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Transgender Rights in South Asia: Comparative Analysis of Pakistan and India

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Cite Us



Title

Transgender Rights in South Asia: Comparative Analysis of Pakistan and India

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Abstract

The rights of the transgender people especially in South Asian countries are an area of interest with specific reference to Pakistan and India. It analyses the historical legal and social factors to their status from the pre-colonial society where they were accepted to the colonial period where there were considered outcasts to the legal changes that have taken place in the modern world. Even with progressive laws such as the Pakistan Transgender Persons (Protection of Rights) Act 2018 and the Indian Transgender Persons (Protection of Rights) Act 2019, there remain societal implementation failures that explain the integration of discrimination experienced by the transgender population in access to health, education, and labor market. Thus qualitative research compares legal recognition, societal acceptance, and consequences of activism. The study outlines challenges to equality and suits to recommend the best practices of acceptance within those societies and effective policy making.

Keywords: Transgender Rights, Legal Frameworks, Social Perceptions, South Asia, Pakistan, and India, Activism and Policy Implementation

Introduction

The rights of transgender people have emerged as the main issue in the broader discourse on the rights of

sexual minorities in South Asia. This region is diverse in culture and history making it quite insightful when identifying how gender is constructed, roles assigned,



and policed, and the laws that govern the minority within these societies. There is considerable evidence that gender identity has been acknowledged by history and various cultures, but modern transgender people still struggling not only for acceptance but often for simple rights and their ways of being legally, socially, or physically suppressed. With a focus on India and Pakistan discuss the current situation of rights of transgenders living in these States while covering legal provisions, cultural acceptance, future difficulties, and how activism directs social change. Gender and sexual history in South Asia is complex. Indian sacred literature and culture are known to have been accepting of the third gender since the Old Ages, especially through Khwaja Sira. Because Khwaja Sira have always been in social positions, which prevents them from customary mainstream lifestyles but often they are celebrated socially. However, with the introduction of colonial masters, there were a lot of changes that came with it. The Indian Penal Code (IPC) drawn up by British historian Lord Thomas Babington Macaulay, which came into force in 1862, imposed subjugated many sexual activities thus leading to the systemic repression of the LGTBQ+ community (Wong, 2021). It contained section 377, which stated that "whoever voluntarily has carnal intercourse against the order of nature with any man; woman or animal would be punished with imprisonment or fines" (Wong, 2021). The colonialism is still felt today, for example, it has supplanted transgender identities with misconceptions and prejudices that are still with the people of the region.

Transgender people of South Asia primarily using discriminatory languages like Hijras, Khusra, and Chakka are historically an important aspect of the regional socio-cultural and religious matrix. Their roles have been changing from time to time and they have been honored and included in treatment processes. They were rejected and excluded from treatment procedures then they are being legal and are advocates for legal change plus social justice now. This uncertain history of transgender rights and struggles in the now South Asian countries including Pakistan and India support this convoluted and evolving process of recognition and systematic

prejudice and political and legal approach. Traditionally, the people who could fall under the category of today's transgender were much more respected in South Asia than now, especially before colonization. Most of the transgender people in the society had some kind of connection with religious belief and they also performed important tasks. During the Mughal rule of India, transgenders were utilized as bodyguards, counselors, and even caretakers for the royal harem, thus being granted significant authority. The role of transgender people in Hindu and Muslim communities included such special abilities as fertility or blessing ceremonies. Hijras were required to bless married couples or newly born children, which is still in practice in South Asia. Their status changed when Britain came to colonize them and homosexuality was criminalized together with these minorities (Wong, 2021).

The British colonial administration sought to establish strict patriarchal orders and adopt legislation that targeted transgender persons. Transgenders were declared as a criminal tribe through the Criminal Tribes Act of 1871 which basically meant that they could be spied on or persecuted (Ipleaders, 2021). This was followed by severe social isolation. Transgender people were ostracized and rendered beggars or prostitutes. It was in colonial legislation that the fundamentals of dual-sex gender ideologies replaced several centuries of consistent cultural acknowledgment of sexual variance.

Transgender individuals in Pakistan are regarded as a marginalized community because they face many challenges and discriminations in various forms i.e. they are called by discriminatory language (Chakka, Khusra, and Hijra), challenges in ID card procedure, etc. They are not treated equally in society and their rights are also violated. However, the Constitution of Pakistan provides the protection of rights to all citizens including Transgender community. Another main thing is respect and social acceptance of this community. There is a lack of social acceptance in Pakistan which leads to further discrimination, violation of fundamental rights, and harassment on the base of their identity. According to the Supreme Court ruling in 2009, families cannot take away the

inheritance rights of Transgender individuals on the base of their identity but there is no proper action on this ruling (Rashid & Rashid, [2022](#)). They are still facing these issues in Pakistan.

In the 21st century, Pakistan has seen significant legal reforms aimed at improving the rights and recognition of transgender individuals. Recently the Supreme Court of Pakistan by eradicating the confusion termed transgender people as the third gender entitling them to the rights of property and employment and protection of the rights of the third gender. This provided the necessary legal developments as subsequent (Rashid & Rashid, [2022](#)). Transgender Persons (Protection of Rights) Act 2018, a compound law was one of the biggest victories for the transgender community in Pakistan. That marked an important recognition for transgender people it let them declare their gender on their own, without having to go through medical procedures, and prevent them from discrimination in workplaces, education, healthcare, and housing. It also brought the right to vote and even to be an electoral candidate into the political recognition sphere (Pakistan, [2018](#)).

The political activism of the transgender community has come to the fore in Pakistan. In the same 2018, the country witnessed preparations for parliamentary polls have transgender candidates contesting in the election for the first time (EFE, [2024](#)). A few activists including Nayyab Ali and others have been most vocal in demanding such changes, especially on the social and political front. Even in cases these individuals have come out publicly in search of reforms, more often than not they (transgender individuals) are still hounded by disdain and are economically and politically excluded from formal politics. Transgenders still face a range of difficulties on the social front in the country. Somewhat there is growth in the legal recognition of homosexuality, prevailing cultural and religious discriminations are primitive. This is more so because most transgenders are unable to secure employment in measure formal employment seeking to engage in begging or performing ritualistic dance. There is still much violence, discrimination, and expressions of

social outcasting of the transgender community to this day, especially in conservative and rural regions.

India has a comparable history regarding the transgender population to that of Pakistan. Transgender were actually appreciated in the pre-colonial era and like Pakistan the colonial laws suppressed the Gender and Sexual minorities into binary gender structures. Hence it can be seen that even after Independence the so-called third gender or trans-gendered in India had no much choice other than staying on the periphery of society and merely performing selective ritualistic roles.

The legal framework of India towards the rights of the transgender has touched some major landmarks like NALSA Judgment (2014) National Legal Services Authority and Union of India case one of the most significant for the rights of Transgenders in the country. In a legal judgment, the Supreme Court of India has declared the existence of a third gender among the people and also its constitutional rights to equality, non-discrimination, and personal liberty. Among various things, this decision made it compulsory for the government to provide measures ensuring education, healthcare, and other public services for transgenders, and ordered states to set up welfare programs (Database, [2014](#)). Transgender Persons (Protection of Rights) Act 2019, this law was enacted by India based on the NALSA judgment to extend the rights protections for transgender people (India, [2019](#)). The rights laid in the law cover equality in schooling, employment, healthcare, and accommodation. However, it has drawn flak for asking for medical reports to support the 'transgender identity,' which activist feels is a direct violation of the right to self-identification as awarded by the NALSA judgment (India, [2019](#)).

India has witnessed a growing political representation of themselves as transgender persons. There are such personalities like Shabnam Mausi who became the first transgendered MLA in 1998 and many others inspired them to come into politics (Gangwal, [2021](#)). Also, India has had transgendered judges while at the same time, the country has had transgender activists demanding policy change at multiple levels of government. Nonetheless, such

confidence does not translate to political voting as the political roleplays also exclude many transgender candidates from having an easy electoral victory. However, the social issues that transgender face in India are still major ones even with legal reforms. Employment discrimination, health care, and social services are some practices among them and are most prevalent in rural areas where the culture is conservative. As we have seen some social acceptance evidently compounded by activism amongst homosexual groups in urban regions across the country, the prejudice of being homosexual/transgender remains a challenge across the country. The social, economic, and physical abuse of transgender persons is common in most societies today. Most hijra still participate in traditional customs of various ceremonies but the majority of them end up becoming beggars or sex workers since they cannot find any other opportunity.

Research Problem

Transgender people in Pakistan and India are still experiencing barriers even after the law was adopted to protect their rights. Although both nations have begun enacting legislation to acknowledge the existence of transgender people and also provide protection for this community, the application of these rights is not consistent. Still, they are facing prejudices, marginalization, discrimination, restricted rights to education, primary health care, and occupations, etc. This shows that even as some states grant legal recognition to transgender people, they are still struggling to be accorded full acceptance in society in these countries.

Research Questions

1. What are the main issues with regard to the enforcement of transgender rights in these two countries and how may these gaps be closed by policy change or society in general?
2. How efficient are policies implemented by governments in covering the healthcare, education, and employment needs of the Transgender population in both countries?

3. What are the similarities and differences in regard to the legal rights of transgender persons in Pakistan and India?
4. What role do societal perceptions of Transgender persons and gender identity in both countries?

Research Methodology

The research methodology adopted in this study shall be a comparative mixed method in that both qualitative and quantitative data shall be collected and used in the comparison of transgenders rights in Pakistan and India. This is because the approach adopted here involves the development of legal perspectives, social perceptions, and firsthand experiences of the transgender person in both countries to come up with a comparison of how the two countries similarly or otherwise protect and uphold the rights of the transgender individual. Primary and secondary data will be collected through interviews with Pakistani Transgenders, activists, lawyers, and scholars in order to capture first-hand information about their struggle, issues with, and feelings regarding rights issues. For data collection in India, online survey forms through Google Forms will be provided, thus providing broad numbers and qualitative data, for the transgender community's experience and opinions. This mixed-method approach will help not only to compare different statistical trends but also to get deep insight into individual experiences in regard to legal and social changes that occur in the context of transgender rights and identities in both countries. Both interviews and the survey will allow for both thematic and statistical analysis, which help to paint a picture of the current situation with transgender rights in South Asia.

Research Objectives

- To examine the legal frameworks and the laws available to transgender in Pakistan and India, their development, executions, and effective legal safeguards.
- To evaluate the impact of government policies on the social determinants of health including health care, education employment, and other

basic needs of the trans-gender persons in both countries.

- To investigate social attitudes, cultural prejudices, and obstacles that transgender individuals have to overcome in more specifically South Asian and increasingly rural and conservative Pakistani and Indian contexts.
- To find out how Transgender activism and organizations have contributed to making changes in the social and political liberalism of the two nations with specific reference to the enhancement of the rights of Transgender individuals.
- To offer concrete suggestions about how enforcement of transgender rights might be carried out, as well as acceptance by society and how gaps in policies might be eliminated between Pakistan and India.

Conceptual Framework

As a research focusing on transgender rights in South Asia, particularly Pakistan, and India, it is fundamentally interested in explaining how gender identities historically recognized but socially excluded are formed by the legal, cultural, and social systems in each state. The premise for this analysis is that even though both Pakistan and India have progressive legislation that recognizes the rights of transgender people the cultural pathologies cause barriers to the implementation of those rights. The social constructivist approach presents sexualization factors as more dynamic and contextual than fixed and innate, woman and man differences. With reference to social constructivism in understanding the rights of the transgender, the study examines how socialization, history, and colonialism have produced gender bins that continue to marginalize the rights of the transgender in both nations. The Transgender Persons (Protection of Rights) Act of 2018 in Pakistan and the Transgender Persons (Protection of Rights) Act of 2019 in India are compared against their effectiveness and shortcomings, and how the implementation of laws affects its subjects, especially in rural/urban settings.

Theoretical Framework

This research will be guided by theories that explore the construction of gender, the influence of social norms on identity, and the impact of structural systems on marginalized groups. These theories offer a framework for analyzing transgender rights which explain how these rights are discursively, culturally, socially and politically are constructed in Pakistan and India. Analyzing the experience of Transgenders and the difficulties they have to face in Pakistan and India, the three major theories which have been chosen are Social Constructivism, Queer Theory, and Intersectionality.

Social constructivism asserts that gender is not a product of biology but a creation of culture, in that gender is a social construct. From this theory, gender, therefore, is considered indiscriminate and diverse depending on the type of society and time we are in. This theory is useful for understanding the status of transgender issues in South Asia because it shows how the colonial gender binaries inculcated and reinforced by religion and culture impacted the minority negatively in Pakistan and India. As such, social constructivism helps to understand the manner in which discursive structures of society influence the rights, identity, and experience of the transgender populations as well as the legal acknowledgment of such in terms of the status of their rights.

Queer theory challenges gender and sexual systems by invoking the binary thinking male/female and heterosexual/homosexual. This theory is especially helpful in analyzing the hardships faced by the transgender community because it embraces the topic of identity and disapproves of following the norms of gender. Queer theory is useful in making sense of the fact that most transgenders in Pakistan and India are compelled to operate within unyielding social structures of marginalization that require them to conform to a certain type of gender. When using queer theory within this research, it is possible to scrutinize the discriminative processes of South Asia, which marginalize individuals with non-binary gender, and consider how the oppressive norms affect their daily existence as well as their legal rights as members of society.

Intersectionality is a concept formulated and used in endeavoring to explain how two or more sociological categories such as gender, ethnic origin, religion, and class work together to provide a different experience of oppression or advantage. This theory is crucial for framing the rights of transgender people in South Asia as the intersections of the oppression that transgender people experience depend on their class, religion, and geography. Intersectionality helps to elucidate how Trans-inclusive policies in Pakistan and India may be discriminated against differently based on social factors including caste, class, or religious group. For instance, many transgender-identifying people from less privileged communities can hardly exercise their rights to healthcare, education, and employment, even when the laws are somewhat favorable.

Literature Review

In the article "Gender Identity and the Issues of Acceptance in Pakistani Community" by Muhammad Umair Ali he explores the obstacles encountered by the third gender in Pakistani society, noting a lack of emphasis on their rights despite substantial debate on gender equality, which mostly targets women's issues. Cultural conventions, societal values, and religious beliefs in Pakistan give little recognition or approval to the third gender, resulting in widespread familial rejection and societal discrimination. State actors and government entities have failed to emphasize the inclusion of the third gender, leaving them excluded from critical services such as employment, education, healthcare, and legal identity. They frequently experience homelessness and are forced into sex work, which exposes them to serious health hazards. According to social constructivism theory, societal approval and strong social interactions can help people achieve higher economic and social status (Ali, [2020](#)).

In the article "Minorities and Political Rights: An Analytical Study of ICCPR and Islamic Doctrine" by "Tooba Ahmad, Dr. Ghulam Mustafa, and Dr. Anwar Ali, the author will seek to explain how human rights have developed and begin with the basic rights to live, be free and own property to the different groups of rights that comprise of civil and political rights, social and economic rights, rights to religion and culture.

This article particularly analyses political rights a priori with reference to their Western human rights frameworks as well as the Islamic viewpoint on political rights more centrally with regard to the political rights of minorities (Ahmad, Mustafa, & Ali, [2022](#)).

In his book "Gender, Sexuality, Decolonization" by Sara Shroff, she focuses the policy on the politics of legal recognition and new language gestures that question our assumptions about humanity. Over the last decade, several terms have emerged as legal names for Pakistan's non-normative gender, sex, and sexualities including Unix and eunuch, as well as the term she male, a recent return to the more respectable Urdu term Khawaja Sira and the adoption of the English term Transgender. The author examines Transgender temporality, social forms, complex genealogies, uneven inheritances, and political uses through a reading of these crisscrossing concepts, which span legislative discourses, activist deployments, and community emotive registers (Shroff, [2020](#)).

In his book "Transgenders in India An Introduction" by Veerendra Mishra, the author focuses on the challenges and difficulties that transgenders face in Indian society and lays down an in-depth understanding of their issues by analysis of their representation in Hindu culture. In following this representation, the book would endeavor to assess how the position of transgender is changing in Indian society. It provides information on top issues like 'coming out' and 'transitioning,' which define the lives of transgenders. Furthermore, the book analyses how other factors such as race, ethnicity, sexual orientation, class, religion, and ability affect the lives of transgenders meaning their gender identities move beyond the binaries of male/female. This book also aims to provide the necessary corrections to the distorted image of the transgender community and minimize the prejudice and discrimination they experience. It provides essential knowledge on how Transgender patients are being marginalized and looks at the causes of this marginalization. It does not explain how contemporary legal systems or recent governmental policies have affected the rights of

transgenders and their real employment (Mishra, [2023](#)).

In his article "Legal Rights of Transgenders in Pakistan: Theory and Practice (Case Study of Faisalabad Division)" by Muhammad Arslan, the author emphasizes the rights of persons in Pakistan belonging to the transgender population, spotlighting the practices. As Islam addresses that everything is low and everyone should be given equal rights, the transgender people of Pakistan are not even acknowledged either by the government or by society. The difficulties of the Transgender people in Pakistan are described in the paper based on the following areas of concern. Lastly, in light of the collected primary data, this research is able to conclude that the government has not adequately enforced laws meant to protect the rights of the transgender population. The author also calls for education, health care, and future employment for the Tomboys and transvestites in the country (Arslan, [2018](#)).

In the article "Navigating Shadows: The Impact of Social Stigma on the Mental Health of the Transgender Community in South Asia" by Danish Suleman, Aisha Kashif, Seema Gul, Suriya Hamid, and Asma Yunus, they emphasize social factors affecting mental health by exploring how and to what extent transgender people in South Asia, especially Lahore and Delhi, are marginalized or stigmatized. Unlike many of the studies that only improve on working wage, this article also informs people about the paradoxical experiences of transgender individuals those despite facing discrimination, demonstrate resilience and strength. Transgender people need change across societies and policies recommending necessary environments for them, policy makers should encourage policies that recognize the realities of transgenders. Given the above findings, it will be useful for mental health practitioners, mental health health-care system developers, legal professionals as well as human rights activists who strive to better the conditions of transgender people's lives in these areas, providing more effective psychiatric care and social justice for members of the Trans community. However this article focuses on the that was collected from only two cities, Lahore and Delhi, although the

region presents a spectrum of experiences Therefore, the exploratory context of the study is pending certain generalizability to the wider region of South Asia. Further studies that include other provinces of Pakistan, other regions of India, and other urban areas may help to give a better understanding of the regional factors affecting the stigma and mental health of transgenders (Suleman, Kashif, Gul, Hamid, & Yunus, [n.d.](#)).

In the article "Law, gender identity, and the Uses of Human Rights: The Paradox of Recognition in South Asia" by Dipika Jaina and Debanuj DasGuptab, the authors aim to analyze the legal and social processes of constructing gender identities in South Asia, a region where the variety of gendered practices becomes a result of religious, linguistic, and cultural diversities. Transgender activists have successfully employed approaches that seek to frame the issue as a human rights question to ensure these literary classified identities are given legal status through national courts. However, since governments and judiciaries confined all these different gender identities under the transgender umbrella it has brought challenges to allow for legal recognition and non-recognition has provided pathways. The article demonstrates how the principles of international human rights law have been taken up in national courts and have afforded and also not afforded transgender rights. The authors maintain that, although the use of international human rights laws has led to some national-level legal gains, the outcome usually entails somewhat less than equal citizenship rights for transgender persons. However, this article addresses courts and international human rights frameworks, and only in passing grassroots activism in different South Asian countries does it offer limited not rich information about grassroots activism of different South Asian countries (Jaina & DasGuptab, [2021](#)).

Legal Protections of Transgender Rights in Pakistan and India:

The Legal Framework of Transgender Rights in Pakistan

All humans are born equal and basic rights are the same for everyone. When it comes to fundamental

rights, these are the rights that are defined in the constitution of the state and the state is responsible for providing these rights to every citizen equally. Our society prefers to accommodate only two genders. Many people in the society do not accept gender identities except from male and female. Transgender people have long sought to be recognized as a separate gender. Transgender people have fought social, political, and legal fights for recognition as a distinct gender in society. Transgender people are among the most marginalized groups in society. Neither the legislation nor society has had a soft spot for them. Ironically, the third gender is denied recognition and rights in developing countries. Transgender individuals have faced the issues of discrimination, sexual harassment, and social acceptance for many years. We analyze the different laws that provide legal guarantees to transgender people. Pakistan's legal framework for transgender rights has undergone significant advancements in recent years but still faces challenges and gaps.

Transgender rights and the constitution of Pakistan

Transgender people have all the rights that are entitled to in the constitution of Pakistan. The Chapter of Fundamental Rights provided the legal recognition of transgender rights. The Constitution of Pakistan provides security to every person, article 9 states that, "No person shall be deprived of life or liberty saves in accordance with law". Article 14(1) of the constitution provides the protection of human dignity, article 14 states that "The dignity of man and subject to law, the privacy of home, shall be inviolable." Article 25 (1) states that "All citizens are equal before law and are entitled to equal protection of law." This article provides the protection before law to all citizens including the transgender people. Article 25(2) states "There shall be no discrimination on the basis of sex." This article prevents transgender people from all forms of discrimination (The Constitution of Islamic Republic of Pakistan, [1973](#)).

Supreme Court's Series of Ruling

In a historic decision in 2009, Pakistan's Supreme

Court acknowledged the rights of transgender people and instructed the government to take steps to preserve their rights and ensure equal treatment under the law. The Supreme Court, for the Social Justice of the transgender, was acting proactively through *Suo Moto Contempt on the Grounds of Prejudice and Violence against the transgender People*. This forms the basis of why many lobby for laws that will seek to protect the rights of Transgender people such rape and Discrimination laws, education bills that address access to education by transgender, health bills regarding health services to Transgender and employment, and equal opportunity legislation for Transgender. The verdict pointed out transgender advocated for societal and new economic marginalization of the people and called for measures to take place (Islam, [n.d.](#)).

The case of transgender in Pakistan was reported to the international human rights organization concerning acts of discrimination, violence, and social exclusion of transgender individuals in Pakistan which led to the 2009 Supreme Court decision in the country. Transgender persons in Pakistan face systemic exclusion as a people in nearly all areas; in school, at work, when seeking medical attention, and in the search for housing. Taking *Suo moto* action means the court has initiated the case on its own with no direction from any other source due to the existing hardship of the Transgender community, the Supreme Court of Pakistan passed the following directions: The court further noted the legal and social barriers that the legally recognized transgender persons face as they continue to be denied the realization of rights. The case enabled the Supreme Court to understand the current state of the process of protecting the rights of transgender people in relation to the Pakistani state to investigate the intensity of discriminated and marginalized aspects of the existence and identify the constitutional obligations of the government to protect the rights of transgender people.

In the decision from the Supreme Court of Pakistan on November 4, 2009, the government was ordered to create legislation of nondiscrimination for all forms of government against Transgender. The

clarification made in the Second Order of the Supreme Court on November 20, 2009, was that the rejection of a transsexual person for any reason does not exclude him/her from the right to family inheritance. Transgenders were given legal rights to enjoy their civil liberty on 11 October by the Supreme Court, the court ordered NADRA to issue passports and ID cards with transgenders' pictures.

Consequences of Supreme Court ruling

After the Supreme Court ruling in 2009, NADRA incorporated three categories of transgender people "male transgender, female transgender, and unisex gender" (Islam). The Supreme Court advised that NADRA provide medical testing for those claiming to be transgender to validate their status. The verdict was appealed in 2011, and there were protests against it. India Rana, President of the Gender Interactive Alliance (GIA), declared that no testing was required for males and females, as their word was sufficient. Why isn't our word enough? The verdict was controversial because it discriminated based on gender, which violates the right to equality guaranteed by the Constitution. The subsequent Supreme Court orders did not reference the testing need, resulting in a diffused situation (Islam).

Transgender Person Act, 2018

On May 8, 2018, the National Assembly of Pakistan adopted the Transgender Persons Act 2018 (Pakistan, 2018). The Act legally recognizes transgender people and forbids discrimination and harassment. It also placed obligations on the government to provide for the well-being of the community. However, subsequent challenges to the Act, including proposed modifications and a Federal Shariat Court decision, have raised concerns. The court's decision to invalidate provisions of the Act based on Islamic principles has provoked outrage and jeopardized the rights and protections of transgender and gender-diverse people in Pakistan. The Act's effectiveness has been questioned due to the lack of sanctions and enforcement measures, which hinder substantive equality and protection of transgender people.

Background of Act

In 2017, Senator Babar Awan introduced the Transgender Persons (Protection of Rights) Bill in Parliament, nearly eight years after the original verdict (Jurists, 2020). The tabling of the bill initiated a procedure that included various actors collaborating and competing to pass the bill. Khawaja sira and transgender activists, UN agencies (e.g. UNDP, NCHR, non-governmental organizations (NGOs), parliamentarians from various parties, feminist groups, and civil society allies collaborated on this issue because like other marginalized communities they have facing discrimination for many years. After nearly a year of drafting legislation to meet the Khawaja sira community's concerns, the bill was enacted in May 2018.

Overview of Act

Key provisions of the Transgender Persons (Protection of Rights) Act, 2018

1. Definition of a transgender person
2. Recognition of gender identity
3. Protection against discrimination
4. Right to education, employment, healthcare, and inheritance
5. Establishment of safe houses and rehabilitation centers
6. Offenses and penalties

The Legal Framework of Transgender Rights in India

India has adopted proactive policies for equal rights for the transgender community. The law now provides the rights to human dignity, identity, and fundamental rights for transgender persons and extends the protection of gender identity. This change stems from the recognition of the rights of women and other marginalized groups in accessing services such as education, employment, and health, and the pursuit of the creation of a society that embraces the diversity of gender and where women are free. However, the problem persists today, manifesting itself in stigmatization of affected groups, as well as poor policy enforcement, and so it remains

clear that it is a process rather than an accomplishment.

While in the past Indian society did not pay much attention to the issues of the third gender, especially to their rights and their work, the situation has changed for the better in recent years, and the country has finally begun to address these problems and try to create a legal framework that would help both ensure the rights and protect the identities of the transsexuals. Considering the past, the lives of such people were stigmatized, and discriminated against, and they were deprived of education, work, medical services, and acceptance. The changing state of the law in India aims for this to change with consequent laws stating that transgenders too have the right to choose how they would want to live their lives and be treated. This framework built on the principles of equality and non-discrimination allows transgender people as equal citizens like all other citizens of the country where needed and also addresses the necessary social welfare provision for the particularities and rights of the gender identity. Nevertheless, these changes are not ideal and leave gaps in societal acceptance, policy implementation, and awareness, underscoring the need for ongoing advocacy and reform. Through legal recognition and social support for transgender persons, India may well await a social change in the foreseeable future embracing, not constraining, gender diversity.

Transgender Rights and the Constitution of India

At the time of gaining independence, the Indian Constitution was silent on the question of the recognition of transgender individuals. However, various provisions have been held to extend to them. There is endorsement for sexual minorities especially the transgender population to live their lives without discrimination and to freely articulate their gender identity from key constitutional provisions like Article 14 which gives the Right to Equality. It is stated that "No one can deny any "person" equality before the law or equal protection of the law. Using the term "person" shows that no discrimination is done on the basis of sex or gender identity". Article 15 which Prohibits the Discrimination. It is stated that

"Prohibits any sort of discrimination on the basis of race, religion, caste or sex or any of them. This implies that discrimination or ill-treatment of Transgender Persons infringes their basic fundamental right". Article 19 gives Freedom of speech. It is stated that "This right grants every citizen the freedom of speech and expression. This includes the freedom to express your gender identity publicly". Article 21 gives the Right to life and personal liberty. It is stated that "the protection of life and personal liberty states that no person shall be deprived of his life and personal liberty except according to the procedure of law. This right states that every individual including a transgender person has the right to life and personal liberty. The transgender person being a citizen of India should have the full right to protect their life and personal liberty" (Nyaaya).

National Legal Services Authority (NALSA) judgment 2014

India has traditionally been insensitive to gender and this realization assumes not only a social perspective but also legal. Currently, the subject is protected only inadequately, and it is necessary to pass relevant legislation and enactments that guarantee the rights of such persons who cannot be attributed to either male or female. The experiences of people generally regarded as being 'transgender' have been one of suffering, adversity, and oppression. Due to their non-conformity to societal norms, transgender people for example have been excluded from the law, and the physical and mental violence against them is often rampant. They are seen to be socially, religiously, and politically expelled from society, which frowns at everything queer.

Transgender persons in India continue to be entitled to protection of their rights under Part III of the Constitution of India since there are no specific laws enacted to deal with them. But on the international level, they do have their rights enshrouded in many legal papers such as the International Covenant on Civil and Political Rights (ICCPR), Universal Declaration of Human Rights (UDHR), and Convention against Torture (CAT).

Background

The National Legal Services Authority (NALSA) moved a constitutional petition in the Supreme Court of India for the Protection of the rights of Transgender persons. This specific petition became a landmark in the fight for transgender people's rights for gender justice in legal terms with an effort to attain legal redress for persons who do not consider themselves as strictly male or female.

Subsequently, another petition was filed by Poojya Mata Nasib Kaur Ji Women Welfare Society (BYJU, 2024). This organization advocating for the rights of the oppressed and marginalized Transgender community (more or less referred to as the transgender population of India) also filed a separate appeal to the legal proceedings. They argue in their petition that the lives of transgender persons remain a struggle when it comes to the enjoyment of basic rights and meaningful acceptance as part of society and thus appealing for enhanced legal reform to support the struggling community and give it the recognition it deserves (BYJU's, 2024).

NALSA Judgment

The Supreme Court passed the verdict on April 15, 2014, through the Judgment delivered by Arimendu K. Sikri J. officially along with Justice K.S. Radhakrishnan J. though the latter didn't present any observations or comments (BYJU's, 2024).

- The Court established a clear distinction between the terms 'biological sex' and 'psychological sex' preferring the latter and affirming that it is by one's identity that one is made male or female.
- That rejects the basis for gender identity on the biological sex arguably in favor of psychological gender identity.
- The Court also decided that international human rights, as stipulated in the Yogyakarta Principles, should be recognized as long as they do not offend the Indian Constitution.
- It determined that the Indian Constitution covers the rights of transgender people and as

such they have the same rights as every other person.

- Consequently, in every respect, the Court stated that Hijra and Eunuch should be legally classified as the third sex.
- The Court directed both State and Central governments to legally empower Transgender persons and provide them their rights in education, health care, and employment. It also outlined specific measures it had suggested such as the construction of sex-separate public convenience, HIV zero-suspect center, and adequate medical attention for transgenders.

Consequences of Judgment

The judgment in the NALSA Case of recognition of the rights of transgender persons paved the way for change in the legal position of transgenders in India. Holding that the transgenders are third gender, the Supreme Court held that they enjoyed all the basic rights which are available to any citizen as enshrined in the Constitution. This judgment was very analogous to equality, personal liberty, and dignity of the section of the people who identified as transgender and they have the right to decide their gender as per their choice without any hindrance of legal as well as social aspects. Also, it leads to the rights of affirmative action policies in order to make the government offer equal services such as education, health, and jobs to the transgender. The decision also emphasized that the disabled needed access to public facilities and health care by use of barrier-free access and facilities and disabled-friendly amenities accessible by the disabled. It took these sexual minorities a quarter of a century to achieve what they pursued when the historic judgment of NALSA came into force but it is still in the process of how society and government institutions largely understand and accept it.

Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Bill, 2019 was introduced in Lok Sabha on July 19, 2019,

by the Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot (Research, 2019).

Overview of Act

Key provisions of the Transgender Persons (Protection of Rights) Act, 2018

1. Definition of a transgender person
2. Prohibition of discrimination
3. Right to residence
4. Certificate of identity
5. Change of gender

Conclusion

In conclusion, both Pakistan and India provide legal frameworks to transgender persons and recognize their identity. India's legal reforms were prompted by the 2014 NALSA. In the case of the National Legal Services Authority of India v Union of India Supreme Court judgment has acknowledged the right to self-perceived gender and enacted the Transgender Persons (Protection of Rights) Act in 2019. This

legislation gives some degree of protection against discrimination and the general ethos is one of mainstream integration but it has been criticized for its procedures and the message it gives to the transgender community which it apparently seeks to serve. On the other hand, the Pakistan Transgender Persons (Protection of Rights) Act 2018 is regarded as liberal in the South Asian context. It guarantees not only the right to be freely eaten as one wishes to be identified but also provides protection from discrimination, providing distinct rights in some fields such as education, work, health, etc. But, unlike the above achievements, the minority faced a major issue of implementation in both countries due to social taboos, unawareness about the availability of such resources, and shortage of adequate resources to go deep into the community and serve as a support system for those who needed it. To ensure that transgender rights are truly protected in South Asia it remains crucial that a detailed and linked model covers these gaps and that the work and development of the law is sustained well into the future.

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