



Understanding the Social and Legal Status of Transgender Individuals in Society

Muhammad Anwar Shaheen¹

¹Advocate Supreme Court of Pakistan, Criminology and Criminal Justice System, Minhaj University Lahore,

Email: muhammadanwarshaheen@gmail.com

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Corresponding Author:

Muhammad Anwar Shaheen

Email:

muhammadanwarshaheen@gmail.com

ABSTRACT

This study explores the social, legal, historical and religious dimensions of transgender individual's place in society, with particular focus on Pakistan. Transgender individuals, whose gender identity differs from their assigned sex at birth, have existed across civilizations and often held respected positions in ancient cultures. However, colonial influences and conservative religious interpretations led to their social marginalization and discrimination. In Pakistan, despite a rich historical presence during the Mughal era, transgender individuals now face exclusion from education, employment, healthcare, and justice. The Supreme Court of Pakistan's 2009 recognition of a "third gender" and enactment of Transgender Persons (Protection of Rights) Act, 2018 marked a significant legal progress, affirming their constitutional right to dignity and equality. However, societal prejudice, weak enforcement and limited awareness continue to hinder effective implementation. The study also analyzes Islamic perspective, emphasizing justice, compassion and human dignity, it shows that Islam does not condone oppression of transgender individuals. Judicial Interpretations in Pakistan and other South Asian countries, such as "Shehbaz Ali Vs. Federation of Pakistan" and "NASLA Vs. Union of India" illustrate growing judicial empathy and activism in protecting transgender individual's rights. The Paper concludes that real inclusion demands not only legislative reform but also societal transformation through education, awareness and institutional support. A comprehensive approach involving law enforcement, religious scholars, policy makers and civil society is essential to eliminate discrimination, ensure equal opportunities and promote the integration of transgender persons as dignified, respected and contributing members of society.



Introduction

We can understand transgender as people whose gender identity is different from the majority population. Due to some reason, biological or psychological, their sex organ is not fully developed or they have different feelings from the sex they were assigned at their birth. In simple, one can say that a male spirit in a female body or a female spirit in a male body. Like others, transgender individuals may experience psychological challenges. Transgender individuals are as deserving of respect and dignity as any other member of the society and they are an important part of our society. But they often face unfair treatment, disrespect, social exclusion (Sreoshi, 2016.) and rejection. Transgender individuals may face identity issues, limited access to education and employment opportunities, family rejection, social ridicule, maltreatment, among others. that is psychologically very painful. In Pakistan they have to struggle to find their rightful place in social, legal and family system. A transgender has to undergo severe psychological crisis due to the treatment extended by other people. (Reisner, 2016) To understand the problems of transgender individuals and to find their solution, this topic is very important. It may help us to find ways to support them. This study aims to explore the challenges faced by them, their rights and roles in society and recommendations for eliminating the discrimination, and promoting their inclusion as equal and productive members of the society (Cavalcante, 2017)

Historical Background

Global Cultural Perceptions of Transgender individual

Transgender individuals have existed across cultures and civilizations since the time immemorial. In ancient societies and civilizations gender diversity was not only recognized but also respected and revered. In many indigenous tribes, transgender individuals held respected roles as teachers, caretakers and also as spiritual leaders. Individuals known as “Two-Spirit” embodying both masculine and feminine traits held very respectable status in society. In ancient India, the concept of Tiritiya Prakriti (third nature) acknowledged as trustworthy and granted unique access to royal families. Transgenders, in Mughal era and even earlier also known for religious and social significance. (Akash, 2022)

Later, during the rise of western colonialism and sub-continent religious communities, people started public ridicule for transgenders and ridiculing them for their ideas, body type, feelings, gait etc. resulted in social rejection and subjected discrimination.

Historical Recognition and Legal Status

Status of transgenders in society has varied depending on the era and prevailing socio-political and religious norms. Though the transgenders held respectable status in ancient societies but not necessarily accepted in legal and social norms. During Medieval period in Europe, associating with a person having gender identity issue often treated as sin. (Sauer, 2015) However, some societies like Asian and African societies continued to allow space for gender non-confirming identities with their traditional social structure.

Transgender History in Pakistan

In the Indo Pak subcontinent transgender individual commonly referred to as Hijras. They have deep rooted social presence. During the Mughal era, they served in royal families as caretakers of harems, advisors, teachers and even soldiers and guards. They were considered spiritually pure and free from major sins. They participated in religious ceremonies, asked for prayed for blessings for newborns and weddings.

After partition, transgenders faced a visible shift in treatment of society which criminalized non-normative sexual behavior and severe public ridicule and social stigma. This led to the legal and social marginalization of the transgender community. Transgenders faced systematic discrimination, exclusion from education, least employment opportunities, limited health care, identity crises, deprivation of inheritance rights, frequent violence and social boycott.

In 2009, the Supreme Court of Pakistan considered the marginalize status of transgenders and recognized them as third gender option and directed the government to ensure their legal and social rights. This led to the issuance of national identity cards with third gender option. The landmark *Transgender Persons (Protection of Rights) Act, 2018* was a monumental legal advancement, ensuring legal recognition, protection from discrimination, and access to fundamental rights.

Muhammad Aslam Khaki & another Vs. S.S.P. (Operations) PLD 2013 SC 188, Rawalpindi and others) this case was decided on 25 September, 2012 by a bench of the august court headed by Chief Justice Iftikhar Muhammad Chaudhary and other judges Justice Jawad S. Khawaja and Justice Khilji Arif Hussain. This case is significant for recognizing the rights of transgenders community in Pakistan, affirming their entitlements to fundamental rights under the constitution, including dignity, equality and protection from discrimination.

Legal Recognition and Rights

Overview of International Laws and Treaties Related to Transgender Rights

Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights, though do not mention “transgender” specifically, but they emphasize the dignity, equality and non-discrimination regardless of gender identity. (Iakobishvili, 2018)

The Yogyakarta Principles (2006) directly addresses sexual orientation and gender identity. These principles provide guidelines for application of international human rights laws, legal and social rights, should apply to protect the rights of LGBTQ+people, including transgender individuals. (Carpenter, 2020)

Although these principles are non-binding in nature, they influenced nations, international organizations, global governance, and UN statements. They affirm equal protection of law, health care, employment and protection against violence.

How Different Countries Approach Transgender Rights Legally

Different countries recognize and protect transgender rights in different ways according to their cultural and religious context. Countries like Argentina and Malta allow legal gender change based on self-identification without undergoing surgery or medical diagnosis.

Many other countries postulate sterilization, psychiatric evaluation, or court orders for gender recognition. Some countries, particularly in parts of Africa and the Middle East. (Symons, 2015)

In recent years a significance shift with respect to the legal and social status of transgenders has taken place but legal protection of their rights still facing challenges and lead to inconsistent application of law. While some countries have introduced significance changes in laws, improved policing system and other social welfare reforms.

Key Legal Provisions Protecting Transgender Individuals in Pakistan (Transgender Persons Act, 2018)

Pakistan has enacted the *Transgender Persons (Protection of Rights) Act, 2018* by an act of parliament. Although this legislation faced criticism in its implementation, as the vires of the law

were challenged in Supreme Court of Pakistan but still in force. This law granted the right to transgender persons to adopt their gender in official documents, on self-assumptions, without needing medical approval.

This law protects transgender individuals from discrimination in employment, health care, education, access to public places and other fundamental rights as guaranteed by the Constitution of Islamic Republic of Pakistan, 1973 to the citizen of Pakistan. This law also emphasizes transgender's right to inherit property and ensures dignity of transgender persons. Despite the effective legislation, cultural hesitation and long-standing background often hinder the practical enforcement of the rights of transgender community in daily life. (Akram, 2023)

Social and Economic Challenges

Transgender individuals across the globe

Transgender individuals across the globe, particularly in societies like Pakistan face a severe social and economic challenges that deeply affect their quality of life and dignity.

Common Struggles in Daily Life

Transgender individuals, particularly in Pakistan face exclusion and marginalization from mainstream society. They are frequently subjected to verbal harassment, physical abuse, treated as sexual object and public humiliation. Their dignity and safety in public spaces are routinely violated. This dilemma led to mental health issues, social seclusion, anxiety and depression.

Barriers to Education, Employment, and Healthcare

- I. **Education:** Most transgender children often unable to go to school due to bullying, lack of acceptance and unfriendly educational environments. As a result, they are deprived from their right of education.
- II. **Employment:** Due to lack of education, social non acceptance, society's unfriendly behavior forces the transgender persons to stay distant, uninvolved and emotionally detached which resulted in employment challenges.
- III. **Healthcare:** Like many other discriminatory social aspect healthcare remains a major issue for transgenders. They face discrimination from healthcare providers, denial of services and lack of cooperation.

Discrimination in Social, Cultural, and Family Settings

Transgender persons often face rejection not only from society but also from their families, leading to homelessness and emotional support. In cultural and religious context, they are view as deviants and outcasts resulting in social isolation. Transgenders are generally kept away from their own family gatherings and public introduction; all these issues make them mentally sick with deep sense of deprivation.

Interaction with the Criminal Justice System

Violence and No Legal Protection

Transgender persons often become victims of physical attacks, sexual violence and emotional abuse. All such treatment extended to them in open public places and even in their own homes. Some people think their right to tease the transgenders. If they try to get help, they face the same treat from the law enforcers as well. They often find that law fails to protect them. They are not considered worth help by the police and police ignore their complaints like petty issues. In

Pakistan, despite passing the Act. There are no proper arrangements to provide them legal protection from mistreatment. Transgender person often thinks themselves helpless and live a very miserable and fearful life

Bad Treatment by police and Lawyers

If the transgender persons dare to complain they are often mocked, insulted and mistreated. Even they are looted not only by the miscreants but also the lower police officials. To treat them harshly by the police never considered any important. They are treated with less respect than even animals. In courts they face the same treatment. In the first instance they normally do not have the resources to pay the lawyers fee and to meet the necessary expenses. Some lawyers don't want to represent the transgender persons in court and treat them with no human respect. Judges even don't understand their marginalization in society and their other problems. Often educated people use wrong names and pronouns for transgenders, which is immensely hurtful. Such treatment makes it very difficult for transgenders to trust the legal system and speak up for their rights.

No Fair Trials or Justice for Transgenders

Transgender persons are often having no pecuniary resources and education so they can't afford a good lawyer. Besides this, if they go to court, they face bias and discrimination from court officials. There are very few legal aid programs for transgenders. There are no special law or procedure to protect the most marginalized segment of the society.

Transgender Rights from an Islamic Perspective

Understanding gender identity in Islam

Islam emphasizes justice, compassion and respect for dignity for all human beings irrespective of their gender, creed or nationality. Islam recognizes the complexity of human creation, including variations in gender identity. Islamic scholarship reflects diverse interpretations regarding gender identity and transition. Islamic history also mentions individuals that didn't neatly fit into male or female categories and make it imperative to treat them with respect, dignity and care. To respect all human is the fundamental and core principles of Islam. Islam recognizes and affirms the rights of transgender persons, emphasizing their equal human dignity.

Scholarly Opinions on Transgender Rights

Islamic scholars have different opinions on transgender rights. Some scholars are of the opinion that if a person experiences strong gender dysphoria and medically confirmed they can transition to the gender with which they identify. Iran has allowed gender reassignment surgery. (Aghabikloo A1, 2012). However, other scholars oppose transition of gender through surgery as, according to them, it amounts to interfere with natural creation of God. This indicates divergence of opinion amongst Islamic scholars but one thing is clear Islam strongly opposes any form of oppression against transgender persons being a human.

Balancing Faith and Legal Protections

Transgender individual, like all human beings, deserve safety, dignity, respect and protection. They also deserve education, healthcare, employment and access to all human activities including access to justice. While respecting Islamic beliefs transgenders can be respected at all levels and disciplines. Laws can be made and implemented to protect their rights, safety from violence, discrimination and exploitation. A thoughtful and compassionate approach, that is exactly according to the Islamic teaching and values, can be helpful to address the transgenders issues. It is concluded that both Islamic and national laws ensure fundamental right of all citizens irrespective

of their gender or creed. However, due to social and cultural reluctance transgender community is not availing their fundamental rights. (Sara Noor, 2024)

The Role of Judiciary and Case Laws

Judicial interpretation of Transgender Rights in Pakistan and Other Countries

In Pakistan, the higher judiciary has played a vital role in protecting the rights of transgender persons. In the *Shehbaz Ali Vs. Federation of Pakistan (PLD 2018 Lahore 54)* Lahore High Court ordered NADRA to issue CNIC showing the correct gender identity of the petitioner. The Supreme Court of Pakistan rendered a landmark judgement (*PLD 2009 SC 351 Muhammad Aslam Khaki case*), recognizing the right of inheritance, education and protection. In India, “National Legal Services Authority (NALSA) Vs. Union of India (2014)” Indian Supreme Court recognized transgenders as a third gender and gave them right to self-identify their gender.

Landmark Cases and Their Impact

In *PLD 2013 SC 188*, the Supreme Court of Pakistan ordered the government to include transgender individual in the upcoming election by registering them as voters. This judgement of the august court gave legal and political recognition to the transgender community. In *NALSA Vs. Union of India*, the Supreme Court of India instructed the government to provide reservations, welfare schemes, and legal protections to the transgender population.

Changing Judicial Attitude

In this modern era of technological advancement and vibrant social media platform, the courts are now more attentive in supporting and understanding the transgender issues. In past, court usually ignore or less attentive towards the transgender’s problems. But now, judiciary shows more empathy and respect for addressing the complaints of the said community. In the *Shehbaz Ali case supra*, the court emphasized human dignity and constitutional equality for the transgenders. Court in Nepal, India, Bangladesh and other countries have also given various decisions whereby forcing the respective governments to bring legislations for the protection of fundamental human rights of the community.

Steps Towards Inclusion and Equality

Legal Protection and Reforms

To ensure the protection of transgenders social, political and economic rights of the transgenders, the legislation and its real time implementation is essential. In many countries, including Pakistan constitutional provides guarantees for protection of fundamental human rights for all citizens without any discrimination. But it is a bitter reality that practical enforcement of constitutional guarantees remained weak in case of transgenders due to lack of necessary will on part of the law enforcing agencies and courts. Laws must seriously address the hate crimes, sexual vulnerability, work place discrimination, identity problems, better employment opportunities, proper education, health care, housing facilities, social support, business loans and financial support for the transgender communities. Special court and legal aid system can be established to support the community. Additionally, transgender persons should be provided an opportunity to acquire official positions as per their abilities.

Awareness and Public Perception

Mindset of the society is necessary to be changed as legal changes alone cannot bring real changes. An effective awareness campaign must be launched to create sense of responsibility amongst the

general public for safety and security of transgender individual as they, in any event, have to remain with common people and unless common people do not change their attitude towards the community no real change can be expected. Media, educational and religious institutions, civil society etc. must be sensitized to protect the community. Labeling transgender persons as criminals and stigmatizing transgender individuals as immoral or criminal must end. Trans persons disproportionately affected by poverty, unemployment, criminalization, harassment, assault and police brutality. (Vipond, 2015) Campaign must show transgenders are not “others” but human with dignity and rights.

Equal Access to Opportunities

Transgender community must be recognized as respectable and important segment of civil society and must be provided equality as per the requirement of the constitution. Their problems must be addressed on priorities basis. Government should introduce policies and quota system to uplift community. Educational institution must provide gender sensitive environment based on equality and respect for all. Healthcare institution must adopt friendly medical treatment for all on same level. Social welfare programs for skill development and job opportunities be initiated on no discriminatory basis. Families must be educated not to reject such children and to make them useful citizens. Individuals misrepresenting themselves as transgender for illicit activities must be legally dealt with to protect the community’s credibility. Society needs a complete shift in approach to deal with transgender individual. Community policing, legal aid system and awareness are critical steps for betterment of transgender community.

Conclusions

This study on transgender rights has highlighted various critical steps, including legal protection, change of societal mindset, healthcare improvement, education, skill development, social well beings, financial support, friendly policing, family emotional support, employment opportunities. Pakistan has already introduced the *Transgender Persons (Protection of Rights) Act, 2018* and higher courts have given landmark judgements to protect the rights of the community, though practical implementation remains inconsistent. The Federal Shariat Court of Pakistan declared the *Transgender Person (Protection of Rights) Act, 2018* as incompatible with Islamic principles. (Mehr Muhammad Adeel Riaz, 2023) Discrimination, violence, social exclusion continues to affect the lives of transgenders lives. The societal reluctance in general and institutional hesitation in particular hinders the systematic changes. Immediate action is necessary to safeguard the rights of transgenders and foster inclusive society. (Murad Ahmed1, 2024)

With the societal change legal reforms must be brought. Education and awareness programs are essential for reducing social reluctance, family rejection and promoting acceptance. Institutional reforms are also needed to ensure that transgenders are treated fairly and sensitively. Cooperation of religious scholars and cultural interpreters is necessary to develop inclusive society.

A multi-pronged approach is vital to advance the transgender rights in Pakistan. Policy must include advocacy, strategic litigation and political representation of the transgender community and active participation in decision making process. Learning from global experience may be helpful to address the issues. International collaboration, academic research and community activism are crucial to dismantle systemic social barriers. The road to equality may be long but continues efforts may bring meaningful changes to normalize the behavior of society towards the transgenders.

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