

**RESEARCH PAPER****Analyzing the Evolution of Transgender Protection: A Comparative Study of Transgender Protection Act of Pakistan 2018 and 2022****Rumaiza Mazhar**

M.Phil Political Science, University of Management and Technology, Lahore, Punjab, Pakistan

Corresponding Author

rumaizatatar@gmail.com

ABSTRACT

This research paper focuses on the comprehensive examination of the transgender protection acts of Pakistan in 2018 and 2022. Transgender, a person with no specific gender is an important part of society. In society, they have been deprived of their basic rights. Related to this, the government of Pakistan passed a bill in 2018 to tackle the basic rights of Transgender community. Later, in 2022, an amendment bill has been presented to raise some questions regarding the 2018 bill. This study is based upon the qualitative approach to deal with this subject which includes the transgender protection bills, including the collection of data from secondary resources including media reports and other documents. It shows the implication of these acts on the rights and well-being of a transgender individual. Through a critical examination, this paper explores the policy intent and identifies the basic differences and similarities between the two acts related to transgender rights in Pakistan and how the issue mainly deals with the gender identity of a transgender person.

Keywords: Gender Identity, Pakistan's Political and Religious Framework, Transgender Bill (Amendment Act) 2022, Transgender Person Act 2018

Introduction

One of the complex issues of society is transgender, directly linked to the problem of gender identity. Gender is the simplest element that makes up human personality. A Transgender named Hijra and many other personal names including kinnar, khunsa, khusra, and khwaja sira, is completely considered as a third gender/sex in society. They are found in every part of the world and are considered a part of Muslim society. Since the British colonial rule, the transgender community has been suffering a lot. The Britishers considered their community as an "immoral community" and the Judges at that time viewed their gender as morally offensive and described them as a pollution for the country. The last housing census happened in Pakistan in 2017, according to that census, the total number of transgender in the country is 10,410.

In the past, not only in Pakistan but also in British, the transgender community declined from their basic rights such as education and inheritance, etc. In Pakistan, transgenders(hijra) have communities led by a leader or guru. They earn their livings by dancing at weddings and births. However, with the outgrowth of novel means of celebration, sex work and begging remain the only available occupational choices for the transgender (Tufail,2006). This situation becomes even worse when no movements have been taken against it on the national and international levels. In 2018, a transgender bill has passed to give rights to the transgender community and later on in 2022, another amendment act was passed to declare the rights of transgenders.

Transgender Protection Act 2018 marked a comprehensive legal framework, introducing provisions related to safeguarding transgender individuals from discrimination and violence. The subsequent amendment in 2022 brings forth an opportunity to evaluate the effectiveness of their protection and also raises many debates in society.

However, this bill faced criticism from different parts of society in Pakistan. So in this study, we examine through critical analysis the policy evaluation, implementation of this act, legal framework, and effectiveness in Pakistani society.

Literature Review

An article related to the amendment bill has been published by the Express Tribune, which shows that the Senate has to take up the changes that have been made in the Transgender Person Act on September 16. This bill shows that intersex persons have the right to get their fundamental rights and the right to self-identity. It has been argued that the primary focus of this bill is to promote and protect the right of an intersex person (Express Tribune, 2022)

The intersex person (Amendment Bill), 2022 states that its goals are to protect transgender people. The measure would grant intersex people the same access to jobs, education, and other opportunities as regular people. The law explains that safeguarding the rights of intersex persons should have been the main goal of this act. A person with ambiguous genitalia is commonly defined as an intersex person or hermaphrodite. Unfortunately, the act of 2018 contains several sections that are directly at odds with our religious beliefs and even the constitution. (DAWN, 2022)

The head of JUIF has said that the law is against the teachings of the Holy Quran and Sunnah. However several transgender activists believe that the 2018 act aimed at protecting the rights of the transgender community and there is no mention that a man can marry another man and a woman can marry other women, said transgender rights activist Zanaiah Chaudary (Express Tribune, 2022).

Pakistan's progressive transgender law faces opposition 4 years later, an article by Sarah Zaman explores that rights activists say that the law is being misunderstood which is dangerous for the rights of Transgender community. However, the opposition claims that the provision related to choosing or changing one's gender is against Islam and could lead to open doors for same-sex marriages. In 2018, the transgender rights legislation was passed with the support of political parties, although it was rejected by many religious parties including Khan's Jammāt-e-Islami. Later on, in 2021, Khan raised the issue of amending the law, Shireen Mazari, then the human rights minister from the ruling party PTI opposed this move (Zaman, 2022)

The JI chief said that the transgender act that the government prepared in 2018 is against the Sharia and it is an attempt to give legal protection to homosexuality in the country. According to this, men and women can change their gender without any hindrance due to which 29 thousand men and women have so far declared changing their gender identity. So there is usually a Western agenda behind all this to destroy the family system and Islamic culture. The transgender community however says that there exists false propaganda against this act (Azad, 2022).

At another press conference alongside the advisor to PM for Kashmir and Gilgit Baltistan Qamar Zaman Kaira rejects this criticism by saying that the link to this bill to homosexuality is a misconception. Tarar, clarified that that bill was passed by the Senate and National Assembly under the presence of religious and political leaders so how it will be against Islamic teachings (DAWN, 2022)?

Material and Methods

This study employs qualitative data analysis of the transgender protection acts of 2018 and 2022, and compare the similarities and dissimilarities that exist in these acts. Data is collected through secondary data that includes media reports and documents.

Examination of public opinion and also the emerging debates of religious and political scenario. Consideration of diverse sources to ensure comprehensive coverage

Results and Discussion

Transgender Protection Bill 2018

In Pakistan, a bill was passed by the National Assembly of Pakistan, related to transgender protection in May 2018. This bill is for the protection of the rights of the transgender community in Pakistan. They have been facing much discrimination from different parts of society. So the government of Pakistan has passed a bill to deal with this issue. This bill contains basic agendas to deal with the basic rights of a transgender individual in society. The main provisions of the transgender bill 2018 are the following:

- Recognition of the identity of a transgender individual, that the transgender individual has a right to recognize his identity as per the provisions of this act.
- There shall be no discrimination against transgender persons having the rightful share of property as prescribed under the law of inheritance. This share of property should be done according to the gender mentioned on the CNIC.
- There shall be no discrimination for the right to education for them. Every transgender individual can get admission to any school and university either private or public.
- The Government must ensure the right to enter into any lawful profession and to conduct any lawful trade or business for transgender persons as guaranteed under Article 18 of the Constitution of the Islamic Republic of Pakistan.
- No transgender person shall be deprived of his right to cast a vote during national, provincial, and local government elections. Provided that the access to polling stations shall be determined according to the gender declared on the CNIC of a transgender person.
- There shall be no discrimination based on sex, gender identity, and gender expression for transgender persons if they wish to contest elections to hold public office. Transgender individual has also equal rights to all health opportunities.
- The Government must ensure the freedom of assembly for transgender persons by Article 16 of the Constitution of the Islamic Republic of Pakistan.
- No transgender person shall be denied access to public places, places of entertainment, or places intended for religious purposes solely based on his sex, gender identity, or gender expression. The Government must ensure transgender persons' access to public places given Article 26 of the Constitution of the Islamic Republic of Pakistan. It shall be unlawful to prevent transgender persons from accessing facilities available for access to the general public and public places mentioned in the sub-section.
- No transgender person shall be denied the right to purchase, sell, rent, or lease property, household, or tenancy on the basis of sex, gender identity, or gender expression.

This bill also gives many other fundamental rights to the transgender community in Pakistan. But later on in 2022, a community presented an amendment bill 2022 saying that

the transgender protection bill is unable to provide complete protection to transgender individuals in society.

Transgender Person (Protection of Rights) (Amendment) Bill, 2022

This amendment act was introduced by the human rights committee by saying that the transgender protection bill 2018 was not providing them with their basic fundamental rights. Hence they present an amendment act in 2022 with some basic points. According to the Committee on Human Rights, the basic purpose behind this amendment or act is to reform and repeal the bill of 2018. In the 2022 act, there are some of the provisions of the 2018 bill that was amended are follows:

- For the word 'Transgender' the word 'Intersex' should be substituted.
- A man as per his self-perceived identity can change his identity legally as a woman and the same for women can change their identity as a man.

Similarities between Transgender Acts of 2018 and 2022

Both these acts of Pakistan deal with the transgender community and have some sort of similarities in both acts. There exist advantages and disadvantages regarding these similarities. The basic similarities exist between the Transgender Protection Act 2018 and the Transgender Person Amendment Act 2022 are the following:

- Access to many facilities such as health, education insurance, etc.
- Protection of Transgender community from discrimination and violence
- Recognition of the gender identity of a transgender person
- The legal documentation of their gender identity and rights.
- Promotion of social involvement such as in different activities.

So these are some basic similarities in both the acts of Pakistan that deal with the protection of the rights of the transgender community and also providing them with a legal identity in society.

Dis-similarities between Acts

Along with similarities in both acts, there exist some dis-similarities which were also the reason behind the existence of misconceptions regarding these acts. And these misconceptions are the reason behind the emerging debate in society for political and religious parties.

The basic dis-similarities between these acts are the following:

- Religious debate and discrimination
- Implementation challenges, as both acts have faced different situations after implementation.
- Political climate and the engagement of stakeholders
- Scope and the depth of the protection of transgender community

Both the acts and some of the provisions of these acts are similar and different from each other. And respectively have some advantages and disadvantages along with that. Because of these dis-similarities there emerged some misconceptions in the country between transgender, religious, and the Government.

Comparative Analysis

Both the Transgender Protection Bill 2018 and the Transgender Person Amendment Act 2022 are different from each other and there exists great contradiction between them. The main goals of both these acts were to provide basic rights to the transgender community as mentioned. But there is a great difference between both these acts which was the basic reason behind the emergence of debate among many political leaders, Ulmas, and the transgender community. The basic debate emerges in the society because of the following reasons:

- The words transgender and intersex
- Self-perceived gender identity
- Homosexuality
- Formation of a medical board
- Many other issues related to the fundamental rights of the transgender community and other religious and social matters.

So the basic concept related to the words Transgender and Intersex revolves around the huge debate against these acts. The word intersex means a general perspective in which a person is born with a sexual anatomy that does not fit with either male or female gender or they have both the characteristics of the male and female sex. According to the state of Australia, there are almost 40 different varieties of intersex. Some of the intersex traits appear at the time of birth while some appear at the time of puberty (Francis, 2021). So many religious parties consider it a source to spread homosexuality because the intersex person changes his/her gender on his/her own will. But on the other hand, transgender activists said that there is not any provision in the acts that clearly says, a man can marry a woman and a woman can marry a man.

Misconceptions

The basic misconception emerged due to the differences in these acts:

- The Word Transgender and Intersex
- Homosexuality
- Self-perceived Gender Identity
- Religious Confrontation
- Erosion of Traditional Values
- Threat to Social Norms and Morality
- Political Agenda or Western Influence

So behind all these conflicts, every group has its perspective. Some consider it a threat to the family system and religious values of Muslims. On the other hand, some consider it a way to protect and safeguard the rights of a transgender individual. Compared to this it was also said that there would be no external conspiracy behind this issue and it would be a Western agenda to destroy the family system in Pakistan. There exists great debate behind the world's self-perceived gender identity because, according to Ulmas and most of the political leaders there must be a medical board, that will declare the gender of a transgender individual and should pursue the trans gender's fundamental rights, necessary to live in a society without any discrimination.

Conclusion

Due to all of this, our transgender community has been suffering a lot. This issue was also a reason behind the emergence of conflicts and proxies for interest groups in Pakistan. So, there must be protective and useful efforts to solve this issue in society to give fundamental rights to the transgender community. And hope that all other efforts and policies will be able to contradict all these emerging issues and fulfill its agenda. They need a strong character in the institution of Pakistan to legally implement such policies that will deal with the fundamental rights of humans. The government of Pakistan must have shown a protective and active role in dealing with this issue of gender identity and the fundamental rights of Transgender community.

Recommendations

Some predictive measures are necessary to solve this issue on a national level. Because it is causing a threat to human values, morality, and religious values of the country. Our transgender community has been suffering a lot in this scenario. Some of the predictive measures that the government of Pakistan should need to take to tackle this issue are the following:

- Stakeholders in Board
- Formation of a Medical Board
- No Westernized pattern should be adopted
- Institutional Building
- Campaigning

All these measures can help to counter this threat. The government must engage with the stakeholders of the country and take advice from them on the religious perspective. Along with this, there must be a medical board that will determine the gender identity of a transgender person. Any pattern that reflects Western culture or values must not be adopted. The institution of the country shall be managed in such a way that can easily handle such situations also there must need for a campaign to spread the reality of these acts.

References

- Azad, A. R. (2022, September 30). JUI-F challenges 'transgender law' in FSC. *Brecorder*.
- DAWN.COM. (2022, September 22). Govt rejects criticism on the transgender bill, says linking it to homosexuality is 'misconception' *DAWN.COM*.
- Leonard, J. (2021, March 22). What does it mean to be intersex?
- Pakistan's trans community battles climate catastrophe and exclusion. (2023, May 8). *PreventionWeb*.
- Tribune. (2022, September 26). Senate to take up changes in transgender persons act on Sep 26. *The Express Tribune*
- Tribune. (2022a, September 23). Trans people decry objections to rights bill. *The Express Tribune*.
- Zaman, S. (2022, September 29). Pakistan's progressive transgender law faces opposition 4 years later. *Voice of America*