus the sufferings of transgenders are common, but in both countries, the state institutions are trying to ameliorate the economic and social conditions of transgender persons.

Redding (2019) discussed the impact of the enactment of the Transgender Persons (Protection of Rights) Act 2018 on the development of the Law of Gender in Pakistan. Nowadays the act is in limelight and different schools of thought have different opinions which are leading towards controversy. The researcher critically analysed the so-called controversial provisions of Gender Self-perception and the right to inheritance of the act, thus refuting the

claims against them. The study also contains the problems still faced by transgender persons and the challenges on the ground that are restraining the uniform implementation of rights. Semra Islam (2020) analysed the 'Right to Equality' provided in the Constitution of Pakistan from the viewpoint of the Transgender community. She discussed the role of the Supreme Court in the development of this law and the protection of the transgender right. The role of landmark judgment of 2013, given by the Apex court was persuaded by the researcher while highlighting the issues and impact of that judgment (Redding, 2016). The researcher concluded that the transgender community has been deprived of their basic fundamental rights which can be resolved if the right to equality is ensured (Semra Islam, 2022).

Legislation on Transgender Rights in Pakistan

Following the Partition of the Subcontinent in 1947, Pakistan adopted the colonial Laws after necessary changes while the first Constitution was adopted in 1956. As Pakistan came into being on the ideology of Islam, it was necessary to reflect the *Shariah and Islamic Principles* in the Supreme Law of the Land (Jeffrey A. Redding, 2019; Rispler-Chaim, 2007). Chapter 1 of the Constitution provides fundamental rights of the Citizens, and most importantly, Article 25(A) guarantees the equality of citizens and allows to make of special laws for the welfare and protection of women and children.

In 1949, Pakistan repealed the controversial Criminal Tribes Act of 1871 (CTA). However, the country's Penal code and procedural laws are still the same. In addition to the legal aspect, the hatred, ill mindset and prejudices of society towards the transgender community are still persistent. Resultantly, this community suffers from abuse, discrimination, financial hardship and difficulties at various levels across the country. The lack of interest and sensitization of the Government towards the sufferings of transgender communities are causing crimes against them (Ali Akbar, 2016). These crimes are considered insignificant by local police officials; thus, they are never reported and registered.

According to the Census Report 2017 of Pakistan, there are estimated to be 10,418 transwomen living in the country. It is important to note that in this census, transgender persons were counted as a separate gender for the very first time (Population Census, 2017). Given the nation's rapidly growing population of over 210 million, the meagre number of transgenders in the Census seems to be made worse by social stigma and covert identities. On the other hand, NGOs and

Transgender organizations claim a much higher number, but this assertion is unsupported by scientific or empirical study. In this context, it had become inevitable to legislate for the protection and rights of the transgender community.

Significant Developments of the Transgender Persons (Protection of Rights) Act 2018

The act provided basic human rights to the transgender community. Although Fundamental rights are available to all citizens it was inevitable to legislate for the marginalized community of Pakistan. The act protected transgenders against discrimination at educational institutions, and in the exercise of Public Rights. It protects the civic and social rights of the transgender community and also prescribes the enforcement mechanism in case of infringement of any right. The most significant provisions of the Act are related to Gender identity or Gender Self-perception, and the inheritance mechanism provided therein. Criticism is also surfacing against these provisions which are analysed next.

Gender Self-Perception

The term 'transgender' is coined by David Valentine during the social and political discourse in the United States in the 1990s. However, it is noteworthy that the term is used in the title of the 2018 Act, indicating that it is now generally accepted in the context of modern Pakistani legislation. In light of this, the Act defines "Transgender" in a way that includes non-cisgender identifications (*Khawaja Sira, Khunsa*) as well as contemporary identification, having a deeper 'indigenous' history in Pakistan. In this act, the condition of intersex is also included in the comprehensive definitional framework of 'transgender'. Section 2(n) of the Transgender Persons (Protection of Rights) Act 2018 states that:

"Transgender person is a person who is

- i. intersex (khusra) with a mixture of male and female genital features or congenital ambiguities; or
- ii. eunuch assigned male at birth, but undergoes genital excision or castration; or
- iii. a transgender man, transgender woman, Khawaja Sira or any person 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."

The above-mentioned definition is not only comprehensive and significant but it also aligns with the wider legislative trend on this subject in South Asia. The definition of "Transgender Persons" provided in the Transgender Persons (Protection of Rights) Act 2018 of Pakistan is similar to the definition presented in a recent Indian bill which has been passed by the lower house and is waiting for passage in the upper house of Indian Parliament. (Transgender Persons (Protection of Rights) Bill, 2018: S 2(k)). The third clause of the above-mentioned definition, "*any person whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at birth*" is the manifestation of Act's innovation on gender norms. Indeed, the statute implies that an individual can make an authoritative decision for legal purposes about their gender.

Chapter II of the act is entitled as, "Recognition of Identity of Transgender Person" and its provisions imply that an individual's gender identity could differ from how others anticipate and perceive them to be. Additionally, such self-perceived gender of an individual must qualify in the eyes of the Law. In other words, this section of the Act seems to be very clear that gender is considered to be, "Self-perceived gender" under the Law. According to Section 3 of the Act;

"Recognition of identity of a transgender person

1. A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.
2. A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to, NADRA [the National Database & Registration Authority].
3. Every transgender person, being a citizen of Pakistan, who has attained the age of eighteen years shall have the right to get himself or herself registered according to self-perceived gender identity with NADRA on the CNIC [national identity card], CRC [child registration certificate], driving licence and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000) or any other relevant laws."

Although this legal language is self-explaining and helpful, there are still many uncertainties

regarding its implementation. In general, the laws are not self-enforcing as they need other institutions to interpret them after their passage. The Apex Court took up the matter of fake and real transgender persons in the wake of the “Transgender Rights Movement” in 2009 and provided guiding principles for the Transgender Persons (Protection of Rights) Act 2018 (Redding, 2015).

Furthermore, the expression “Self-perception” can be interpreted and understood in several ways. For instance, the term may involve self-naming on legal identity documents such as National identity cards and passports instead of using the demeaning terms i.e., *hijra*, *mukhannas*, *Khawaja sira*. Alternatively, the 2018 Act might also imply that the National identity cards and other official documents must include a fairly simple and tripartite choice between the gender “male”, “female”, and “X”. Gender X can better be understood any unconventional gender identity other than male and female (Zeeshan Haider, 2017). Between these two alternatives and different operationalisations of gender self-perception, an intermediate interpretation of the Transgender Persons Act 2018 could provide a choice between more than two genders, but not infinite options.

In fact, before the passage of this act, the Government of Pakistan adopted the latter approach in response to the directions of The Supreme Court on the welfare and rights of transgender persons. Thus, five choices are available to any transgender person who is willing to acquire a National Identity card. These genders are Khwaja Sira (male), Khwaja Sira (female), male, female, and Khusa-mushkil (Jeffrey A. Redding, 2019).

Furthermore, there has been misunderstanding and contestation regarding each of these choices and whether or not people can legitimately choose between them (Web Desk, 2012). When the Government of Pakistan initially started using the term “Khunsa-e-Mushkil” in relation to the identity issue, the society was unable to comprehend it. This Arabic-derived term can be interpreted as “the Complex Sex”, “hermaphrodite”, or “Intersex” (Gesink, 2018; Rispler-Chaim, 2007). In a broader sense, it is debatable whether the term “Khwaja Sira” is equivalent to the term “Transgender”. As a result, the category of Khwaja Sira (male) should include those who are commonly understood as ‘FTM (female to male) Transgender’. It is noteworthy that the phrases “transgender female” and “transgender male” are used in Section 7(3) of the Transgender Persons (Protection of Rights) Act, 2018 rather than “Khwaja Sira (female)” and “Khwaja Sira (male)”.

Therefore, it is difficult to anticipate how the provisions of the aforementioned Act regarding “Self-Perception” will be interpreted and put into practice due to prevalent intricacies and complexities.

Inheritance Mechanism under the Act

The documents of identification, such as CNIC, FRC, passport and others are important for any citizen to engage in public activities of the state. Even fundamental rights cannot be exercised without valid identification documents. Meaning thereby, the right to inheritance, voting (Ali Hazrat Bacha, 2013), travelling, employment etc are associated with such identification. Among other rights provided under the Act, the most important of these involves the right to inheritance.

The fundamental concern of the Act regarding fundamental rights is stated in Chapter V that, “*there shall be no discrimination against transgender persons in acquiring the rightful share of the property as prescribed under the law of inheritance*” (Section 7 (I)). Furthermore, the gender stated on the National Identity Cards will also be used to determine the share of the inheritance (Section 7(2)).

The provision of gender self-identification is significant since the Act gives transgender males the same portion of inheritance as provided for men under Islamic law. Likewise, the share of transgender females would be the same as that of females. These provisions provide transgender persons with an opportunity to evade those restrictions of law that are discriminatory to their community. However, challenges may arise in the interpretation of such provisions because the Transgender Persons Act, 2018 applies the Islamic Law of Inheritance unilaterally, regardless of their faith and religion.

It is significant to note that nothing in the Transgender Persons (Protection of Rights) Act 2018 expressly states that the Islamic inheritance provisions in the Act exclusively apply to Muslim transgender persons. In contrast, the language of the Act implies “*share of inheritance for transgender persons will be*” (Section 7(3)).

Challenges

The enactment of the Transgender Persons (Protection of Rights) Act 2018 is a laudable attempt to guarantee the long-awaited fundamental rights to the transgender community of Pakistan. However, it remains to be seen how thoroughly and effectively these rights will be enforced.

Right to Vote:

Section II of the Act states:

“There shall be no discrimination on the basis of sex, gender identity and gender expression for transgender persons if they wish to contest election to hold public office”.

Early indicators regarding voting rights imply that it will be a difficult task to enforce such provisions. For instance, the General elections of 2018 held after the passage of this act encountered doubts about the authenticity of identity cards, and many transgender voters were refused entry from polling stations (Roli Srivastava & Meka Beresford, 2018). The confusion occurred due to disparities between the individual's gender specified on their identity cards and the current gender of individuals. Therefore, the provisions of the Act that mandates the Governmental authorities or NADRA to issue identity cards on the basis of individuals' self-perceived gender have failed to address the fundamental issues relating to the franchise (Web Desk, 2012).

Issues Pertaining to Kinship

The Act of 2018 also provides anti-begging provisions which raise some issues relating to the kinship of transgender persons. Firstly, some transgender persons requested to allow to use the name of their *Guru* in the space of 'Father' on their national identity cards or other documents (The Newspaper's Staff Reporter, 2017; Web Desk, 2012). Unfortunately, in our society, transgender persons are abandoned by their natal or biological families, and in most cases, they even don't know the identity of their biological parents. Thus, they demanded that transgender kinship relations are given legitimacy. Secondly, if the Government accede to this demand, it will impact the determination of inheritance among Muslim transgenders in Pakistan.

Anti-Begging Provisions

According to Section 17 of the Transgender Persons (Protection of Rights) Act 2018, *“Whoever employs, compels or uses any transgender person for begging shall be punishable with imprisonment which extent to six months or with fine which may extend to fifty thousand rupees or with both”.* The provision aimed to discourage the practice of begging forced by the head of the community or the *Guru* (incharge of the household of disciples) in Pakistan.

The historical stereotypes commonly portray that *Gurus* are keen to multiply their family and communities, and in order to achieve this goal, they

castrate young boys or kidnap them to make their *Chele* (Jeffrey A. Redding, 2019; Saria, 2022). Furthermore, these *Chele* are engaged in begging and prostitution to provide maintenance of the *Guru* and their ever-increasing households (Pamment, 2010). Thus, there is a great concern with the *Guru-Chele* kinship practices in Pakistan and this anti-begging provision exclusively focuses on that particular issue.

Issues Pertaining to Marriage

Another critical question that is still unanswered by the 2018 Act relates to marriage in Pakistan. It is generally presumed that marriage is consummated between heterosexual individuals, but now subject to the legal reality that 'official gender' is self-perceived and self-declared gender, perhaps then too, mutable per choice or convenience. It would require not only a creative mind but also a courageous soul for the members of a same-sex couple to change their gender officially and subsequently get married in Pakistan. Moreover, Section 377 of the Pakistan Penal Code criminalized *“carnal intercourse against the order of nature”*, and can also be pursued against the person engaging in same-sex marriage.

Recommendations

Legislative Reforms

The parliament should introduce the following significant laws and amendments to effectively address the concerns of the transgender community;

- The parliament must ensure that the usage of pronouns must be appropriate. The usage of 'He' in statutes should refrain as it has both symbolic and legal significance.
- Although the right to inheritance has been provided in the Act, there is no procedure or law to effectively implement it. As every transgender doesn't need to be of Muslim faith, there is confusion regarding the right to inheritance to non-Muslim transgenders. Thus, the appropriate laws, dealing with this issue must be enacted to ensure this significant economic right.
- There are no significant penal clauses in the specialized law for transgenders. In this new enactment, there is no punishment in case of infringement of transgenders' rights. Thus, it is recommended that the legislatures should add strict penal clauses to this act and enact specialized criminal law for transgender persons. Moreover, the hate crimes against this marginalized community can be tackled by

ensuring strict and certain punishments for offenders.

Public Awareness

The Government needs to initiate awareness campaigns regarding the sufferings and plight of transgender communities. The media must play its role to be aware of the struggle of transgender persons, and the difficulties they face in society. It is also necessary to highlight the relevant laws, and constitutional protections provided to transgender persons.

Specialized Educational Institutes

A major issue faced by the community is the lack of educational and employment opportunities. Initially, there are no separate schools for the community, and they have to face harassment and discrimination in public schools. The fellow students bully and hoot them, ultimately discouraging their spirit of education. When these illiterate transgenders try to find a job, they can't compete in the job market with no formal education. This results in the economic deterioration of the community and they are left with narrow choices, such as prostitution, begging and dancing. Thus, specialized educational institutes must be established at every district level, and scholarships should also be given to high achievers.

Conclusion

The Transgender Persons Act (Protection of Rights) Act, 2018 is praised as a positive step to provide the underprivileged and marginalized transgender community with fundamental rights for the very first time. The study implies that this community has faced hostility and racism since the Colonial Era, but somehow, Pakistan's approach to resolving this issue is flawed. The Supreme Court provided the guiding principles to the policymakers and granted some essential rights to this community while focusing on formal equality rather than substantive equality. The Law protects some essential rights of transgender persons such as protection against discrimination,

right to education and employment, right to enjoy health facilities, right to vote etc. but on the ground level, their effective implementation and protection are impossible. Unfortunately, the social, political and economic discrimination against transgender persons is very persistent in Pakistani society which hinders the smooth implementation of fundamental rights for the transgender population. It is concluded by the researchers that Government has taken initiative but it cannot be implemented without giving awareness and changing the mindset of society as the main hurdles are caused by the public instead of policymakers.

Similarly, the different schools of thought are trying to sabotage such development by criticising some provisions of the Act. They are of the view that this Act serves the purpose of same-sex marriage or LGBT, but the above analysis has refuted this claim. Gender Self Perception and Gender Identity will provide an opportunity for the transgender community to exercise all the rights provided to male and female genders of society, but the beneficiaries of the *Status quo* are making this clause controversial. Meanwhile, the right to inheritance is also in the spotlight of criticism which can be easily resolved by making trivial changes.

The existence of unresolved and outstanding legal issues as mentioned above implies that the 2018 Act has been successful in changing the 'law of gender' in Pakistan, but due consideration is needed regarding the prescribed challenges. This Act is therefore revolutionary in many ways, not just for Pakistan but also for the region and the World. Given all of this, Pakistan's deconstruction of Gender will demand the active development of something worthwhile and sustainable. Therefore, this Act 2018 should be the cause for celebration, but not complacency.

The persistent issues in the implementation of rights can better be resolved through key legislative reforms and awareness. As the provisions of the Act are interpreted without knowing the background of the issue, awareness seminars, social media, mainstream media and civil society should be conducted to develop an inclusive society.

References

- Ali, A. (2016, May 25). Transgender Alisha succumbs to wounds at Peshawar hospital. *Dawn*. <https://www.dawn.com/news/1260559>
- Ali, H. B. (2013, May 9). Transgenders in KP can't cast vote. *Dawn*. <https://www.dawn.com/news/1026648/transvestites-in-kp-cant-cast-vote>
- Asif, M. (2018, June 12). Transgender Community Boycotts Elections. *The Express Tribune*. <https://tribune.com.pk/story/1732970/transgender-community-boycotts-elections>
- Fazi, M. A., & Bibi, M. (2021). Discrepancies in transgender persons (protection of rights) act, 2018: A comparative study of transgender's rights in Pakistan and India. *International Journal of Law and Management*, 6(3), 347-356. <https://doi.org/10.1108/IJLMA-10-2020-0262>
- Gesink, I. F. (2018). Intersex Bodies in Premodern Islamic Discourse. *Journal of Middle East Women's Studies*, 14(2), 152-173. <https://doi.org/10.1215/15525864-6680205>
- Jahangir, A., & Jilani, H. (2003). *The Hudood ordinances: A divine sanction?; a research study of the Hudood ordinances and their effect on the disadvantaged sections of Pakistan society*. Sang-e-Meel Publ.
- Jeffrey, A. R. (2019). The Pakistan Transgender Persons (Protection of Rights) Act of 2018 and its Impact on the Law of Gender in Pakistan. *Australian Journal of Asian Law*, 20(1), 103-113.
- Khaitan, T. (2018). The Point of Discrimination Law: Securing the Freedom to Flourish. In T. Khaitan, *The Empire of Disgust* (pp. 348-368). Oxford University Press. <https://doi.org/10.1093/oso/9780199487837.003.0017>
- Khan, F. A. (2016). *Khwaja Sira* Activism. *TSQ: Transgender Studies Quarterly*, 31(2), 158-164. <https://doi.org/10.1215/23289252-3334331>
- Laurence, W. P. (1987). A Right to Exist: Eunuchs and the State in Nineteenth-Century India. *Modern Asian Studies*, 21(2), 371-387.
- Pamment, C. (2010). Hijraism: Jostling for a Third Space in Pakistani Politics. *TDR/The Drama Review*, 54(2), 29-50. <https://doi.org/10.1162/dram.2010.54.2.29>
- Population Census. (2017). *Pakistan Bureau of Statistics*. <https://www.pbs.gov.pk/content/population-census>
- Redding, J. A. (2015). From 'She-males' to 'Unix'. In D. Berti & D. Bordia (Eds.), *Regimes of Legality* (pp. 258-289). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199456741.003.0009>
- Redding, J. A. (2016). Transgender Rights in Pakistan?: Global, Colonial, and Islamic Perspectives. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2837520>
- Reddy, G. (2005). *With respect to sex: Negotiating hijra identity in South India*. University of Chicago Press.
- Rimmel, M. (2019, January 22). *With Transgender Rights, Pakistan has an Opportunity to be a Pathbreaker*. Amnesty International. <https://www.amnesty.org/en/latest/news/2019/01/with-transgender-rights-pakistan-has-an-opportunity-to-be-a-path-breaker/>
- Rispler-Chaim, V. (2007). *Disability in Islamic law*. Springer.
- Roli, S., & Meka Beresford. (2018, July 26). *Pakistan's transgender community says faced pushback at general election*. <https://www.reuters.com/article/us-pakistan-lgbt-transgender-idUSKBNIKG2OT>
- Saria, V. (2022). *Jessica Hinchy, Governing Gender and Sexuality in Colonial India: The Hijra, C.1850-1900* (Cambridge: Cambridge University Press, 2019) Liat Kozma, *Global Women, Colonial Ports: Prostitution in the Interwar Middle East* (Ithaca: State University of New York Press, 2017) Durba Mitra, *Indian Sex Life: Sexuality and the Colonial Origins of Modern Social Thought* (Princeton: Princeton University Press, 2020) Ishita Pande, *Sex, Law, and the Politics of Age: Child Marriage in India, 1891-1937* (Cambridge: Cambridge University Press, 2020) Judith Surkis, *Sex, Law, and Sovereignty in French Algeria, 1830-1930* (Ithaca: Cornell University Press, 2019). *Gender & History*, 3(1), 293-304. <https://doi.org/10.1111/1468-0424.12603>
- Sarkar, N. (2013). Forbidden Privileges and History-Writing in Medieval India. *The Medieval History Journal*, 16(1), 21-62. <https://doi.org/10.1177/097194581301600102>
- Semra, I. (2022). The Transgender Community and the Right to Equality in Pakistan: Review of the Transgender Persons Act 2018. *LUMS Law Journal*, 7. <https://sahsol.lums.edu.pk/node/12893>
- Shamus, K., & Joss, G. (2019, January 31). What Pakistan gets right and the US gets wrong on trans rights. *CNN Opinion*. <https://edition.cnn.com/2019/01/31/opinions/united-states-pakistan-transgender-rights-khan-greene/index.html>

Stephens, J. A. (2018). *Governing Islam: Law, empire, and secularism in modern south Asia*. Cambridge University Press.

The Newspaper's Staff Reporter. (2017, September 27). Trans people can use guru's name as parent in CNIC. *Dawn*. <https://www.dawn.com/news/1360320>

Web Desk. (2012). Dream come true: Transgender community celebrates CNICs, voter registration.

The Express Tribune.
<https://tribune.com.pk/story/326911/dream-come-true-transgender-community-celebrates-cnics-voter-registration>

Zeeshan, H. (2017, June 28). Pakistan issues landmark transgender passport; fight for rights goes on. *Reuters*. <https://www.reuters.com/article/us-pakistan-lgbt-passport-idUSKBN19J237>