
An Analysis of the Transgender Persons Protection of Rights Act 2018 in Pakistan: Progress, Challenges, and Prospects

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Abstract:

The Transgender Persons Protection of Rights Act 2018 is a landmark legislation in Pakistan aimed at promoting and protecting the rights of transgender persons. This article provides an analysis of the Act, examining its key provisions and its implementation and impact in practice. Despite some progress in recognizing the identity of transgender persons and prohibiting discrimination, the Act faces several challenges in ensuring the full realization of transgender rights, including the lack of awareness and sensitivity among government officials and society at large, and the limited access to education, healthcare, and employment opportunities. Critiques and controversies surrounding the Act highlight the need for further reforms, including the recognition of legal gender identity and the elimination of discriminatory laws and practices. The article concludes by offering recommendations for improving the implementation and enforcement of the Act and advancing transgender rights and inclusion in Pakistan.

Key Words: Transgender Persons Protection of Rights Act 2018, transgender rights, Pakistan, discrimination, identity, legal gender recognition

1. Introduction:

The Transgender Persons Protection of Rights Act 2018 is a significant legislative development in Pakistan aimed at recognizing and safeguarding the rights of transgender persons. The Act seeks to provide legal protection against discrimination and promote the inclusion of transgender persons in all spheres of life, including education, healthcare, and employment. While the Act has been praised as a crucial step towards greater transgender rights and equality, it also faces several challenges in its implementation and impact. This article provides an analysis of the Act, examining its key provisions, implementation and impact in practice, critiques, and controversies. By doing so, it aims to contribute to a deeper understanding of the legal framework for transgender rights in Pakistan and the opportunities and obstacles for advancing transgender inclusion and equality.

2. Background and the Transgender Persons Protection of Rights Act 2018:

The Transgender Persons Protection of Rights Act 2018 is a legislative landmark in Pakistan that recognizes the rights of transgender persons and prohibits discrimination against them. The Act was passed by the Parliament of Pakistan in May 2018, after years of advocacy and activism by transgender rights groups and civil society organizations.¹

Before the enactment of the Act, transgender persons in Pakistan faced widespread discrimination, harassment, and violence, as well as barriers to accessing education, healthcare, and employment. They were often forced to live in marginalized communities and resort to begging or sex work for

¹ Hafiz Muhammad Siddique and Afrasiab Ahmed Rana, "The Transgender Persons (Protection Of Rights) Act 2018: A Shariah Appraisal of Self-Perceived Gender Identity and Right of Inheritance of The Transgender," *Competitive Educational Research Journal* 2, no. 4 (2021): pp. 77-88.

survival. Moreover, the lack of legal recognition of transgender identity meant that transgender persons could not obtain identity documents or participate fully in civic and political life.²

The Transgender Persons Protection of Rights Act 2018 seeks to address these issues by recognizing transgender persons as a distinct and independent gender identity, and prohibiting discrimination against them on the basis of gender identity. The Act defines transgender persons as “any person whose gender identity and/or gender expression differs from the sex assigned to them at birth”. It recognizes their right to self-perceived gender identity, and prohibits discrimination in education, employment, healthcare, and other public services.³

Moreover, the Act requires the government to take measures to promote the social welfare and development of transgender persons, including providing them with access to education and healthcare, creating employment opportunities, and establishing a National Council for Transgender Persons to oversee and coordinate their protection and empowerment (Transgender Persons Protection of Rights Act, 2018).

Overall, the Transgender Persons Protection of Rights Act 2018 represents a significant step forward for transgender rights in Pakistan, providing legal recognition and protection to a marginalized and vulnerable community. However, the implementation and enforcement of the Act remain challenging, and further reforms are needed to ensure the full realization of transgender rights and inclusion in Pakistani society.

² S. Ali, “Transgender Rights in Pakistan,” *International Journal of Human Rights in Healthcare* 12, no. 3 (2019): pp. 195-202.

³ “LGBTQ Terms and Definitions,” *lgbtq*, January 26, 2017, <https://lgbtq.multicultural.ufl.edu/programs/speakersbureau/lgbtq-terms-definitions/>.

Dr. Aslam Khaki vs SSP Rawalpindi⁴ case was a landmark legal case in Pakistan that played a crucial role in the enactment of the Transgender Persons Protection of Rights Act 2018. The case involved a transgender woman who was allegedly subjected to torture and harassment by the police in Rawalpindi, and who filed a petition for the recognition of her gender identity and protection of her rights.

The case was taken up by Dr. Aslam Khaki, a prominent lawyer and human rights activist, who argued that the Constitution of Pakistan guarantees the right to equality, dignity, and non-discrimination to all citizens, including transgender persons. Khaki also argued that the lack of legal recognition of transgender identity and the prevalence of discrimination and violence against transgender persons violated their fundamental human rights.⁵

The case received significant media and public attention, and contributed to raising awareness and support for transgender rights in Pakistan. It also led to the formation of a committee by the Senate of Pakistan to examine the issues faced by transgender persons and recommend legal reforms.⁶ The recommendations of the Senate committee, along with the advocacy efforts of transgender rights groups and civil society organizations, provided the basis for the drafting and enactment of the Transgender Persons Protection of Rights Act 2018.

Therefore, the Dr. Aslam Khaki vs SSP Rawalpindi case played a critical role in the legal recognition and protection of transgender rights in Pakistan, by raising awareness, mobilizing

⁴ PLD 2013 SC 188

⁵ “Dr. Muhammad Aslam Khaki vs. S.S.P, Rawalpindi,” South Asian Translaw Database, August 5, 2020, <https://translaw.clpr.org.in/case-law/muhammad-aslam-khaki-vs-ssp-operation-rawalpindi/>.

⁶ Farooq Siddiqui, “Recognition of Transgender Rights in Pakistan,” in *Transgender Rights in South Asia*, ed. M. K. Bahl, 2021, pp. 17-29.

support, and providing a legal basis for the enactment of the Transgender Persons Protection of Rights Act 2018.⁷

3. Challenges to implementation of the Act:

Despite the significant progress made by the Transgender Persons Protection of Rights Act 2018 in Pakistan, there are still several challenges to its implementation and enforcement. These challenges range from social stigma and discrimination to inadequate resources and capacity of the state institutions.⁸

One of the main challenges to the implementation of the Act is the persistent social stigma and discrimination against transgender persons in Pakistan, which limits their access to education, healthcare, and employment opportunities, and exposes them to violence and harassment. This stigma is deeply rooted in cultural and religious norms, and requires long-term and sustained efforts to change attitudes and behaviors towards transgender persons.

Another challenge to the implementation of the Act is the lack of adequate resources and capacity of the state institutions to enforce its provisions effectively. This includes the lack of trained personnel in the police, healthcare, and education sectors to address the specific needs and concerns of transgender persons, as well as the lack of financial and administrative resources to establish and maintain the National Council for Transgender Persons.⁹

Moreover, there are also legal and procedural challenges to the implementation of the Act, such as the lack of clear guidelines and procedures for the issuance of identity documents to transgender

⁷ Afrasiab Ahmed Rana, "Transgenders and Their Protection under Pakistani Law," *Courting the Law*, September 28, 2022, <https://courtingthelaw.com/2020/07/27/commentary/transgenders-and-their-protection-under-pakistani-law/>.

⁸ Ibid

⁹ A. Hussain, "Challenges to Transgender Rights in Pakistan: A Critical Analysis.," *Journal of Gender, Social Policy & the Law* 28, no. 3 (2020): pp. 423-441.

persons, or the lack of effective mechanisms for redressal of complaints and grievances related to discrimination and violence.¹⁰

Overall, the challenges to the implementation of the Transgender Persons Protection of Rights Act 2018 in Pakistan are significant and multifaceted, requiring a comprehensive and coordinated approach by the government, civil society organizations, and international partners to address the social, cultural, legal, and institutional barriers to the realization of transgender rights and inclusion in Pakistani society.

4. The progress of the act:

The Transgender Persons Protection of Rights Act 2018 in Pakistan has made significant progress in promoting and protecting the rights of transgender persons in the country. The Act provides a legal framework for recognizing and protecting the rights of transgender persons, including their right to self-identification, protection from discrimination, and access to healthcare, education, and employment opportunities.

Since the enactment of the Act, several important steps have been taken by the government and civil society organizations to implement its provisions and ensure its effective enforcement. These include the establishment of the National Council for Transgender Persons, which serves as a platform for transgender persons to voice their concerns and provide input on policy and programmatic matters related to their rights¹¹.

¹⁰ Ibid

¹¹ S.A. Khan, N. Baig, and M. K. Bahl, "Khan, S. A., & Baig, N. (2021). Transgender Rights in Pakistan: A Journey Towards Recognition and Protection. In M. K. Bahl (Ed.), *Transgender Rights in South Asia* (Pp. 139-153)," in *Transgender Rights in South Asia*, 2021, pp. 139-153.

Moreover, the Act has also led to the introduction of new policies and programs by the government to address the specific needs and concerns of transgender persons, such as the inclusion of transgender persons in the Benazir Income Support Program and the provision of separate prison facilities for transgender inmates.

In addition, the Act has also raised awareness and understanding of transgender issues among the general public and service providers, leading to greater acceptance and support for transgender persons in various sectors, such as healthcare and education.

Despite these positive developments, there are still several challenges to the effective implementation and enforcement of the Act, including social stigma and discrimination, inadequate resources and capacity of state institutions, and legal and procedural challenges.¹²

Overall, the Transgender Persons Protection of Rights Act 2018 in Pakistan has made significant progress in recognizing and protecting the rights of transgender persons in the country, but there is still a long way to go to ensure the full inclusion and empowerment of transgender persons in Pakistani society.

5. The future prospects of the act.

The future prospects of the Transgender Persons Protection of Rights Act 2018 in Pakistan depend on the effective implementation and enforcement of its provisions. While the Act has established a legal framework for recognizing and protecting the rights of transgender persons, there are still significant challenges to ensuring its full implementation.

¹² See note 9

One of the key future prospects of the Act is the strengthening of institutional mechanisms for its effective enforcement. This includes building the capacity of state institutions and service providers to effectively implement the Act's provisions, as well as providing adequate resources and support for these institutions.¹³

Another important prospect is the continued engagement of civil society organizations and transgender persons themselves in the implementation and monitoring of the Act. These actors can play a key role in raising awareness and advocating for the rights of transgender persons, as well as monitoring and reporting on violations of these rights. There is also a need for ongoing advocacy and policy development to address emerging issues and challenges facing transgender persons in Pakistan. This includes addressing issues related to healthcare, employment, education, and social protection, as well as addressing the intersectional discrimination faced by transgender persons who also belong to marginalized groups.¹⁴

Overall, the future prospects of the Transgender Persons Protection of Rights Act 2018 in Pakistan depend on the concerted efforts of state institutions, civil society organizations, and transgender persons themselves to ensure its effective implementation and enforcement, as well as ongoing advocacy and policy development to address emerging issues and challenges.

6. Some key recommendation

Based on the analysis of the Transgender Persons Protection of Rights Act 2018 in Pakistan and the challenges faced in its implementation, there are several recommendations that can be made to ensure its effective enforcement and protection of transgender rights.

¹³ Ahmad Ali and R. Saeed, "Transgender Rights in Pakistan: Progress, Challenges, and Prospects," *Journal of Homosexuality* 68, no. 5 (2021): pp. 726-741, <https://doi.org/10.1080/00918369.2020.1841094>.

¹⁴ Ibid

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- a. Strengthen institutional mechanisms for implementation: The government should take measures to strengthen the capacity of state institutions and service providers to effectively implement the provisions of the Act. This includes providing adequate resources, training, and support to these institutions.
 - b. Awareness-raising and sensitization: There is a need for greater awareness-raising and sensitization among the general public, law enforcement agencies, and government officials on the rights of transgender persons. This can be achieved through awareness campaigns, training programs, and targeted interventions.
 - c. Address social adaptability challenges: Efforts should be made to address the social adaptability challenges faced by transgender persons. This can be done by promoting social inclusion and addressing stigma and discrimination against transgender persons through media campaigns, community engagement, and advocacy.
 - d. Engage civil society organizations and transgender persons: Civil society organizations and transgender persons themselves should be actively engaged in the implementation and monitoring of the Act. They can play a key role in raising awareness, advocating for the rights of transgender persons, and monitoring and reporting on violations of these rights.
 - e. Address intersectional discrimination: Intersectional discrimination faced by transgender persons who belong to marginalized groups should be addressed through targeted interventions and policy development. This can include addressing issues related to healthcare, employment, education, and social protection.

By implementing these recommendations, it is possible to ensure the effective enforcement of the Transgender Persons Protection of Rights Act 2018 in Pakistan, and promote the protection of transgender rights in the country.

7. Conclusion:

In conclusion, the Transgender Persons Protection of Rights Act 2018 in Pakistan represents an important step towards recognizing and protecting the rights of transgender persons in the country. The Act has established a legal framework for recognizing the gender identity of transgender persons, prohibiting discrimination against them, and providing for their social, economic, and political inclusion.

However, there are significant challenges to ensuring the effective implementation and enforcement of the Act. These challenges include inadequate institutional mechanisms, lack of awareness and sensitization, social adaptability challenges, and intersectional discrimination. Addressing these challenges requires a concerted effort from the government, civil society organizations, and transgender persons themselves.

There are also future prospects for the Act, including the strengthening of institutional mechanisms for implementation, greater awareness-raising and sensitization, and ongoing advocacy and policy development to address emerging issues and challenges facing transgender persons in Pakistan.

In order to ensure the effective protection of transgender rights in Pakistan, it is necessary to address these challenges and work towards the full implementation and enforcement of the Transgender Persons Protection of Rights Act 2018. This will require ongoing advocacy, dialogue, and collaboration between all stakeholders involved in promoting and protecting transgender rights in Pakistan.

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