

STUDY
TO REVIEW SUFFICIENCY OF EXISTING LAWS
ON RIGHTS OF TRANSGENDER COMMUNITY
PUNJAB-PAKISTAN

Conducted by:
Good Thinkers Organization-Pakistan



PROTECTING RIGHTS OF TRANSGENDERS THROUGH LEGISLATION
PUNJAB-PAKISTAN

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Acknowledgment

Pakistan deserves to be acclaimed for promoting rights of transgender persons, and making legislation for them. It is the pioneer among South Asian countries to enact The Transgender Persons (Protection of Rights) Act 2018. This Act guarantees protection and provision of basic rights for transgender community. Enforcement of this Act is, however, yet an overwhelming challenge. Public departments not only have inadequate orientation about this law but also facing scarcity of resources. On the other hand, majority of the citizens are also not familiar with this law. This is why transgender persons are still facing a ray of challenges while claiming their basic human rights. There have been reported several cases of discrimination, social injustice and violation of their rights. They have been grappling with the societal neglect and isolation.

GTO firmly believes in human equality, and discourages all types of discrimination based on sex, race, color, religion and ethnicity. It realizes that some of the marginalized groups (particularly transgender persons) are facing the problem of inequality. They have been grappling with limited social acceptance and inadequate provision of human rights despite enactment of federal Act for their protection. Being a human rights organization, GTO has collaborated with relevant stakeholders to protect rights of transgender persons through legislative reforms. In this backdrop, it has commissioned a study for reviewing existing laws (including the aforesaid federal Act) and policies related to human rights of transgender men and women in Punjab.

The purpose of this study was twofold. On the one hand, the prevailing laws and policies related to rights of transgender persons were reviewed. This study attempted to determine the sufficiency of these laws along with identifying practices as well as challenges towards enforcement of these laws. It identified gaps and complications in these laws and policies. It particularly reviewed, The Transgender Persons (Protection of Rights) Act 2018. On the other hand, the study proposes recommendations for legislative reforms. It has highlighted human rights perspectives which need additional legislative in context of province Punjab. Furthermore, it provides a ground for devising lobbying strategies to be adopted by GTO and other stakeholders for necessary changes in the laws/policies and their implementation to address the gaps.

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Acronyms

CNIC	National Database and Registration Authority
CrPC	Code of Criminal Procedure, 1898
EOBI	Employees' Old-Age Benefits Institution
GTO	Good Thinkers Organization-Pakistan
ICCPR	International Covenant on Civil and Political Rights
NCHR	National Commission on Human Rights
NCSW	National Commission for Status of Women
NADRA	National Database & Registration Authority
PPC	Pakistan Penal Code, 1860
UDHR	Universal Declaration of Human Rights
UN	United Nations
WP	Writ Petition

Background and Context

Transgender is a broad term encompassing and covering a wide range of subjects. The history of every region in this world is filled with tales of transgender. Sometimes, enjoying high status in the palaces and courts of kings to being persecuted for just being different from other men and women. In the subcontinent, transgender in the last century witnessed and live through different phases from serving in palaces of Mughal empires to being avowed as criminals under The Criminal Tribes Act of 1871 by British colonial occupiers.

The preamble of The Criminal Tribes Act read as: `Whereas it is expedient to provide for the registration, surveillance and control of certain criminal tribes and eunuchs; it is hereby enacted as follows: -`. The Act provided for the registration, surveillance and control of certain criminal tribes and eunuchs and had penalized eunuchs, who were registered, and appeared to be dressed or ornamented like a woman, in a public street or place, as well as those who danced or played music in a public place. Such persons also could be arrested without a warrant and sentenced to imprisonment up to two years or fine or both. Under the Act, the local Government had to register the names and residence of all eunuchs residing in that area as well as their properties, who were reasonably suspected of kidnapping or castrating children, or of committing offences under Section 377 of the Indian Penal Code, or of abetting the commission of any of the said offences. Under the Act, the acts of keeping anybody under 16 years in the charge of a registered eunuch was an offence punishable with imprisonment up to two years and a fine and the Act also denuded the registered eunuchs of their civil rights by prohibiting them from acting as guardians to minors, from making a gift deed or a will, or from adopting a son¹.

¹Mian Asia V Federation of Pakistan WP 31581-16

English Colonists are the ones who are responsible for the current state of transgender person which we see in Pakistan as the draconian laws and blatant discrimination against transgender person destroyed their culture and community and pushed them towards the depth of poverty and despair. The law was finally repealed after the partition of the subcontinent in August 1949. But the legacy of the law resulted in the institutionalization of marginalization and expulsion of transgender persons diminishing their ability to fight for and demand their due rights as human beings.

Transgender person faces every kind of violence imaginable in this region from disrespect to discrimination in every walk of life and from physical and sexual abuse to murder. Transgender person endure economic exploitation by the hands of their Guru`s as they take away most of their earnings. Apart from the violence caused by the individuals, transgender person faces torture, particularly by the police. A slew of murders, rapes, intimidation and hate crimes have shattered the transgender community in Pakistan in recent years with more than 70 transgender people have been killed across the Khyber Pakhtunkwa province since 2016. More than 1,500 crimes, mostly gang rapes, attempted murders, torture, kidnapping, violence and intimidation were reported to the police in the last five years².

The start of the 21st century has brought positive news for transgender persons in South Asia and governments are taking legal and policy reforms on the backdrop of landmark decisions of superior courts which laid the foundation of protection of transgender persons. Nepal's Supreme Court took the lead in 2007 and provided legal recognition to the `third gender` followed by a judgment by the Supreme Court of Pakistan in 2009. In 2014 the decision of the Supreme Court of India gave formal recognition to transgender persons. These positive judgments

²<https://www.dpa-international.com/topic/transgender-people-pakistan-conservative-region-live-edge-urn%3Anewsml%3Adpa.com%3A20090101%3A201119-99-394445>

give rise in 2018 to the Transgender Persons (Protection of Rights) Act 2018 in Pakistan and Transgender Persons (Protection of Rights) Act, 2019 in India.

Yogyakarta Principles although not binding on the states are the first set of principles that provide basic rights and protections to transgender persons. Before these principles `non-discrimination based on sexual orientation, gender identity, or sex characteristics are not explicitly referred to in any international human rights treaty`³. But this does not mean that none of the human rights declarations, treaties, bodies and mechanisms provided protection to transgender persons. UN Charter the first international document prohibits discrimination on the basis of race, sex, language or religion. As human beings, all the core UN conventions equally apply and provide protection to transgender persons. The Universal Declaration of Human Rights Article 1 provides that, `All human beings are born free and equal in dignity and rights.`. Similarly, the right to be recognized as a person before the law stated under Article 6 of UDHR and Article 16 of the International Covenant on Civil and Political Rights is available equally to a transgender person. Further, Article 17 of ICCPR provides, `No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.`. Article 26 of ICCPR provides equality before the law of all persons without any discrimination and prohibits any discrimination on any ground such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or another status.

³<https://www.pgaction.org/inclusion/background/framework.html>

Build Up to the Law-The Transgender Persons (Protection of Rights) Act, 2018

The main focus under the Constitution of Pakistan, Chapter 1 - Fundamental Rights, is the principle of Equality and Non-discrimination. Article 25, 26, and 27 especially focus on Equality and Non-discrimination based on race, religion, caste, sex, residence or place of birth. Article 25, declares that all citizens are equal before the law and there shall be no discrimination based on sex, among other things. Article 26, there shall be no discrimination against any citizen on the ground of race, religion, caste, sex, residence or place of birth in respect of access to public places. Article 27 No citizen otherwise qualified for appointment in the services of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth. The transgender community has a unique language and culture and Article 28 language, script, and culture of any section of citizens are protected.

The august Supreme Court of Pakistan in its original jurisdiction in Civil Petition No.43 of 2009, Dr. Muhammad Aslam Khaki v.s S.S.P. (Operations) Rawalpindi⁴ was taken up and directions were passed from time to time to recognize the dignity of transgender persons and declaring them third gender entitled for equal protection under the law. The Apex Court noted that transgender persons have been neglected on the account of gender disorders in their bodies. They have been denied the right of inheritance as they were neither sons nor daughters who could inherit under Islamic Law and sometimes even families intentionally disinherit transgender children. To eliminate this gender-based ill-treated discrimination against the transgender person, the Supreme Court in the titled case directed Provincial and Federal Governments to protect transgender person`s identification, right to inherit property, right to education and right to life which includes employment and quality of life.

⁴PLD 2013 SC 188

Another important constitutional petition filed before Lahore High Court titled Mian Asia v.s Federation of Pakistan, WP 31581-16, for issuing the direction to the respondent NADRA to issue a new computerized national identity card (CNIC). NADRA has declined the request of the petition for the renewal of his CNIC on the ground that the name of his Guru in the parent column is not acceptable. The honorable Justice Abid Aziz Sheikh directed NADRA to develop a policy as transgender persons being citizens of this country are also entitled to same respect, dignity, and fundamental rights as are available to the other segments of the society. The Court also apprised the policymakers that in case any transgender is not able to provide the name of his father, being abandoned by his family, it cannot be a sole ground not to issue him CNIC and to deprive him of his fundamental right of being a citizen of this country. As a consequence of these proceedings, the concerned policymakers (NADRA) finally framed the policy dated 21.08.2017 to issue CNIC to the transgender person with unknown parentage. These judgments laid the foundations for The Transgender Persons (Protection of Rights) Act, 2018.

In 2017, the following senators or member of the National Assembly; Senator Zaheer-Ud-Din Babar Awan, Senator Karim Ahmed Khawaja, Naeema Kishwer Khan, Member National Assembly, Senator Rubina Khalid, Senator Rubina Irfan, Senator Samina Abid, and Senator Kalsoom Perveen submitted 6 different drafts for the protection of the right of transgender persons in Parliament. The final version of the bill was drafted with the participation of different stakeholders which included the National Commission on Human Rights (NCHR), the Federal Ombudsman's taskforce on transgender people, UN agencies and civil society organizations.

The country's total population of transgender people reported in the sixth Population and Housing Census is 10,418⁵. The right to be counted in the sixth

⁵<https://www.dawn.com/news/1354039>

Population and Housing Census was also a result of a case in which Lahore high court Chief Justice Syed Mansoor Ali Shah passed the order, issuing directives to enforce the transgender community's basic rights⁶. This figure is grossly incorrect. Study on the frequency of ambiguous genitalia carried in Turkey reported that 0.13 percent of babies observed during the study had ambiguous genitalia⁷. So if we go by the minimum numbers, for Pakistan's population of 207.8 million as per the 2017 Census, there has to be a minimum of 270,106 intersex individuals alone and if we consider transgender persons then the figures would be in hundreds of millions. A study by Good Thinkers Organization in 2016 estimated that there were more than 42,000 transgender persons only in Punjab. These numbers show that a considerable size of the population is protected by the Transgender Persons (Protection of Rights) Act 2018. It also becomes equally important to remove the gaps in the law to fully protect the transgender person living in Pakistan.

Salient Features of the Transgender Persons (Protection of Rights) Act 2018

Transgender Persons (Protection of Rights) Act 2018 has 21 sections spread over 7 chapters. The first chapter states that the law extends to the whole of Pakistan⁸. Terms like gender expression, gender identity and transgender person are defined in any law for the first time in Pakistan. In chapter 2 the transgender persons can register themselves with any governmental department e.g. NADRA, Social Welfare or Passport office, etc. as per their self-perceived gender identity for availing services of governmental departments. It also allows transgender person to change the gender in their documents if they were registered prior to the promulgation of this Act.

⁶<https://thewire.in/rights/pakistan-lgbt-rights-national-census>

⁷Journal of the Endocrine Society, Volume 3, Issue 6, June 2019, Pages 1185–1195

⁸Section 1, Transgender Persons (Protection of Rights) Act 2018

Chapter three protects and prohibits discrimination and harassment against transgender person in educational institutions, employment, trade or occupation, health services, goods and general services, sale, purchase or rent of a property, standing for or holding public office.

Forth chapter narrates steps that the government shall take to secure the full and effective participation of transgender persons and their inclusion in society.

Chapter five gives the right to inheritance, education, employment, property, vote, assembly, access to public spaces and health. It further ensures fundamental rights as provided by the Constitution of Pakistan. Penalty for engaging transgender person in begging is also included in this chapter.

Chapter six provides an enforcement mechanism for rights guaranteed are denied. Chapter seven provides miscellaneous actions for implementation of the Act like development of rules for implementation.

Familiarity of Transgender person with the 2018`s Act

Good Thinkers' Organization for Human Development (GTO) conducted focus group discussions with the transgender community of Punjab on provincial legislation. The objectives of the discussion are to bring the grassroots voices in the law-making process, to identify the gaps and opportunities for provincial legislation and to address the transgender community's needs and demands for the provincial legislation. Less than 5% of Trans-community was aware of any law on protecting the rights of Transgender person. Focus group discussion resulted in the following findings;

The widespread problems that transgender is experiencing on daily basis are lack of protection and security, harassment and abuse, mistreatment in healthcare and by other Government Departments. The level of suffering that community is facing at the hands of the Police department is of great concern posed by the

community. Trans-community is demanding the basic fundamental rights as enjoyed by any citizen of Pakistan.

The lack of respect and dignity and social acceptance on the basis of their social identity is one of the main concerns noted during the discussions. According to the community's demands, each and every government department should take initiatives for the sensitization and awareness programs for the inclusion of transgender persons. The role of mainstream media should be defined in highlighting their issues and media should act as an awareness tool for their social acceptance. Shelter homes and funds allocation for aged trans-persons were also among their demands.

The type of violence that the community faces on daily basis includes physical abuse, sexual abuse and mental abuse. There are number of narrations of the incidence of unfair treatment from police were recorded. It was suggested by the community that there is a greater need for police sensitization training towards transgender persons. Healthcare facilities are also greatly failing at addressing the community's health care issues because of discrimination upon visiting any hospital.

There should be healthcare cards provided to them from the Government, so that they can avail equal treatment. It was also observed during the discussion that more than 80% of community members are not interested in getting an education because of a lack of employment opportunities, less wages, abuse and harassment. Again the economic discrimination that the community faces should be addressed in law in the form of minimum employment quota, technical skill education and other economic opportunities. Furthermore, it is noted that concerned law-making departments should set up an implementation mechanism of the provincial law for protecting the rights of the transgender community.

Shortcoming in the Existing Law

After 18th Constitutional amendment, Federation and Provinces are clearly separated to legislate, according to their defined jurisdictions;

As per the supreme law of the state, now provinces are responsible to legislate on social & human rights-related issues. Transgender Persons (Protection of Rights) Act 2018 was passed by the parliament and applies to the whole of Pakistan. Ideally, each province should develop its laws for the protection of transgender persons, as kind of services and administrative assistance need to address the issue holistically lays with provinces. Thus the implementation of federal law on the subject will always face hindrance, which cannot be easily tackled by the Federal Government.

The law limits the scope and role of the complainant. As per the law, complainant means a transgender person who has made a complaint on being aggrieved by an act of harassment. The definition restricts that only complaint can be filed, in case of harassment faced by the transgender person. The law is silent on the issue of discrimination. Can the transgender person file complainant in cases of discrimination is open to question and interpretation? No uniform definition of the term transgender person exists in the world, not even in international law and human rights framework, as it embodies a lot of variations and it also changes over a period of time. The law tries to define the term transgender person but in an attempt to define the term it mixed transgender and intersex.

In section 2(2) the Act states that a word or expression not defined in the Act shall have the same meaning as assigned to it in the Code of Criminal Procedure, 1898 (Act V of 1898) or The Pakistan Penal Code, 1860 (Act XLV of 1860). CrPC or PPC does not provide any remedy specifically for transgender persons and the law itself does not use any term which has been separately defined in PPC or CrPC.

Very few countries in the world have taken the progressive step of allowing recognition of gender, based on self-perceived identity. Generally, most countries of the world have shown cautions on the subject and have laid down some administrative or medical process for registration of gender on public documents. The legal problem would lay in the case where a person was allowed to register themselves based on self-perceived gender and later on due to any reason that person decides or wants to change his or her gender again. The Act remains mute on this proposition. Can a person be allowed to change their gender on documents more than once? and what would be the legal consequence in case that person has claimed some rights based on their previous documented gender? A lot of complications could potentially arise in the case of inheritance of property.

The Act puts one restriction on self-perceived recognition and allows only individuals above 18 years to be registered with governmental departments. The Convention on the Rights of the Children is also quiet on the recognition and registration of children based on self-perceived gender. The complications and the troubles start for most transgender children, when they enter their teenage. The body, emotional and psychological changes in the adolescent years bar their growth as human being.

A process needs to be determined so that such children can align themselves as easily as possible with their required gender. But this would not be an easy task as young children are not sure of their feelings, emotions and bodily changes and secondly, there is likely a chance that the parents or guardians might look for corrective surgeries or treatment for these children which will further complicate their lives.

The law lists down an exhaustive list of grounds on which discrimination is not allowed against a transgender person. Similarly, harassment of transgender persons both within and outside the home, based on their sex, gender identity

and gender expression is prohibited. Only prohibition or barring certain actions do not serve any purpose and these prohibitions remain inside the law books as not punishment or punitive force is available to stop the discrimination and harassment. Punishment is a strong method to stop the perpetrator and with punishment also comes the possibility of an enforcement mechanism for the rights and protections guaranteed under the Act.

The obligations of the government under section 6 are drafted in a very generic way. Most of the provisions are vague and as stated earlier most of the obligations fall in the purview of the provincial governments rather than the federal government. For instance, the law states that protection centers and safe houses are to be established for the protection and rehabilitation of transgender person but creating such centers and safe houses by the federal government in the provinces and managing them from the center will be a very difficult task requiring an additional huge budget. Similarly, the establishment of separate prisons, jails, confinement cells cannot be established by the federal government in provinces as these departments and resources for them are under the domain of provincial governments.

The right to inherit the property has been given under the Act and discrimination is barred. Bases on which any transgender will get the share in inheritance has been given but the implementation mechanism is missing. Special measures are needed for ensuring that transgender person gets their due share the inheritance like measures taken over the period of time for women's right to inheritance in Pakistan.

The right to education is provided in section 8 of the Act. This section prohibits discrimination against transgender person in public and private educational institutes. Provision of education particular to children is a provincial subject and the federal government does not have much role in this area. Subsection 3 of section 8 states that `The Government shall take steps to provide free and

compulsory education to transgender persons as guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan` but Article 25A is only limited to the provision of free and compulsory education to children between the age of 5 years to 16 years. The correct constitutional article, if it has to be quoted, is Article 22(3)(b) which provide that `no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.`. Transgender Persons (Protection of Rights) Act 2018 is primary legislation, primary legislation is meant to explain and provide a system and mechanism for protection and enforcement of rights available under the constitution of the country which is the supreme law of the state. Thus, giving reference to the constitution in primary legislation is not ideal rather it defeats the purpose of the primary legislation and only becomes superficial.

The right to employment is provided in section 9. Again reference to Article 18 of the Constitution of the Islamic Republic of Pakistan is given, which could have been avoided. In an ideal world, transgender person should be able to secure employment if principles of non-discrimination are followed but due to centuries of exclusion, the transgender community is not in a position to have reasonable jobs for themselves. In order to provide employment possibilities as per the actual population of transgender person quota in the public and private sector must be introduced.

The right to health is provided in section 12 of the law. Hospitals and other healthcare institutions and centers are governed and managed by provincial governments and the problem of management of these hospitals and centers will be raised if the federal government starts to develop such facilities. The right to health is ensured by no penalty or punishment is given in the law if this right is denied. Subsection c of section 12 provides for access to gender corrective treatment. The provision of such treatment is important and it is equally important to ensure that gender corrective treatment is not forced on any

transgender person of any age, particularly the individual below the age of 18 years, and secondly, a mechanism is developed to ensure the safety of such medical or surgical treatments.

Guarantee of fundamental rights is stated in section 16. The law does not provide any process or setup for ensuring that the rights available under the Constitution of Pakistan are in real sense guaranteed to the transgender population as stated above that the objective of the primary legislation is to explain and provide an implementation system for constitutional provisions. The mere mentioning of fundamental rights will never give due rights to the transgender person. The only action or issue that is criminalized under this law is begging. Whoever employs, compels or uses any transgender person for begging shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both⁹. Begging is already criminalized in Punjab through Punjab Vagrancy Ordinance, 1958, thus no new penalty is created.

The law does not have any independent enforcement mechanism built in the law. Section 18 narrates that aggrieved transgender person can avail the remedies available under the Constitution or The Pakistan Penal Code 1860 (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898) or the Code of Civil Procedure 1908 (Act V of 1908). But these laws do not provide any specific remedy for transgender person. The remedies under these laws are already independently available to transgender persons. The law further suggests that aggrieved transgender person can move a complaint to the Federal Ombudsman, National Commission for Status of Women (NCSW) and National Commission of Human Rights (NCHR) if any of the rights guaranteed herein are denied to him or her. Each of these institutions has its own limitations. Federal Ombudsman can only get actions against employees working under the federal government. NCSW and NCHR can only hold an inquiry on the incident reported to them and

⁹Section 17, Transgender Persons (Protection of Rights) Act 2018

these authorities do not have any enforcement structure and rely on the existing police force for the execution of their inquiry reports if any offence is made out.

The federal government has the power to make rules for this law for carrying out the purposes of this Act. But there are still no rules developed after more than two and a half years. Without the presence of rules of business, implementation of this law becomes virtually impossible. The rules will further define which ministry or department will be the custodian of this law and how provinces and the federal government will cooperate with each other. Section 21 gave the power to the government to remove difficulties which they face during the implementation of the law by giving directions, published in the official Gazette. The law further limited this power of the government and gave only two years from the date of commencement of this Act. Unfortunately, those two years have passed and the government missed the opportunity to bring positive changes in the law through an administrative order.

Transgender persons face violence in their daily lives because of their gender identity. Verbal abuse and derogatory remarks are common for them. Transgender persons are shunned by society and physical violence and sexual abuse are not taken seriously by actors of the criminal justice system. Apart from the callous attitude of the society the criminal laws in Pakistan also have no recourse for them. PPC does not give the term `Transgender Person`, all the offence mentioned in the PPC only apply to males or females as criminal and civil laws recognize only two groups of gender i.e., man and woman. Rape of a transgender person is not an offence under PPC, and if an FIR is registered, a section of Unnatural Offence under section 377 is added in the FIR. Assaults or uses criminal force to any women and strips her of her clothes and, in that condition, exposes her to the public view¹⁰ is a very serious offence with a maximum sentence of death but if such an incident happens with a transgender

¹⁰ 355 PPC

person than the law is silent and transgender person cannot claim justice. A similar situation is for offence like procurement of transgender child, kidnapping or abducting a transgender person for unnatural lust, buying or selling a transgender person for purposes of prostitution, depriving transgender person for inheriting property, Importation of Transgender Person from a foreign country, Enticing or taking away or detaining a Transgender person with criminal intent, head shaving, and a de-beautifying transgender person among other offences.

Principle 7 of The Yogyakarta Principles states that there shall be no arbitrary arrest and detention on the basis of gender identity. But transgender persons are regularly detained and search by police when they are returning late at night after performing in some social event. Beating and snatching of money and belongings are regularly reported by transgender person during these unlawful stop and search.

Violence faced by the transgender children is hidden inside the homes. Transgender children face psychological abuse and emotional blackmail from a family member which results in substance abuse or develop suicidal tendencies. Transgender children are forced to gender-conforming traits and when they do not follow the gender norms they face violence and if they follow the gender roles acceptable to society then they live a fake and false life.

Abandonment of transgender children is common practice, particularly aggravated, when children reach puberty. Like other offences abandonment of transgender children is not recognized under the law. Even if with a broader or open interpretation of the law, we apply section 328 PPC¹¹ then the age of children restricted to only 12 years.

The preamble of the Transgender Persons (Protection of Rights) Act 2018 provides that law is being passed `for protection relief and rehabilitation of rights

¹¹Exposure and abandonment of child under twelve years by parent or person having care of it

of the transgender persons and their welfare and for matters connected therewith and incidental thereto`. But the text of the law only provides partial protection to the transgender person. Only section 6(a) briefly talks about the establishment of centers and safe houses for the rehabilitation of transgender. There is no clause regarding the welfare of the transgender person. There can be no rehabilitation without welfare and no welfare without rehabilitation. Protection centers are not the only aspect in the rehabilitation process with the provision of health, education, employment and safety net schemes.

Conclusion and Recommendations

The law alone will not vanish the troubles faced by the transgender community, comprehensive policy and attitudinal change in the behavior of society is need to bring transgender person at par with other segments of society. The legislation was the first step and now the government should take other positive measures to end ostracism. The rights of the transgender person can truly be fulfilled with comprehensive provincial legislation as most of the services needed fall under the ambit of the provincial government. Therefore, in light of the above, the following recommendations are put forward:

- ❖ The Government of Punjab should legislate/adopt a comprehensive `Transgender Welfare and Protection Act` and ensure the proper implementation of it with a proper plan of action.
- ❖ Amendment in this existing federal law is required to take provincial governments on board for fulfilling the obligations entrusted to the federal government under this law. The federal government should partner with provincial governments for the realization of obligations and these points could be further elaborated in the rules of business of this law.

- ❖ Relevant amendments should be made in Section 498A PPC and Land Revenue Acts to ensure transgender person's rights to inheritance are safeguarded.
- ❖ 2% to 5% quota in the public and private sector job must be introduced for transgender persons at the provincial and federal level.
- ❖ Rules of the business of this Act should be developed as soon as possible with the consultation of stakeholders for the implementation of this Act for smooth implementation at the provincial level.
- ❖ Health insurance schemes/cards should be available for transgender persons as they are at high risk of sexually transmitted diseases and infections by the Provincial Health Department.
- ❖ Offences under the law for the protection of transgender should be cognizable, non-bailable, and non-compoundable.
- ❖ Ensure equal opportunity for getting appropriate education and vocational training, workplace security, and safety. The special incentives, schemes, rebates by the authorities (relate to tax and revenue, EOBI, Social Security, and Saving Schemes, etc.) should be introduced to encourage the trans-led profit-oriented or community organizations at provincial and federal level.
- ❖ Harassment at workplaces and in all other settings should be discouraged including within home settings, based on their sex, gender identity and gender expression should be prohibited, the laws Pakistan Penal Code and Harassment at Workplace Act should also be amended to provide cover against harassment and discriminatory behaviors.

- ❖ Establishment of commissions with meaningful participation of trans community, having certain judicial powers under Criminal and Civil Procedure Codes, through an act of provincial assembly with a swift complaint redressal system at provincial and federal levels for the protection of the rights of transgender persons.
- ❖ Legal Gender Recognition and self-determination processes must be efficient, transparent, and accessible, and hassle-free to uphold the rights of transgender persons.
- ❖ Ensuring the right to free legal support at the state expense and access to justice by an individual transgender in any case where these persons conflict with the law or as a victim. No discrimination against transgender in all settings including the measures for the protection of transgender detainees.
- ❖ Considering it as a fundamental constitutional right of a citizen, the protection of their specific subcultures, language and lifestyles according to their choice.
- ❖ Institutional and structural improvements to ensure the health care services including the emotional and psychological health of these communities as well as special arrangements and provisions in implementation of the HIV&AIDS prevention programs for transgender communities at the provincial level.
- ❖ The federal government should make a special effort to ensure that the next Population and Housing Census have the most accurate figures related to transgender persons with timely coordination with provinces.

- ❖ Under different Prime Minister Loan schemes and educational grants, a transgender person should be given high priority.
- ❖ Abandoned transgender children should be handed over to the provincial child protection setups. There should be a possibility in law to allow parents to handover the children to child protection services without legal consequences.
- ❖ Police and judicial academies should include training material related to transgender rights and protection in their curriculum at the provincial and federal levels.
- ❖ A direct cash transfer grant scheme should be introduced for the transgender person above 50 years of age who are registered with NADRA or the provincial social welfare department.