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Access to Justice for Transgender People in Pakistan

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ABSTRACT

The ability of transgender people to access justice in Pakistan is a highly significant yet under-researched phenomenon that can be explained by the structural discrimination, legal ambiguities, and social obstacles. Transgender people experience a huge problem in acquiring equal treatment in the criminal justice system even with the constitutional safeguards and historic legal decisions. The major barriers are the societal stigma, harassment of the police, poor legal representation, and absence of gender sensitive judicial procedures. The Transgender Persons (Protection of Rights) Act, 2018, is a positive move, however, the implementation process is uneven, and most transgender people continue to be victims of violence and exclusion. Access to justice is further complicated by cultural and religious norms which will tend to keep up with the marginalization. This paper explores the nexus between law, institutionalized practices and social reasoning in order to find out the obstacle and enabling factors to enhance access to justice. Through the examination of the available laws, case studies, and views of the stakeholders involved, the research demonstrates a very pressing need to reform the policies, conduct awareness programs, and train available capacity to provide fair justice to the transgender communities in Pakistan.

Introduction

The challenge of access to justice by transgender people in Pakistan is a vital yet poorly researched phenomenon due to systemic discrimination, gaps in the law, and cultural obstacles. Although there are constitutional safeguards against discrimination including Article 9 (right to life) and Article 25 (equality before the law), the transgender groups encounter various challenges in achieving justice because of the institutional biases, police misconduct, and societal stigmatization (Nawaz and Safdar, 2023). The Transgender Persons (Protection of Rights) Act of 2018 has been

hailed as an unprecedented step toward legalization, but it failed to be enforced and was still met with violence and violence (Alamgir, 2024). The criminal justice system of Pakistan is fraught with the ethical violations that systematically impact disadvantaged groups, such as transgender individuals through corruption and political influence, among the other aspects of the system (Arslan et al., 2023a).

Transgender rights are even more complicated by the intersection of the Islamic jurisprudence and the laws of the colonial era. Although Islamic concepts of Adl (justice) and Musawat (equality) are theoretically grounded in inclusivity, the conservative interpretations in most cases marginalize transgender individuals (Noor et al., 2024). The attitude of police to the community is often negative, and they are reported to extort, intimidate, and deny people the opportunity to file complaints (Arslan et al., 2023 b). Moreover, they are excluded, and economic barriers and the unawareness of the law worsen the situation with the redress of courts (Arshad et al., 2024).

In this article, the problem and opportunities of availing justice to transgender individuals in Pakistan will be examined based on the legal frameworks, systematic biases, as well as the sociocultural interactions and dynamics. According to its study, transgender people continue to encounter challenges throughout the criminal justice system, and any prejudices and flaws in criminal justice regulations are reinforcing the idea of unequal treatment of transgender individuals (Alamgir, 2024). Constitutional rights and human rights guarantees exist, and in most aspects, they are ineffective in real life because of lingo-ambiguity and socio-legal practices (Malik et al., 2022). Moreover, although transgender rights are legally recognized in Pakistan, the discrepancy between the policy and the realization of these rights remains apparent, which makes the need to make alterations to the constitutional commitments to the international and local human rights requirements undeniable (Nawaz & Safdar, 2023).

Research Justification

The exploration of access to justice among transgender individuals in Pakistan is essential because of the magnitude and the institutionalized difficulties this minority group experiences in the Pakistani legal system. Transgender persons are still subjected to discrimination, violence, and exclusion by justice systems despite constitutional protections and the Transgender Persons (Protection of Rights) Act, 2018, the pioneer and historic law addressing the needs of transgender individuals. These gaps must be filled in through research since widespread stigma, police harassment, and judicial bias are detrimental to the rule of law and the Pakistan government's obligation to international standards of human rights.

Furthermore, the overlapping of the cultural, religious, and legal standards in Pakistan poses particular challenges to transgender people who wish to seek justice. The right's theoretical basis is given by Islamic principles of equity and the 2018 Act, but the implementation of the practical aspect is usually hindered by the prejudice in society and the inefficiencies of the institutions. The work comes at a very opportune time because there is an increasing violence against transgender individuals, with reported incidents of extrajudicial murder and refusal to represent them in court, among others, that need to be addressed by enacting reforms.

Research Objectives

1. To discuss the historical context of access to justice for transgender people in Pakistan.
2. To highlight the theoretical context of access to justice for transgender people in Pakistan.
3. To analyze the laws regarding transgender people in Pakistan.
4. To identify the key challenges regarding access to justice for transgender people in Pakistan.

5. To explore the opportunities for access to justice for transgender people in Pakistan.
6. To propose effective prevention and intervention strategies.

Research Methodology

This study employed a systematic review methodology, with research objectives established accordingly. A comprehensive literature review was conducted (Komba & Lwoga, 2020). Research findings were categorized based on their content (Hiver et al., 2021; Petticrew & Roberts, 2006), and classified information was incorporated into the study by organizing it into headings (Gan et al., 2021; Pawson et al., 2005). The evaluation of classified information and titles formed the basis of the study (Page, 2021; Rahi, 2017), ensuring the integrity of the research subject and its contents (Egger et al., 2022; Victor, 2008). The criteria for selection are listed.

Relevance: Researches that directly addressed the questions posed by this study are included.

Quality: Studies that meet a certain quality threshold (e.g., methodological rigor, bias risk) are included. Most of the research is from Scopus-indexed and Clarivate Analytics journals and reputed publishers.

Recency: Consideration of the publication date to ensure that the review reflects the most current evidence. Most of the studies are from the last three years.

Language: Only studies published in English are included.

Data Completeness: Previous studies must provide sufficient data on outcomes of interest for practical synthesis; this is also ensured in this research.

This study did not use primary data from human participants; therefore, no ethics clearance letter from the ethics committee was required.

Literature Review

The focus of the literature is on the significance of systemic barriers to justice among transgender individuals in Pakistan, around the institutional discrimination and socio-legal exclusion. In Alamgir (2024), it is documented that police and the judiciary system generally show rejection to transgender plaintiffs, and this is justified by the fact that this is deeply ingrained in them and that they have not been trained on gender diversity. Nawaz & Safdar (2023) argue that the enactment of the (Transgender Act, 2018) can be described by the bureaucratic inertia and misinterpretation of the Islamic law because it does not correspond to the desired purpose of the act, i.e., to secure the rights of the transgender population.

Corruption is one of the complicating factors to law enforcement (Arslan et al., 2023) argue that the police shake or rape transgender people and exploit the fact that they are marginalized (Malik et al., 2022) also identify the insufficiency of colonial-era laws, such as the Penal Code of 1860, to stop gender-based violence offenders against transgender people since there is no legal redress to the problem. Such abuses as the use of force and imprisonment are status quo according to human rights reports, and the cases are not frequently prosecuted.

Access to justice is also complicated in terms of cultural and religious explanations. (Noor et al. 2024) explain how the conservative understanding of Islam can be confusing transgender identity and vice, and this is an excuse to discriminate. In contrast, Bano (2024) also mentions as an

example transgender inclusion in Islamic cultures in the past; however, he also supports culturally respectful legal amendments.

Nawaz et al. (2024) mention that it is necessary to promote and implement policies to communities, and (Arshad et al, 2024) propose the legal assistance program, which is grounded on the needs of transgender people. However, there is a paucity of empirical research on effective interventions, thus the need to carry out additional research.

Historical Context of Access to Justice for Transgender People in Pakistan

Colonial and Islamic traditions guide the issue of transgender rights in Pakistan. Since 1947, British law and the Penal Code (1860), which states that same-sex acts were unnatural, have been inherited by the country and did not recognize gender diversity (Malik et al., 2022). Islamic values were accommodated in the 1973 Constitution, but it did not acknowledge transgender persons until the Supreme Court decided in 2009 to grant them their rights (Nawaz & Safdar, 2023).

Transgender Act transformed everything, and legal rights to identity and inheritance were provided in 2018. Its use is, however, not palatable to conservative religions, which find it un-Islamic (Noor et al., 2024). Transgender societies once occupied a very high position at the Mughal courts, yet the moral codes imposed by the colonists undermined the role of the transgender individuals (Bano, 2024). Such factors as political instability and militarization also marginalized transgender people. According to (Arslan et al. 2023b), in such authoritarian regimes, the law frequently works against the police and the courts. This exclusion history and prejudiced actualization demonstrate how the reforms were necessary to make the Islamic ethics and the current human rights norms consistent with each other.

Theoretical Context of Access to Justice for Transgender People in Pakistan

Access to justice is based on legal and philosophical theories that focus on equality, fairness, and the right to be heard. Theories like the theory of justice by John Rawls emphasize the need to have fair access to institutional structures by minorities, including trans people. The Pakistani systemic exclusion and discrimination context offers the backdrop of these theoretical models to reflect on the inability of the justice system to safeguard transgender rights in the country. The principle of substantive equality that extends past formal equality requires that legal frameworks acknowledge and respond to historic injustice and structural inequalities that transgender individuals have to endure.

Feminist legal theory and queer jurisprudence may also provide an insight into the challenge of gender nonconformity to the traditional legal norms. These models support the idea of intersectional justice, as transgender people tend to experience multiple marginalization due to gender, social status, and social identity. In addition, the dignity and protection of all human beings, including Khawaja siras (transgender persons), are upheld by Islamic jurisprudence (fiqh), when interpreted progressively, providing a culturally grounded basis of inclusion. It is crucial to the redesigning of the legal and institutional structures in Pakistan to make the country inclusive, rights-oriented, and responsive to the needs of the transgender community, where justice is not just present, but accessible to everyone.

Laws Regarding Transgender People in Pakistan

The legislative system of transgender rights in Pakistan is in the process of transformation that has been significantly modified during recent years, yet certain gaps in execution persist. Significant statutes and case rulings are:

Pakistan Penal Code (PPC) Amendments: 377 (unnatural offenses) and 509 (word/gesture intended to insult modesty) have been construed to protect transgender individuals against harassment, but have not been consistently upheld.

Police Order, 2002: Despite the fact that the law does not direct the transgender group per se, the provisions of this law, which outlaw police misconduct, theoretically protect transgender individuals against being harassed during arrests or complaints.

Provincial Laws: Sindh has the Transgender Protection Act of 2018, and Khyber Pakhtunkhwa has the Transgender Persons Protection Rules, which provide provincial frameworks, but are not always applied in provincial jurisdictions.

Supreme Court Decisions: A 2009 case Supreme Court decision recognized the right of transgender citizens to be given identity and inheritance documents and formed the foundation of further legislation. In 2018, also, the court also directed provincial governments to implement transgender protections.

Transgender Persons (Protection of Rights) Act, 2018: This ground-breaking act will guarantee human rights to transgender people, such as the right to determine their own gender, inherit property, access education and health care, and undergo legal protection against discrimination. It involves establishing safe houses and protection centers, but they are largely dormant.

Challenges for Access to Justice for Transgender People in Pakistan

In Pakistan, there are extreme institutional and social barriers to accessing justice by transgender people. Police regularly extort, arbitrarily arrest transgender individuals (frequently under Section 109 CrPC regarding vagrancy), and physically/sexually assault them. Most officers are not willing to enter first information reports (FIRs) of crimes against transgender victims. There is also judicial discrimination where transgender-led cases are often thrown out of courts because of misgendering, disrespectful treatment in courtrooms, favoritism in evidence consideration (including refusing to admit testimony as unreliable), and procedural delays. There are also major legal and economic obstacles. An astounding 90 percent of transgender people are not able to afford lawyers. Others also do not have Computerized National Identity Cards (CNICs) owing to bureaucracy, and others cannot afford to file lawsuits because of homelessness. There are also complications of access to justice due to sociocultural stigma. Families resist successful prosecution to prevent being shamed, and media sensationalization of transgender cases can also affect judges.

Opportunities for Access to Justice for Transgender People in Pakistan

Community/Technology-Based Solutions: There is a chance to develop special transgender protection desks at police stations that have LGBTQ + liaison officers. It can be productive to use mobile applications, including Trans Alert, to report crimes anonymously and get legal help.

Institutional Capacity Building: Police reforms can resemble the sensitivity training model used with Punjab in 2022, which has already proven to decrease the number of complaints of harassment by 30 percent. The transgender rights modules in judicial academies should be included in judicial training to minimize bias in courts.

Islamic Advocacy & Awareness: With the involvement of religious scholars, it is possible to develop a greater acceptance of fatwas that state transgender dignity in Islamic principles. Change of perception can be done through media campaigns by having transgender lawyers or judges.

International Cooperation: Pakistan can learn the practices in such countries as India, namely, the NALSA v. Union of India case, relating to affirmative legal practices of gender.

Legal Reforms & Policy Implementation: The enforcement of the Transgender Persons (Protection of Rights) Act, 2018, may be enhanced by the introduction of a penalty for the lack of non-compliance with the law to the police and the judicial system. To increase the scope of legal aid services, the government can collaborate with NGOs such as Gender Interactive Alliance to get free representation.

Path Forward: By implementing these measures strategically, it is possible to close the gap between legislation and the reality of transgender Pakistanis in order to have a more just and inclusive justice system.

Lastly, implementation gaps of the current laws are quite high. The Transgender Persons Act (2018) does not have penalties that the non-compliant officials face, and the necessary procedures for affirming the genders in the legal procedures. Due to all these systemic problems, transgender victims of crime only report to the police 12 percent of the crimes, thus continuing to propagate a cycle of violence and impunity.

Discussion

Access to justice among transgender individuals in Pakistan has been a strongly debated and poorly addressed right in spite of substantive legislative progress. The inclusion is also legally established by the Transgender Persons (Protection of Rights) Act, 2018, and past rulings of the Supreme Court. However, it still faces practical challenges on all levels of the justice system. Transgender individuals are common targets of mockery, harassment, or denial of services by law enforcement officers or judicial officials, thus afraid to go to a court of law. Moreover, legal guidance is not usually accessible, and most lawyers lack the experience of handling gender identity matters with sensitivity and respect.

Cultural stigma makes the question of institutional neglect tricky as well, since society continues to perceive the notion of transgender identity through the framework of deviance or illegitimacy. These predicaments are an indication of a structural disjuncture of rights and practice in the society. Such a gap can be mitigated only by changing the laws and providing the institutions with powerful training, creating awareness, and enforcement procedures.

Conclusion

Institutional barriers are incapacitating transgender communities by depriving them of redress when they are unable to seek legal help, selective enforcement of the law, and socio-economic marginalization. However, the solution lies in a means of escape through police/judicial reforms, Islamic advocacy, and solutions based on technology. With the employment of the laws that are in place, the growth in the number of sensitivity trainings, and the utilization of community-led efforts, Pakistan would bridge the gap between what the law demands and the reality. Not only is it a constitutional obligation, but also a moral obligation to provide fair justice to transgender persons due to the necessity to foster the dignity of all humankind and to provide a comprehensive state.

Recommendations

Assure a Thorough Implementation of the 2018 Act: Devise explicit guidelines for law enforcement and the judiciary regarding how to implement the Transgender Persons Act. It

developed remedies of punishment in situations where the officials violate the rights of transgender individuals.

Expand Legal Aid Services: Have government-funded legal aid centers that are specifically charged with dealing with transgender cases. It has brought about a 24/7 helpline of emergency legal services.

Increase Law Enforcement Training: Gender sensitivity training of the police is a requirement, including respectful treatment of transgender people. It established Transgender protection units within big police stations.

Improve Surveillance and Responsibility: It publishes transgender access to justice annual reports. It had established independent oversight bodies to investigate grievances.

Improve Documentation Systems: It simplifies the procedure regarding the acquisition of CNICs (Computerized National Identity Cards), having neutral gender choices. It ensures that all the government forms recognize the various types of genders.

Promote Non-discriminatory Policies: Welcomes transgender activists in the policy-making platforms. It develops anti-discrimination laws stating their protection of transgender individuals.

Quick Scholarly Investment: It funds the study of transgender experiences of the justice system. It introduces transgender rights into law schools.

Raise Social Consciousness: It conducts campaigns across the country to educate the masses on the rights of transgender individuals. It collaborates with the media to break the stereotypes and promote acceptance.

Reform Courts: It trains transgender rights and participatory courtroom practice in judges. It further speeds up the cases involving transgender complainants in order to prevent delays.

Support Community-Led Programs: It partners with transgender-led NGOs as a type of legal representation and advice. It provides support to transgender justice organizations on the grassroots level.

Research Limitations

The research on access to justice among transgender individuals in Pakistan is limited in many aspects. First, transgender interaction with the justice system cannot be empirically supported as it is not explored, due to the fear of backlash and institutional secrets. Many transgender persons distrust formal systems and, therefore, they might not count on official structures, but rather on anecdotal or NGO-based evidence. Secondly, the absence of uniformity in the regulation of laws across the regions and the functioning of the courts in Pakistan makes the eventual national extrapolation of the findings difficult. Another limitation of the study, due to time and ethical considerations, is the absence of first-hand interviews. In addition, the legal ambiguity and cultural sensitivities of gender identity may influence the meaning and application of the laws in other parts. Finally, the majority of the existing literature is recent and dynamic and, therefore, has to be updated continuously to keep up to date. The following limitations indicate that there is a need to conduct additional field-based studies and transgender group work as a way of conducting more practical studies.

Research Implications

Human Rights Advocacy: The paper supports the advocacy of equality of rights and protection under the law with reference to the Pakistani constitutional amendments and the international human rights requirements.

Judicial and Police Training: The study reveals the desperate need for gender-sensitivity training for police officers, lawyers, and judges to eliminate discrimination-related practices and give transgender people decent treatment.

Policy Reform: The study findings might be employed to develop shared policies to bridge the difference between acknowledging the law and the reality of transgender rights. The enforcement mechanisms of the police and the judicial institutions need to be strengthened.

Progress of Legal Aids: The absence of law support among marginalized genders would be highlighted to sway government and non-governmental bodies to establish legal aid centers, which are affordable to society.

Social Inclusion: It underlines the sense of urgency in the need to integrate transgender individuals within normal justice systems and legal empowerment, and broader acceptance of society.

Future Research Directions

Empirical Studies: the paper has followed up on a big survey and interview on transgender people to record their experiences with police, courts, and with the legal aid services.

Intersectional Analysis: Discuss how transgender people have justice barriers that are increased by the presence of class, religion, and disability.

Islamic Jurisprudence: Study the way the Islamic laws can be abused to promote the plight of transgender individuals in the Pakistani justice system.

Longitudinal Assessments: Monitor the process of the application of the Transgender Persons Act (2018) through time and how it influences the results of cases and the behavior of institutions.

Regional Comparisons: Compare access to justice by Region, i.e., urban or rural, and by province, i.e., inner or outer province, to establish differences in legal protection.

Judicial Ruling decision-making: Research the cases where transgender litigants are involved to identify the court's attitude and the prejudice.

Technology Solutions: Consider the utility of technology (e.g., legal aid application, online reporting systems) in access to justice.

Policy Impact Studies: Study the effectiveness of the new reforms (e.g., police training programs) in order to identify the best practices.

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