



**RESEARCH PAPER**

**An Analysis of Pakistan Transgender Persons Act 2018: A Sociological Perspective**

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**ABSTRACT**

This literature review provides an overview of the existing research on the Act from a sociological perspective, highlighting the cultural and social factors that have shaped its development and impact. The Transgender Persons (Protection of Rights) Act 2018 in Pakistan represents a significant step towards promoting the rights of transgender individuals. Though, has been criticized by a major chunk of legislators and activists. The research design was qualitative the data was collected through secondary sources. The Act represents a significant achievement in promoting social justice and ensuring equal rights for all individuals, there are also challenges and limitations to its implementation, particularly in terms of public awareness and understanding of transgender issues, and the need for greater resources and support for its effective implementation. Further research is needed to explore these issues and identify strategies for promoting the social inclusion of transgender individuals in Pakistan.

**KEYWORDS** Gender Identity, Self-Perception, Transgender Act

**Introduction**

The transgender community in Pakistan has long been marginalized and discriminated against, facing significant challenges in accessing basic rights such as education, healthcare, and employment. The lack of legal recognition and protection has contributed to their exclusion from mainstream society and increased vulnerability to violence and abuse.

In response to these challenges, a number of advocacy groups, NGOs, and human rights organizations have been working to promote transgender rights and increase public awareness of their issues. The Transgender Persons Act 2018 represents a significant achievement in this regard, providing legal recognition and protection to transgender individuals and establishing mechanisms for addressing their grievances.

The Transgender Persons (Protection of Rights) Act 2018 is a significant step towards promoting the rights of transgender individuals in Pakistan. The legislation, which recognizes the third gender as a distinct and equal identity, aims to provide legal protection and ensure the social inclusion of transgender persons. This paper aims to analyze the Transgender Persons Act 2018 from a sociological perspective, exploring the social and cultural factors that have shaped its development and impact.

Throughout history, each culture has had its own perspective on gender diversity at various points in time. Transgender people are a diverse group that includes Trans, intersex, and eunuchs. For over 2000 years, transgender people have been a part of South Asian culture. Transgender people were considered an important or integral part of society in South Asia prior to the arrival of British colonists. They were entitled to a plethora of opportunities and rewards. The Hijra's spiritual discernment system was seen as a threat or

a parallel powerful political force capable of challenging or deteriorating British colonial rule as well as challenging the English legal system based on family, heterosexuality, and reproductive sexuality, so it was the British Empire that specifically brought a narrow view as a part of the divide and rule strategy. To counteract this issue, a special anti-hijra law known as the Criminal Act 1871 was enacted in order to preserve British colonial rule. The criminal act of 1871 classified the transgender community as a sodomites and put them as a whole in the criminal tribes (Fazi, 2020).

Following partition, In Pakistan, the law was repealed in 1949. Regrettably, not much was done up until 2009, when the Supreme Court ruled that provincial governments must protect the rights of transgender people. In 2012 transgender community was provided with the same rights as the other cisgender people out there in the country which includes the right to vote or inheritance. In 2016, another significant effort was made by Muslim clerics which declared that making fun of, teasing or thinking the transgender community as lesser than is totally against the sharia. In 2017, they also got the right to register themselves through NADRA. Despite significant government or legislative efforts, the majority of Tran's people are disowned by their families. They are denied the opportunity to study or work, and as a result, 42% of the community is illiterate or unemployed. According to a 2016 survey, 51% of transgender people make money by dancing at weddings or births, 15% by sex work, and 12% by begging (Karijo, 2021). The European Union-funded Trans Murder Monitoring Project in Pakistan also found that 10 transgender people are killed there on average every year. (Rehman, 2022). The Transgender Persons Act (2018) was passed with the intention of defending the rights of transgender people and fostering their integration into society.

In order to address all these issues in 2018, Pakistan introduced the Transgender Persons Act in Parliament in order to provide legal equality and protection to the transgender community. The Transgender Persons Act formally recognizes transgender persons and guarantees them the same rights as cisgender people. Amnesty International praised the Act for its subtlety and clarity. Four years later, several right-wing activists have come forward with this claim that this act is nothing but mere an attempt to legitimize homosexuality in Pakistan, which is strictly forbidden in Islam (Khan, 2022).

The Federal Shariat Court was petitioned by multiple individuals aggrieved with the Transgender Persons Act 2018. The Federal Shariat court's jurisdiction is mentioned in Article 203D of the Pakistani constitution this declares that the FSC has the power to investigate or challenge any law or legal provision that contravenes Islamic teachings or principles. According to this petition, this statute has made a number of grave faults, including

1. The definition of the key term transgender person includes Gays and Lesbians along with real transgender.
2. There is no medical board authorization present or required.
3. This act has given every Pakistani citizen the right to be recognized as transgender (Redding, 2022).

However, numerous transgender activists argued that the 2018 statute was intended to protect the rights of their community. They contend that the act gives transgender people the right to take legal action against those who force them to begging on the streets. They further added that misleading propaganda has been spread against the Transgender Protection Act, and that labeling individuals advocating for equal rights for transgender persons as homosexuals is destructive to their cause (Mehmood, 2022). They further refute the idea that these parties' outcry four years later is solely motivated by a desire to use the matter in their 2023 election campaigns. (Veengas, 2022). Trans activists

urges people to accept the law in order to end oppressive colonial laws that regard transgender people as deviants or imposters and argued that there can be no other logical explanation for bringing up all of this at such a crucial moment as Pakistan attempts to recover from the flood that is considered to be the worst in history (Omer, 2022).

### **Literature Review**

David Valentine places the introduction of the term "transgender" into American political and social discourse in the 1990s, making it a relatively new invention in the English language. (Bacha & Hazrat, 2013). Its spread to Pakistan most likely even more recent. However, it is noteworthy that the 2018 Act utilizes the phrase in its name, demonstrating that it is now largely accepted in the context of modern Pakistan whether in Urdu, English, or other Pakistani languages (Bello & Hassan, 2015).

The transgender population faces a multitude of associated issues in Pakistan, including a higher risk of HIV/AIDS due to engaging in unprotected sex work. This puts them at a disturbingly high risk of contracting the virus, highlighting the importance of good healthcare. Additionally, social isolation, prejudice, and violence lead to a higher proportion of mental health disorders within the community. As a result, many individuals within the community report experiencing symptoms of depression, anxiety, and other mental health conditions (Khan, 2022). Beyond health considerations, transgender people face a variety of social challenges. They frequently experience prejudice, a lack of access to healthcare and education, and difficulty finding work. (Agarwal & Kumar, 2022).

In response to these challenges faced by transgender individuals in Pakistan, the Transgender Persons Act was passed in 2018. Pakistan Transgender Persons Act 2018 is a law in Pakistan that is designed to promote equal rights and legal recognition for transgender individuals. The law seeks to help address some of the challenges faced by transgender people in the country, such as difficulties obtaining identification documentation and facing discrimination in various settings. The Act allows transgender individuals to change their gender in the National Database & Registration Authority (NADRA) and prohibits harassment and discrimination against them in various contexts (Scott, 2022).

The Act's definition of "transgender" includes non-cisgender identifications (such as khwaja sira), which have a longer and more "indigenous" history in Pakistan in addition to this modern term and identification. The state or identity of being intersex is also covered in this legal interpretation of "transgender." In fact, the phrase "transgender person" is defined in Chapter I of the Act, which contains definitions of important statutory terms: Any individual who is intersex (khusra), has congenital ambiguities, or a combination of male and female genital features; (ii) assigned male at birth but has undergone genital excision or castration; or (iii) a transgender man, transgender woman, KhawajaSira, or any other individual whose gender identity or gender expression differs from social norms and cultural expectations based 2(n); original emphasis (Transgender Persons Act, 2018).

The Transgender Act has been criticized by some who argue that it conflicts with Sharia law. The Act allows individuals to change their gender without facing obstacles, and so far, thousands of individuals have made use of this provision. However, some individuals argue that that it is part of a Western agenda to undermine traditional family structures, and that it is a threat to the social fabric of their communities (Desk, 2022).

Many Trans activists argued that right-wing parties misunderstood the meaning of the term transgender as it is used in legislation, and are using it to advance their political goals by falsely linking it with homosexuality. To better understand the relationship between gender identity, gender expression, and the gender a person is assigned at birth, we can look at the example of Iran, which is a Muslim country that provides insight into how

these issues are viewed from an Islamic standpoint. In Iran, homosexuality is considered a criminal offense and can result in severe punishment such as lashings or even a death sentence. However, Iran is also notable for granting legal recognition and acknowledgement of gender identity to its transgender citizens. Following the Islamic Revolution in Iran, a religious decision or fatwa has been issued recognizing hormone replacement therapy and gender-confirmation surgery as permissible procedures in line with Islamic beliefs (Fatima, 2022).

A religious constitutional council has stated that the law protecting transindividuals does not comply with Shariah, implying uncertainty regarding the future of the law. The council further added that various aspects of the law contradict Islamic principles and suggested that the government needs to form a committee comprising members of the council, religious scholars, and experts in law and medicine to assess the legislation (Chudy, 2022).

### **An overview of the Pakistan Transgender Persons Act 2018**

The Pakistan Transgender Person Act 2018 encompasses various provisions which are as under:

#### **Key Statutory Terms**

The definitions of the important terminology, such as transgender person, gender identity, and gender expression, are given in the first chapter of this act.

#### **Legal Recognition of Gender Identity**

The second chapter enables transgender people who are 18 years old or above the right to register their self-perceived gender identity with the NADRA on various identification documents such as national identity cards, child registration certificates, driving licenses, and passports.

#### **Protection against Discrimination**

The chapter 3 strictly forbids the discrimination against transgender individuals. No person is allowed to treat a transgender person unfairly in educational institutions or employment, including trade or occupation. Transgender individuals should have access to healthcare services without any discrimination or unfair treatment. Denial of goods, accommodation, services, facilities, benefits, privileges or opportunities that are dedicated to the use of the general public or are customarily available to the public is also not allowed. They have the right to safe travel and the use of public facilities of transportation. Transgender individuals should not be denied the right to reside, purchase or occupy any movable or immovable property, or the opportunity to hold public or private office. They should have equal access to government or private establishments, organizations, institutions, departments, and centers where they may be employed.

#### **Protection against Harassment**

This Act prohibits any form of harassment of transgender individuals, whether it occurs inside or outside of their homes, based on their gender identity, gender expression, or sex.

## **Obligations of the Government**

Chapter 4 imposes specific obligations and duties on the state, including the establishment of special detention facilities or prisons and the provision of protection centers or homes for the transgender population. This chapter further says that there is this requirement of building unique vocational training programs to give support the livelihood for transgender community along with encouraging transgender community to create small business through different schemes or by awarding them easy loans.

## **Right to Inherit**

This law makes it clear that transgender individuals should not face discrimination when it comes to inheriting property. They have the right to receive their rightful share of inheritance as determined by the law of inheritance in Pakistan. The gender declared on their CNIC (national identity card) will be used to determine their share of inheritance.

## **Right to Education**

This law guarantees that transgender individuals cannot be discriminated against when seeking admission to any public or private educational institution. As long as they meet the required qualifications, they have the same right as any other individual to apply and be considered for admission.

## **Right to Employment**

As per Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973, the government is obligated to ensure that transgender individuals have the right to enter into any lawful profession, occupation, trade or business.

## **Right to Vote**

This law guarantees that no transgender person can be denied their right to vote in national, provincial or local government elections. All transgender individuals who are eligible to vote have the same right as any other citizen to participate in the democratic process and exercise their right to vote. The government must ensure that polling stations are accessible and safe for transgender individuals to vote without facing discrimination or harassment.

## **Right to Health Care Services**

Transgender individuals must be provided with a safe and enabling environment in hospitals and other healthcare institutions and centers to ensure that they have access to appropriate healthcare services.

## **Right to hold Public Office**

Transgender individuals should not face discrimination based on their sex, gender identity, and/or gender expression if they choose to run for public office.

## **Right to Assemble**

Transgender individuals should have the right to freedom of assembly, as guaranteed by Article 16 of the Constitution of the Islamic Republic of Pakistan, 1973. Furthermore, the government should take necessary measures to ensure the safety of transgender individuals during their assembly.

### **Right to Property**

No Transgender person shall face discrimination in terms of renting, subletting, or tenancy based on their gender identity, gender expression, or sex, as per the provisions of the Pakistan Transgender Person Act 2018.

### **Right to Public Places**

Preventing Transgender Persons from accessing public facilities and places available to the general public shall be deemed unlawful.

### **Guarantee of Fundamental Rights**

Apart from the rights specified in this chapter, every Transgender Person shall have full and equal access to all the Fundamental Rights enshrined in Chapter I, Part II of the Constitution of the Islamic Republic of Pakistan, 1973, without any discrimination or prejudice.

### **Offences and Penalties**

Using or compelling a transgender person for begging is prohibited and punishable under this Act. The punishment may include imprisonment for up to six months, a fine of up to fifty thousand rupees, or both.

### **Right to move a Complaint**

The Federal Ombudsperson, the National Commission for the Status of Women, and the National Commission for Human Rights can all receive complaints from transgender people who have been wronged under Chapter 6.

### **Overriding Effect**

At last, Chapter 7 comprises formal or general provisions, including a provision stating that the Act of 2018 should predominate over all other laws now in force and the drafting of regulations to manage the Act.

### **Analysis of Self-Perceived Gender Identity**

According to Section 2(f) of the Act, "gender identity" means as follows:

"Someone whose gender identity or gender expression, depending on the sex they were assigned at birth, departs from the social standards and cultural expectations"

This term makes it very obvious that the act gives everyone free access to choose their own identity regardless of their biological make-up. It permits the self-perceived gender identity to affect a person's innermost feelings and sense of self. (Rana & Siddique, 2022) Chapter II's "Recognition of Identification of Transgender Person" provisions imply that a person's gender identity may not only differ from how others perceive and anticipate them to be, but also that the person's self-perceived gender is what counts legally. In other words, this section of the Act seems to make it plain that gender is considered to be "self-perceived gender" under the law. (Redding, 2022). Legal Gender Recognition (LGR) is the process through which a person's gender identity is acknowledged in official documents, such as birth certificates and driver's licences, as well as gender markers and names. One of the key objectives of a law protecting the rights of transgender people is LGR without medical requirements, such as gender confirmation surgery, forced sterilization, or hormone treatment. Moreover, LGR procedures must be "quick, transparent, and accessible"

and adequately protect the rights of transgender individuals, particularly their right to self-determination. The Transgender People (Protection of Rights) Act corresponds in many ways with international standards and recommended procedures for the official recognition of preferred gender identity. (Goldman, 2020).

Gender dysphoria is a psychological condition where an individual's sense of gender identity is incongruent with their biological sex. It was previously classified as a mental disorder, but recent academic literature suggests otherwise, as being transgender is no longer considered a mental illness. Since there are no physical symptoms of gender dysphoria, it does not necessarily indicate any physical abnormalities or defects. This lack of clear physical indicators is one reason why the topic remains a subject of debate and controversy. The symptoms of gender dysphoria manifest as feelings and behaviors related to an individual's gender identity and vary by age. For children with gender dysphoria, they may insist that their gender is the opposite of their biological sex. They may refuse to wear clothing associated with their sex and prefer to play with children of the opposite sex. Children with gender dysphoria may also express hope or desire for changes in their genitals (Iftikhar *et al.*, 2021).

Islamic Law also forbids self-perceived gender identification. The scripture makes it quite apparent that such gender modification is prohibited in Islam. Islam has standardized how people perceive themselves. The Islamic standards must be used to determine gender identification. According to Ibn 'Abbas' narration. "The Prophet denounced effeminate males (those men who are in the similitude (adopt the manners of women) and those women who assume the manners of men, and he said, turn them out of your dwellings," From this tradition of the Holy Prophet (PBUH), it is abundantly obvious that doing so is forbidden in Islam and will result in the person's being cursed by the Prophet (PBUH). Islam is a universal religion that has considered every potential result of a legal rule. There will be several psychological, social, and legal concerns when one shifts the identification of one's own identity to his or her own self-perception. (Rana and Siddique, 2022)

The legislation made sure that transgender people received inheritance rights in accordance with inheritance law and gave them inheritance rights based on the gender listed in their CNIC. Because NADRA is required to follow the self-perception of the person himself and not via another means, it has therefore allowed the right to inheritance as per the Transgender's self-perceived gender identity. Islam, on the other hand, has offered a different framework for the inheritance of the transgender Ibn Adi asserts that the Holy Prophet (PBUH) said when asked about the inheritance of the transsexual that it will be determined from the organ he urinates (as recounted by Hazrat Ibn e Abbas, R.A.). This means that if the transgender person urinates like a man, he will receive the portion of a man, and if he urinates like a woman, he will receive the share of a woman. (Hassan, 2022)

Additionally, some religious organizations think that this Act is an attempt to legitimize homosexuality in the nation. Mushtaq Ahmad Khan, a senator for Jamaat-e-Islami (JI), has even challenged the Act before the Federal Shariat Court. Despite criticism of the 2018 Act from religious groups who saw it as an attempt to defend or promote homosexuality, transgender people assert that the Act does not address any type of sex transition or legalize "unnatural" sex. The Act's text, particularly where it states that "a transgender person shall have a right to be recognized as per his or her self-perceived gender identity," has alarmed the religious community. (Khan, 2022)

The Council of Islamic Ideology (CII) declared that the rules made in continuation of the Transgender Act contained various elements and clauses that were incompatible with Shariah and labelled "self-perceived identity" as being un-Islamic. The CII voiced worry over the social and legal issues intersex and transgender people are facing and said it is important to defend these people's fundamental human rights. During a two-day meeting, CII Chairman Dr. Qibla Ayaz told a press conference that the gathering went over the Transgender People

(Rights of Protection) Guidelines in great depth and considered the perspectives of all parties involved. The "self-perceived identity" was deemed un-Islamic by [the CII] after carefully analyzing these regulations. He continued that these regulations featured various articles and clauses that were incompatible with Islam and were constructed as a continuation of the Transgender Act, According to him, the CII reviewed and made certain revisions to the amendment proposals put up by Senators Mohsin Aziz, Mushtaq Ahmed, and Maulana Abdul Ghafoor Haidari during the meeting. (Nasir, 2023)

### **Conclusion**

Article 227 of the Islamic Republic of Pakistan's constitution mandates that all legislation be passed in conformity with Islamic tenets. Islamic edicts do not support the right to inheritance based on one's self-perceived gender identity. Islam prevents people from choosing their gender in line with their inner feelings, despite the Transgender Persons Act 2018 giving person's complete rights to do so. Islam has established rules for how gender identity is seen, leaving no opportunity for the self-perception. Pakistan Transgender Persons Act 2018 is the first of its type and addresses a delicate social issue, thus it will take some time for it to go into force. The study recommended more, in-depth investigation on the Transgender Protection of Rights Act of 2018, which is related to the use of one's own self-perceived gender identity as a tool for making policy. In specific the study recommends that a thorough assessment of one's own self-perception gender identity within the framework of a process, program, or political movement that could demonstrate the effectiveness of a tool being used.



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