



A Critical Analysis of the Transgender Persons (Protection of Rights) Act

Toward Inclusive and Affirmative Legal Reform

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ABSTRACT

This article critically examines the Transgender Persons (Protection of Rights) Act, 2018 and its 2022 amendment bill, with a focus on the definitional gaps that hinder its effective implementation. Central to the critique is the Act's failure to provide a clear and inclusive definition of the term "transgender," resulting in legal ambiguity and inconsistent application. Despite its progressive intent, the legislation has faced backlash from segments of society, often conflating gender identity rights with debates around same-sex relationships and LGBTQ+ (individuals who are lesbian, gay, bisexual, transgender, queer) recognition. The study adopts analytical and descriptive legal methods to explore the constitutional implications of the Act, its reception within Pakistani society, and its impact on the transgender community's access to fundamental rights, including education, healthcare, employment, and political participation. The article further assesses challenges related to gender identity recognition, kinship, inheritance, and marriage, and argues for a more precise and inclusive legal framework. Ultimately, this study advocates for pragmatic reforms that ensure the legislation serves as a robust instrument for the protection and empowerment of transgender individuals in Pakistan.

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Introduction

In Pakistan, the legal system is shaped by both Anglo-Saxon traditions and Islamic jurisprudence. The Constitution of Pakistan incorporates Islamic principles while retaining the structure of a common law system. Article 2(A) affirms Islam as the state religion, and any legislative provision found inconsistent with Islamic injunctions may be declared unconstitutional [1]. While Chapter 1 of the Constitution provides a comprehensive set of fundamental rights, including the right to life, education, freedom of speech, and protection from discrimination, systemic barriers continue to restrict these rights, particularly for the transgender community [2].

Transgender individuals in Pakistan have long been marginalized, facing exclusion from education, healthcare, employment, and public services. A turning point came in 2009, when the Supreme Court of Pakistan issued a landmark judgment in Constitutional Petition No. 43 of 2009, recognizing the rights and identity of transgender persons. Over a series of rulings between 2009 and 2012, the Court instructed the government to ensure the inclusion of transgender people in national identification systems and uphold their constitutional rights [3]. The judgment in *Dr. Muhammad Aslam Khaki v. S.S.P (Operations) Rawalpindi* (PLD 2013 SC 188) further solidified their legal status.

In response, the Transgender Persons (Protection of Rights) Act, 2018 was enacted to safeguard the civil rights of transgender people. It prohibits discrimination, allows legal recognition of self-perceived gender identity, and affirms rights to education, health, property, employment, and inheritance [4]. The Act also imposes obligations on the state to establish protective facilities and promote economic inclusion. However, despite its progressive intent, the legislation lacks a precise and universally accepted definition of “transgender,” creating ambiguity in its interpretation and implementation.

“Transgender” as a term is globally understood to include individuals whose gender identity or expression differs from the sex assigned at birth. The Act’s failure to define this term leaves its scope unclear and opens the door to varied interpretations, limiting its protective value. As a result, enforcement becomes inconsistent, and people perceived to be transgender may suffer from further marginalization [5].

In 2022, the law was amended in response to public and religious opposition. The Amendment Bill replaced “transgender” with “khunsa,” removed the principle of self-perceived gender identity, and required medical board verification for gender recognition. While some viewed these changes as necessary to prevent misuse, such as in matters of inheritance, others argued they undermined the Act’s spirit and violated fundamental rights [6].

The legislation has become a flashpoint in Pakistan’s cultural discourse. Supporters hail it as a landmark step toward equality, noting that it affirms dignity, inclusion, and protection

against discrimination. The International Commission of Jurists called the 2018 law one of the most progressive transgender rights frameworks globally. However, critics argue that the allowance for self-identification could open doors to same-sex marriage, which they view as un-Islamic [7].

Furthermore, practical challenges hinder the law's implementation. The Act does not include penalties for violations and fails to address specific issues such as hate crimes, medical discrimination, or harassment in educational institutions. Its silence on matters like marriage rights and gender-based violence highlights its limitations [8]. Religious tensions also complicate the recognition of gender identity, especially in the absence of clear diagnostic criteria or Islamic legal guidance.

In addition, Senator Mushtaq Ahmed introduced the Intersex Persons (Protection of Rights) Amendment Bill, 2022, seeking to delete sections of the 2018 Act deemed incompatible with Islam. This move reflects the ongoing debate about balancing human rights with religious norms. While the original law was aimed at empowering the transgender community, the proposed amendment risks narrowing its scope and reversing hard-won gains.

Despite these challenges, Pakistan's legal recognition of transgender rights remains significant. Though social acceptance remains limited, the 2018 Act positioned Pakistan as a global leader in transgender legal reform [9]. However, the current legal and social climate reveals deep-seated tensions between constitutional rights, societal norms, and religious interpretations.

This study critically evaluates both the Transgender Persons (Protection of Rights) Act, 2018 and the Amendment Bill, 2022, identifying gaps in legal definitions, inconsistencies in application, and social implications. It aims to provide a comprehensive analysis of the evolving transgender rights framework in Pakistan and offer recommendations for a more inclusive and implementable legal structure.

Method

A. Research Design and Data Sources

This study adopts a qualitative research design, which is well-suited for examining the legal, social, and cultural intricacies embedded within the Transgender Persons (Protection of Rights) Act, 2018 and its proposed amendments. A qualitative approach allows for a comprehensive and interpretive analysis of the Act's provisions, especially those related to the definition of "transgender," the concept of self-perceived identity, and issues surrounding inheritance. The emphasis on interpretation and contextual understanding makes this design particularly effective for legal analysis.

Data for this study is drawn from both primary and secondary sources. The primary source is the Transgender Protection Act 2018 itself, including the text of the law and the 2022 amendment bill. These documents are closely examined to understand the legal language, identify legislative intent, and assess the practical implications of specific provisions. Supplementary legal texts and official legislative records are also consulted to provide a more precise legal context.

In addition to primary materials, a variety of secondary sources are used to enrich the analysis. These include academic journal articles, books, news reports, and policy commentaries that discuss transgender rights and the legal framework in Pakistan. These sources offer broader historical perspectives, scholarly insights, and sociocultural interpretations, helping to situate the legislation within the wider discourse on gender identity and legal recognition. A purposive sampling strategy is employed, whereby only the most relevant and authoritative documents are selected to ensure a focused and coherent analysis.

B. Data Collection, Analysis, and Ethical Considerations

The data collection process involves a structured document analysis. This includes a detailed examination of the Transgender Protection Act 2018, with particular focus on the provisions related to self-perceived identity, inheritance, and the definition of transgender. In parallel, the 2022 amendment bill is scrutinized to identify how proposed changes may affect the scope and application of the original law. To supplement this, a comprehensive review of secondary literature is conducted to draw on expert commentary and contextual perspectives regarding transgender rights in Pakistan.

For data analysis, the study applies both thematic and critical analytical techniques. Thematic analysis is used to identify and explore recurring patterns or issues in the legislation, such as the conceptual framing of gender identity and the mechanisms for its legal recognition. Through this approach, themes such as definitional ambiguity, inheritance challenges, and social acceptance are systematically evaluated. In addition, a critical analysis assesses the gaps and inconsistencies within the Act, particularly the absence of a clear legal definition of “transgender.” This analysis also considers the alignment between the original Act and the proposed amendments, taking into account their legal, societal, and religious implications.

Throughout the research process, ethical standards are strictly observed. While the study does not involve human participants, it ensures respectful treatment of sensitive issues related to gender identity and legal rights. When referring to specific cases, names and identifying details are anonymized to uphold confidentiality. The analysis also seeks to represent the transgender community with dignity and sensitivity, avoiding bias and harmful assumptions.

Finally, the study acknowledges certain limitations. Given the evolving nature of legal and social norms, interpretations may vary over time. There is also a possibility of interpretive bias due to the subjective nature of legal texts and cultural frameworks. Nonetheless, the study

maintains transparency in its methodology and strives to present findings in a balanced and well-supported manner.

Results and Discussion

A. Definitional Ambiguity and Legal Implications

A central challenge to the implementation of the Transgender Persons (Protection of Rights) Act, 2018 is its failure to provide a clear and consistent definition of “transgender.” Section 2(1)(n) of the Act attempts to define “transgender person,” but does so by listing categories rather than applying standard legal drafting terms such as “means” or “includes” (Shariat Petition 05-I of 2022) [10]. This lack of precision has led to significant confusion regarding eligibility for legal protections, both among transgender individuals and implementing authorities.

Senator Mushtaq Ahmad Khan and others have argued before the Federal Shariat Court that this ambiguity violates legislative drafting norms and Islamic principles. While intersex persons (*khunsa*) are generally accepted under Islamic jurisprudence, categories such as “transgender man,” “transgender woman,” and “Khawaja Sira” remain contentious. The Federal Shariat Court eventually ruled that gender cannot be changed based on “self-perception” alone and rejected several clauses allowing changes in official documents without biological validation.

This definitional ambiguity not only undermines the protection of transgender rights but has broader implications for the implementation of inheritance laws, access to identification documents, and protection from discrimination [3]. Without a precise legal identity, transgender persons are left vulnerable to social exclusion and bureaucratic barriers.

B. Judicial Interpretations and Disability Discourse

The early Supreme Court rulings (2009–2013) were pivotal in bringing transgender rights into legal discourse in Pakistan. However, these judgments also framed transgender identity through the problematic lens of disability and disorder. Drawing on colonial-era understandings, the court suggested medical examinations and offered job opportunities framed as “convenient” for transgender individuals, thus reinforcing harmful stereotypes [11]–[13].

The Court’s direction to NADRA to adopt a policy for medical examination in determining gender identity was driven largely by Islamic inheritance laws, which differentiate shares based on binary gender [14]. This approach has perpetuated the idea that gender must be externally validated and fails to respect personal autonomy, privacy, and the right to self-determination.

Subsequent legal challenges have tried to move away from the medical model. The Lahore High Court in *Mian Asia v. Federation of Pakistan* (PLD 2018 LHC 54) acknowledged that transgender persons have a fundamental right to identity and protection from discrimination. The court rejected NADRA’s requirement for paternal identification and upheld that abandonment at birth should not be a barrier to acquiring a National Identity Card. However,

even this progressive stance is limited by the government's inability to translate legal rights into inclusive policy reforms [15].

In another case from Azad Jammu and Kashmir (Zafar alias Mumtaz v. Sajjad Begum), the court rejected the customary inheritance norms of transgender gurus and their chelas in favor of a strict interpretation of Sharia law, ignoring the lived realities and kinship systems within the transgender community [16]. This judicial gap underscores the inadequacy of existing laws to accommodate non-binary gender experiences.

C. Lived Realities and Social Exclusion

Despite legal reforms, the situation on the ground remains dire. In a 2019 study by Rashid & Rashid [3], interviews with 79 transgender individuals in Lahore revealed widespread abuse, discrimination, and exclusion. Respondents reported poor relationships with their biological families, police violence, and barriers to banking and public services due to identification issues. The overwhelming majority expressed fear and mistrust of government institutions.

Although the Act guarantees rights to inheritance, education, employment, and healthcare, these provisions are largely ineffective without mechanisms for enforcement. Transgender individuals often resort to begging or dancing to survive, highlighting the state's failure to create inclusive economic opportunities [3]. In rural areas and smaller provinces, the situation is even worse. Human Rights Watch [17] documented over 479 attacks and 65 murders of transgender individuals in Khyber Pakhtunkhwa since 2015.

Efforts by NGOs such as Akhuwat and Khawaja Sira Society have contributed to transgender empowerment, but the government's failure to run awareness campaigns and sensitivity training has led to a stagnation of social attitudes [18]. The lack of public education and the persistence of colonial-era and religious misconceptions continue to undermine any legislative progress.

Scholars like Fazi & Bibi [2] and Redding [19] emphasize the need to address the postcolonial legacy and religious interpretations that restrict the transgender rights movement. A clear, inclusive, and context-sensitive definition of "transgender" in Pakistani law remains crucial for advancing constitutional protections and ensuring human dignity [20].

Conclusion

The Transgender Persons (Protection of Rights) Act, 2018 represents a landmark effort by the Pakistani state to recognize and protect the rights of one of its most marginalized communities. The Act introduced a legal framework aimed at affirming the dignity and equality of transgender individuals through access to education, employment, healthcare, identity documentation, and protection from discrimination. However, the effectiveness of this legal protection has been significantly undermined by the absence of a clear and inclusive definition of the term "transgender." This ambiguity has impeded the law's practical implementation and

fueled public misunderstanding and judicial confusion. Despite the legislative progress marked by the 2018 Act, effective protection remains largely symbolic. Implementation on the ground is stifled by deep-rooted social stigma, religious opposition, and institutional neglect. Public perception, often influenced by religious misinterpretations and societal conservatism, continues to present major barriers to acceptance. The criticism levied by religious groups further fuels political and legal backlash, despite no basis in the Act for concerns about same-sex marriage or LGBT agendas.

Importantly, the Act's silence on inheritance rights procedures, punitive mechanisms, and safeguards against hate crimes weakens its ability to enforce equality. Transgender individuals are often left without recourse in the face of violence, harassment, and bureaucratic exclusion. Without structural support and public awareness, the promises of the 2018 legislation remain unfulfilled. Nonetheless, the Act has shifted the conversation on gender identity in Pakistan and holds potential for transformative change if reinforced through comprehensive legal reforms, inclusive definitions, and societal education. This progress must be protected from regressive amendments and strengthened through active state commitment, public sensitization, and institutional accountability.

Recommendations

To address the current gaps in the legal framework and promote meaningful inclusion of transgender individuals in Pakistani society, the following recommendations are proposed:

1. Define "Transgender" Clearly and Inclusively: A collaborative legal definition should be developed by engaging legal scholars, Islamic jurists, medical professionals, civil society actors, and members of the transgender community. This definition must reflect social realities and international human rights standards, while remaining consistent with constitutional protections.
2. Eliminate Legal Ambiguities and Prevent Misuse: A provision should be added to prevent misuse of transgender status for criminal intent or undue legal advantage. A mechanism should be established to identify false claims, with appropriate penal consequences.
3. Gender Determination Mechanism: A standardized process for gender determination should be developed for individuals both below and above the age of 18, incorporating medical and psychological input only when absolutely necessary and with the consent of the individual.
4. Inheritance Law Reform: Specific legal mechanisms should be enacted to address the inheritance rights of transgender individuals, especially for those not belonging to the Muslim faith. The law should provide clarity on the inheritance process and allow self-identified gender to guide inheritance entitlements.

5. Criminalize Rights Violations and Hate Crimes: The current Act lacks any punitive clauses. Amendments should introduce penalties for violations of transgender rights, and a dedicated law should be passed to address hate crimes against transgender individuals with strict and non-bailable punishments.
6. Launch National Awareness Campaigns: Government-led campaigns through print, electronic, and social media should promote awareness about transgender rights and counter social stigma. Civil society and religious leaders must also be involved in building an inclusive and respectful discourse.
7. Promote Inclusive Education and Employment Opportunities: Specialized educational institutions for transgender persons should be established in every district, accompanied by scholarship programs and vocational training. Public and private sector employers must be incentivized to hire transgender individuals, with affirmative action measures where necessary.
8. Media Sensitization: The media must play a constructive role in portraying transgender individuals as dignified members of society. Their stories, struggles, and achievements should be highlighted to change the narrative from pity and ridicule to empowerment and equality.
9. Training for Government Officials and Police: Capacity-building programs and sensitivity training must be mandatory for all public officials, particularly in law enforcement and public service agencies, to improve their interactions with transgender individuals and reduce state-sponsored discrimination.
10. Monitor and Evaluate Implementation: A national monitoring body should be created to regularly evaluate the implementation of the Act. This body should include representation from the transgender community and be empowered to recommend corrective actions.

Conflict of Interest

The authors declare that there is no conflict of interest.

References

- [1] J. Jan, A. Muhammad, and F. Amir, "Transgender Persons (Protection of Rights) Act 2018: A Critical Appraisal," *Global Legal Studies Review*, vol. VII, no. III, pp. 6–14, 2022. [Online]. Available: [https://doi.org/10.31703/glsr.2022\(VII-III\).02](https://doi.org/10.31703/glsr.2022(VII-III).02)
- [2] M. A. Fazi and M. Bibi, "Discrepancies in transgender persons (protection of rights) act, 2018: A comparative study of transgender's rights in Pakistan and India," *International Journal of Law and Management*, vol. 63, no. 3, pp. 347–356, 2021. [Online]. Available: <https://doi.org/10.1108/IJLMA-10-2020-0262>
- [3] A. Rashid and U. Rashid, "Constitutional and Legal Guarantees for Transgender in Pakistan: Reforms and Failures in Law," in *Towards Gender Equality in Law: An Analysis of State Failures from a Global Perspective*, Cham: Springer International Publishing, 2022, pp. 79–110.
- [4] F. A. Khan, "Khwaja Sira Activism," *TSQ: Transgender Studies Quarterly*, vol. 3, no. 1–2, pp. 158–164, 2016. [Online]. Available: <https://doi.org/10.1215/23289252-3334331>

- [5] L. F. Carpenter and R. B. Marshall, "Walking while trans: Profiling of transgender women by law enforcement, and the problem of proof," *William & Mary Journal of Women and the Law*, vol. 24, p. 5, 2017.
- [6] S. Khan, J. Greene, C. A. Mellins, and J. S. Hirsch, "The social organization of sexual assault," *Annual Review of Criminology*, vol. 3, no. 1, pp. 139–163, 2020.
- [7] C. Pamment, "Hijraism: Jostling for a Third Space in Pakistani Politics," *TDR/The Drama Review*, vol. 54, no. 2, pp. 29–50, 2010. [Online]. Available: <https://doi.org/10.1162/dram.2010.54.2.29>
- [8] R. Che Hashim, S. Jayasingam, N. Mohd Mustamil, R. Abu Bakar, and S. Omar, "Behind the Curtain of Smiles: The Silent Torment of Domestic Violence," in *Women's Economic Empowerment and Wellbeing: Perspectives from a Developing Nation*, Singapore: Springer Nature Singapore, 2025, pp. 49–71.
- [9] A. Jamal, "Our Young Muslim Women, Willfulness, and the Honor Crime," *Al-Raida*, vol. 44, no. 2, pp. 21–48, 2020.
- [10] A. Rasheed, Z. Shaikh, and S. Ahmed, "Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principles," *INKISHAF*, vol. 3, no. 8, pp. 150–167, 2023.
- [11] D. Spade, "Resisting Medicine, Re/modeling Gender," *Berkeley Women's Law Journal*, vol. 15, no. 1, pp. 15–39, 2003.
- [12] J. J. Chung, "Identity or condition: The theory and practice of applying State Disability Laws to transgender individuals," *Columbia Journal of Gender and Law*, vol. 21, p. 1, 2011.
- [13] J. Levi and B. Klein, "Pursuing Protection for Transgender People Through Disability Laws," in *Transgender Rights*, P. Currah, R. M. Juang, and S. P. Minter, Eds. University of Minnesota Press, 2006, pp. 74–92.
- [14] H. Kugle, *Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims*. Oneworld Publications, 2010.
- [15] The Nation, "Nadra Introduces Policy to Register Transgender Persons," Aug. 29, 2017. [Online]. Available: <https://nation.com.pk/29-Aug-2017/nadra-introduces-policy-to-register-transgender-persons>
- [16] F. Jabeen, "Inheritance Laws for Muslim Transgenders: Insights from Islamic Jurisprudence across Jurisdictions," *RSIL L. Rev.*, 54, 2024
- [17] Human Rights Watch, "Pakistan: Events of 2020," 2021. [Online]. Available: <https://www.hrw.org/world-report/2021/country-chapters/pakistan#e81181>
- [18] Akhuwat, "Khawajasira Support Program." [Online]. Available: <https://akhuwat.org.pk/khwajasira-support-program/>
- [19] J. A. Redding, "The Pakistan Transgender Persons (Protection of Rights) Act of 2018 and Its Impact on the Law of Gender in Pakistan," *Australian Journal of Asian Law*, vol. 20, no. 1, Article 8, pp. 103–113, 2019. [Online]. Available: <https://ssrn.com/abstract=3490418>
- [20] I. Semra, "The Transgender Community and the Right to Equality in Pakistan: Review of the Transgender Persons Act 2018," *LUMS Law Journal*, vol. 7, 2022. [Online]. Available: <https://sahsol.lums.edu.pk/node/12893>

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