

# **SUFFICIENCY OF RIGHTS OF TRANS-GENDERS IN PAKISTAN IN THE EXISTING LEGAL CORPUS AND FRAMEWORK FOR THEIR ENFORCEMENT; A CRITICAL APPRAISAL, ISSUES AND FUTURE POLICY SUGGESTIONS**

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## **Introduction**

Gender identity is perhaps the most important aspect which determines the psycho-social behavior of humans. A gender identity crisis not only leads to problematic social life, but also lowers the self-esteem of an individual which may potentially lead to his socio-economic and political alienation. Normalcy is conformity to prevalent norms of the majority. The binary gender definitions serve the purpose of the dominant majority and hence, the third gender, the transgender and the gender queer, do not fit in the binary gender mainstream. The struggle for mainstreaming the transgender persons<sup>i</sup> is an on-going phenomenon around the world. However, their full-fledged acceptance into the gender codes still remains to be achieved.

Efforts for mainstreaming the transgender persons in Pakistan have shown some progress in recent years through judicial decisions and legislative instruments. However, despite fundamental guarantees protected under the constitution of the Islamic Republic of Pakistan which prohibits discrimination on the basis of gender, special laws had to be enacted to call for affirmative actions by the Government. This alludes to misplaced state priorities regarding affairs of the transgender community. Moreover, it also shows that the societal will as represented in the constitution, is perhaps, no more than a theoretical aspiration because the transgender persons are heavily grieved by how society treats them in the real life.

If we look at history of the transgender community in the sub-continent, it is observed that transgender persons known by the term *Khwaja Sara* held a special recognition in the society during the Mughal period when they were employed as guardians of the *Zanan Khana*<sup>ii</sup> in palaces. Moreover, they were also respected by the society, for superstitious as well as religious reasons, for it was generally believed that their prayers would not be turned down, since they were devoid of committing basic sins. Furthermore, it used to be a regular tradition all across the sub-continent at the birth of a child where *Khwaja Saras* used to celebrate by dancing to welcome the newborn. In fact, people used to reward them in cash or kind that used to be the

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main source of their livelihood. Although it was not their social mainstreaming in the strict sense of the term, however, the societal response towards transgender persons was probably more receptive and their life was proportionately less stigmatized as it appears today.

Without getting into the detailed historical analysis of the topic, which is not the focus of this paper, it may be appropriate to mention that over the passage of time, the socio-economic and political role of transgender community in the sub-continent changed drastically. A major stimulus to it was the passage of the Criminal Tribes Act, 1871 during the British era which placed the transgender communities in the category of criminal tribes, thereby, alienating them socially. It remained in force till 1947 after which, it was repealed by the respective legislatures<sup>iii</sup>. Simultaneously, the gradual rise of the middle class and technological innovations made over time brought in alternatives to entertainment and other social roles which used to be traditionally taken up by the transgender persons. This led to minimizing their economic prospects and given their already clichéd social status of an anomalous existence, they started resorting to earn their livelihoods by means of beggary, selling sex and becoming drug peddlers. It is in this context that the transgender communities in Pakistan have been raising their voices to seek their mainstreaming through provision of socio-economic and political rights, by the state authorities and the acceptance of their identity, by the society at large, as equal citizens of the state.

### **Statement of the Problem**

Rights of transgender persons in Pakistan are generally provided by way of implication under the constitution, re-affirmed in some decisions of the superior Courts and are more specifically granted through the legislative instrument called The Transgender Persons (protection of rights) Act, 2018<sup>iv</sup>. In addition to the general cognizance of rights available under the major criminal and civil codes of Pakistan, the Act also provides for enforcement mechanisms through the offices of the Federal Ombudsman, National Commission on Status of Women(NCSW) and National Commission on Human Rights(NCHR). However, by spreading these responsibilities of enforcement of rights across too many institutions, its effectiveness is compromised. This state of affairs has given rise to multitude of social, political and economic problems for this marginalized segment of the Pakistani society. The purpose of this study is to find out as to whether the rights available to transgender persons in the legal corpus of Pakistan are sufficient and to what extent do the enforcement authorities respond to carry out their implementation.

## **Significance and Scope of Study**

The importance of this study lies in the fact that this longstanding subject matter was taken up by the Supreme Court of Pakistan in 2009 and decisions were made on some of the important aspects of the case.<sup>v</sup> Additionally, the Pakistani Parliament passed a law in 2018 relating to rights of transgender persons.<sup>vi</sup> Both of these instruments stressed upon the need for affirmative actions for protecting rights of transgender persons and also enumerated the enforcement mechanisms. The grant of rights and their enforcement mechanisms are required to be tested for their sufficiency and effectiveness of implementation because there are differing claims made by the government and the community with regard to potency of such steps. Therefore, it is desirable to carry out the situation analysis in order to determine the veracity of such claims and bring out the factual position. There is also a need to identify gaps and propose solutions to carry this process forward. This is required to be done through an evidence based approach.

In addition to all the fundamental rights available to transgender persons under the constitution of Pakistan, the Act specifically re-affirms nine rights to them which include right to inherit, right to education, right to employment, right to vote, right to hold public office, right to health, right to assembly, right of access to public places, right to property and right to assembly. However, for the purpose of this study, we shall restrict ourselves to five basic rights of transgender persons which include right to inherit, right to education, right to health, right to employment and right to vote. The recognition of identity of transgender persons shall be a cross-cutting and overlapping theme when we discuss these five basic rights.

## **Review of the Literature**

Beginning in the 1980s and 1990s, a new social movement developed around the concept of transgender<sup>vii</sup>. Such movements began around the world in the last two decades or so primarily asking for transgender rights by the state authorities for their inclusion into the mainstream societal fiber. Their marginalization in Pakistan is a hard fact which continues till date. The transformation of the Pakistani society, in the last few decades, has curtailed opportunities for Khawaja Saras to practice traditional occupations, and has increased their dependence on prostitution and beggary<sup>viii</sup>.

The apathy of transgender persons in Pakistan is represented in a study conducted by LEAD Pakistan which finds that the physical and/or psychological state Khawaja Saras' in Pakistan put up with leads to a disproportionate amount of homelessness, unemployment, low income and other financial disadvantages<sup>ix</sup>.

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Another research finds that interventions aimed at increasing social inclusion, reducing gender based discrimination, violence and physical abuse and facilitating access to quality medical care should be considered as part of a comprehensive approach for preventing risk behavior in trans populations<sup>x</sup>. A study conducted by the USAID in collaboration with Aurat Foundation – a Pakistani CSO, concludes that where NGOs can provide a good kick-start to realize the rights of transgender people, it is eventually the State's responsibility to help the community and protect its rights<sup>xi</sup>.

The literature on the subject of rights for transgender persons offers repeated recommendations to alleviate their sufferings. Perhaps due to these consistent advocacy efforts, it was made possible in Pakistan to legislate upon the issue and provide for an enactment in 2018 which not only enlists the rights of transgender persons but also provides for mechanisms to enforce them.

### **Methodology**

The study adopts analytical descriptive methodology to evaluate the situation of rights guaranteed to transgender persons and the enforcement mechanisms available to correspond to their implementation. Data has been gathered from a mix of primary and secondary sources. In the primary sources, structured interviews with the relevant officials in the government and the NGOs have been conducted. In order to gauge the impact of the laws governing the rights of transgender persons and their enforcement mechanisms, a community survey was undertaken. The sample size of 100 transgender persons residing in Lahore was selected and approached to respond to questionnaire designed in Urdu language, keeping in view the literacy constraints of respondents. Due to time constraints and difficulties of access, enumerators were also engaged to gather the data through the survey questionnaire.

The secondary sources in the form of books on this particular subjects were hard to find by, however, research journal articles, newspaper reports, online literature, NGOs studies and focused group discussions have been consulted. The Transgender Persons (Protection of Rights) Act 2018 is the legal document which forms the primal reference node for analysis carried out in this study.

### **Organization of the paper**

This paper is divided into three sections. The first section holds a detailed evaluation of all rights which are currently available to the transgender persons in Pakistan under the existing legal framework with the objective to test their sufficiency. In the second section, the effectiveness of enforcement mechanisms available under the

existing laws for rights of the transgender persons in Pakistan has been gauged. The third section contains an in-depth analysis of the situation for transgender persons in Pakistan by correlating the extent of sufficiency of laws with the potency of enforcement mechanisms with the aim to find out the severity of the problem. This has enabled to identify some gaps, between the theory and practice. The paper concludes by listing the major findings on the subject and then presenting few policy options in the form of practicable set of recommendations which may either invite immediate policy rectifications for the socio-economic and political mainstreaming of transgender persons in Pakistan or may become basis for further research on this topic.

### **Section I: Legal & Policy Framework in Pakistan**

Rights of Transgender persons in Pakistan are principally guaranteed under the 1973 Constitution of the Islamic Republic of Pakistan which does not allow any discrimination on the basis of gender alone. However, the social fabric of Pakistani society primarily supports the binary gender codes in all walks of life. The TG persons continue to remain a marginalized segment of the society who face complete isolation which is reflected in the negligible enforcement of their socio-political or economic rights.

#### **Constitutional Petition 43 of 2009**

Since the general provisions of fundamental rights which are given under the Pakistani constitution could only be re-affirmed or enforced through the Court, therefore, first and the most profound Court judgement which specifically pronounced rights of TG persons in Pakistan was given by its Supreme Court in 2011 in the Constitutional Petition No.43 of 2009 titled *Dr. Aslam Khaki vs SSP (Operations) Rawalpindi*.<sup>xii</sup> This judgment was emphatic because it provided the legal recognition to TG persons who are commonly known as eunuchs in Pakistan. It recognized their need for separate identity as the third gender and directed the National Database and Registration Authority (NADRA), Pakistan, for registering them with their separate identity beyond the gender binary. The Supreme Court of Pakistan also recognized their marginalization and called upon the concerned authorities in the Federal and all Provincial Governments to take necessary measures, on priority basis, to address issues of transgender persons related to their socio-political and economic rights. It also directed to provide mechanisms for the welfare of TG persons with the objective to mainstream them into the society.

Though the judgment was declaratory in nature, however, it specifically decided upon two fundamental points of law. Firstly, it provided for the separate recognition

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of transgender identity by the State authorities. Secondly, it specifically granted the transgender persons, the right to inherit their legal share in both movable and immovable properties and called upon the concerned State functionaries to ensure its enforcement by taking proactive measures, in this regard.

**The Transgender Persons (Protection of Rights) Act, 2018**

As discussed above that the Supreme Court judgment in Constitutional Petition 43 of 2009 called upon the State authorities to take steps for protection of rights and welfare of transgender persons, therefore, with that pretext, Pakistan's Parliament legislated upon these matters and passed a Bill which became an Act of the Parliament on 18<sup>th</sup> May, 2018 after receiving the assent of the President of Pakistan and was extraordinarily published in The Gazette of Pakistan on May 24, 2018<sup>xiii</sup>. This enactment marked the successful culmination of a decade old struggle which had started with the filing of the Constitutional Petition No.43 of 2009 in the Supreme Court of Pakistan. The Government of Pakistan took an affirmative action by acknowledging the marginalization of transgender community and specifically providing for their rights and welfare matters through this Act.

The Transgender Persons (Protection of Rights) Act, 2018; which shall be referred to as 'The Act' in subsequent discussion, contains 7 chapters and 21 sections. In Chapter I of the Act, the following terms have been defined to restrict the scope of its application.

**Gender Expression:** According to Section 2(e) of the Act; gender expression refers to a person's presentation of his gender identity and the one that is perceived by others<sup>xiv</sup>.

**Gender Identity:** According to Section 2(f) of the Act; gender identity means a person's innermost and individual sense of self as a male, female or a blend of both or neither that can correspond or not to the sex assigned at birth<sup>xv</sup>.

**Transgender Person:** According to Section 2(n) of the Act; a transgender person is a person who is:

Intersex (khusra) with mixture of male and female genital features or congenital ambiguities; or

Eunuch assigned male at birth, but undergoes genital excision or castration; or

A transgender man, transgender woman, Khawaja Sara or any person whose gender identity or gender expression differs from the social norms and cultural expectations

based on sex they were assigned at the time of their birth<sup>xvi</sup>.

These definitions given under the Act are exhaustively comprehensive and cover nearly all categories of transgender identities. The Act contains rights of transgender persons under Chapters II, III and V<sup>xvii</sup>. The second chapter is solely confined to emphasize upon the right to recognition of identity of transgender persons<sup>xviii</sup>. The third chapter enlists certain prohibitions against discrimination towards TG persons<sup>xix</sup>. Under Chapter V of the Act, protections for transgender persons for right to inherit, right to education, right to employment, right to vote, right to hold public office, right to health, right to access public offices and right to property have been provided<sup>xx</sup>. Moreover, Section 16 of the Act re-affirms the unequivocal availability of any of the fundamental rights given under the Part II of Chapter I of the Constitution of the Islamic Republic of Pakistan, to transgender persons<sup>xxi</sup>. However, this paper is limited to focus on the following five categories of rights of transgender persons and analyze provisions of the Act related to them.

#### Right to identity

Marginalization of transgender persons is considered to have been rooted in the persistent denial of the most fundamental right of gender identity. Although the Pakistani Constitution prohibited any discrimination on the basis of gender alone, however, for transgender persons, the essential issue had been the absence of an alternative gender identity in a gender binary society. Realizing the need to address this issue, the Act has laid down greater emphasis on the recognition of identity of transgender persons by providing it as a right under a dedicated Chapter. It is due to the fact that the right to identity is the founding right from which all other rights flow out.

Section 3 of the Act grants the right to a transgender person to be recognized as per his or her self-perceived gender identity<sup>xxii</sup>. It is important to note that the right to recognition of identity as a transgender person is restricted to the *self-perceived gender identity* and does not include the *gender expression* which is based on perception by others. Moreover, the Act also guarantees the protection to identity of transgender persons against harassment under Section 5 whereby, harassment of transgender persons both within and outside the home, based on their sex, gender identity and gender expressions has been prohibited<sup>xxiii</sup>.

#### Right to education

Lack of access to education arising out of the societal neglect and social stigmas has inhibited the mainstreaming of transgender community in Pakistan. Since, the transgender persons in Pakistan have customarily been living in their own

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communities under the guardianship of their *Gurus*<sup>xxiv</sup> as they are usually abandoned by their parents at tender ages, therefore, the constitutional rights to education guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan for free and compulsory education required re-affirmation under the Act vis-à-vis the transgender persons especially after the legal recognition to transgender identity by the Supreme Court of Pakistan in Constitutional Petition 43 of 2009. In that context, the Act, under Section 8, prohibits any discrimination against transgender persons in acquiring admission in any educational institutions, public or private, subject to fulfillment of the prescribed requirements<sup>xxv</sup>. Additionally, under the same section of the Act, prohibitions against discrimination have been imposed on any opportunities for sports, recreation, leisure activities and any other positive externalities associated with the education, on the basis of person's sex, gender identity and expression. Under Section 4 of the Act, it has also been prohibited to discriminate against a transgender person and deny, discontinue of, or treat him or her unfairly in educational institutions and services thereof<sup>xxvi</sup>.

#### Right to employment

According to a study conducted by the LEAD Pakistan, social discrimination in employment is one of the main factors of involvement of the transgender persons in sex work. Unfortunate but inevitable entrapment of many Khawaja Saras in prostitution reinforces the stigmatization of the whole community as outcasts. Abandoned by the family, unable to obtain proper documentation, education and employment, many transgender children take up sex work in order to survive in an unfriendly environment.<sup>xxvii</sup> In that contextual framework, the Act under Section 9, builds upon the right to employment guaranteed under Article 18 of the Constitution of the Islamic Republic of Pakistan by re-affirming the non-discrimination against any transgender person relating to matters connected with the employment including, but not limited to, recruitment, promotion, appointment, transfer and other incidental issues.<sup>xxviii</sup> It also protects the adoption of any lawful profession or occupation and conduct of any lawful trade or business by the transgender persons. Moreover, under Section 4 of the Act, safeguards have been provided for discrimination against transgender persons in denial of access to any opportunities of employment or any unfair treatment in government or private establishments, organizations, institutions, departments and centers.<sup>xxix</sup>

#### Right to health

On the night of 22<sup>nd</sup> May 2016, Alesha was taken to Lady Reading Hospital in a critical condition with six gunshot wounds. The hospital administration however

failed to provide her with urgent medical care, as it could not decide whether to send her to a male or female ward.<sup>xxx</sup> The incident of Alesha's murder, a transgender from Peshawar, reflects the apathy of the right of health to Khawaja Saras even when they approached the health facilities under life-threatening conditions during emergencies. In order to respond to the need of equal access to healthcare facilities, the Act, under Section 4(d) prohibits the denial or discontinuation of, or unfair treatment in, healthcare services.<sup>xxxi</sup> Moreover, Section 12 of the Act categorically calls upon the Government to review medical curriculum and improve research for doctors and nursing staff to address specific health issues of transgender persons in cooperation with the PMDC, facilitate access of transgender persons by providing them a safe and enabling environment in hospitals and ensure transgender persons access to all necessary medical and psychological gender corrective treatment.<sup>xxxii</sup>

#### Right to inheritance & property

One of the key themes dealt by the Supreme Court of Pakistan while hearing the Constitutional Petition No.43 of 2009 was its decision on the grant of inheritance rights to transgender persons under the relevant laws and calling for the Government of Pakistan to undertake proactive measures to ensure that.<sup>xxxiii</sup> In continuation to that, the Act, under Section 7, has re-affirmed the right to inherit the due share in property by transgender persons under the law of inheritance as per the gender declared on their Computerized National Identity Card(CNIC).<sup>xxxiv</sup> The same section of the Act also lays down the procedure for determination of their share.

The Act, under Section 15, also affirms the non-discriminatory right of transgender persons to purchase, sell, rent or lease property, household or tenancy. These property rights, coupled with the right to education and right to employment are basically meant to collectively scale up the socio-economic security of Khawaja Saras.

#### **Supreme Court of Pakistan's Conference on the draft welfare policy of Transgender Persons-August 2018**

Building upon its verdict in the Constitutional Petition No.43 of 2009, the Supreme Court of Pakistan has acted as a watchdog of transgender rights. The then Chief Justice of Pakistan, Mr. Justice Mian Saqib Nisar, took up issues of transgender rights in the Human Rights Case No.32005-P of 2018 and followed through on the registration of transgender persons by NADRA and provision of CNICs to them, as the trans associations had approached the apex court and reported of procedural hurdles. The Provincial Governments through their Chief Secretaries were directed by the apex court to facilitate NADRA in registration of transgender persons.<sup>xxxv</sup>

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Once the registration procedures were streamlined through collective efforts of provincial governments and NADRA, then the Supreme Court directed the Federal and all provincial governments to come up with the policy recommendations in shape of a Draft Policy for welfare of transgender persons. The draft welfare policy drew upon rights guaranteed to transgender persons under the Constitution of Pakistan and the Act of 2018. In August 2018, a detailed document known as the draft welfare policy for transgender persons, prepared by the Punjab Social Protection Authority(PSPA) was presented in a seminar organized by the Law and Justice Commission of Pakistan(LJCP) and the session was chaired by the then Chief Justice of Pakistan. It was attended by senior representatives from the Federal Government, all provincial governments, transgender associations and NGOs working for transgender rights in Pakistan. The conference resolved for priority consideration of the draft welfare policy for transgender persons by the Federal Government, all provincial governments and its early adoption by seeking approvals from the respective forums.<sup>xxxvi</sup>

## **Section-II: Enforcement Mechanisms**

The enforcement mechanisms for rights granted to transgender persons under the legal corpus of Pakistan are provided specifically under the Transgender Persons (Protection of Rights) Act, 2018. Since the higher courts in Pakistan are empowered under the Writ Jurisdiction to enforce all fundamental and basic human rights guaranteed under the Constitution, therefore, the ultimate enforcement of transgender rights remains vested in the High Courts and the Supreme Court of Pakistan. However, judgments of the higher courts and provisions of the Act of 2018 have repeatedly called for the Government functionaries to take affirmative actions for safeguarding rights of transgender persons. This has led to evolution of some other enforcement channels on the executive side, as derivatives from the court judgments and by way of implication of the legislative provisions on the subject. For the purpose of this study, it may be appropriate to discuss these enforcement mechanisms under two categories. Firstly, those institutions which have been specifically tasked to perform functions of enforcement of rights of transgender persons under the Act; and secondly, all other enforcement channels which have emerged as derivatives from the Court judgments, the Act of 2018 and other policy directions of the Federal or any of the Provincial Governments. While looking into the domain of provincial governments, we shall only restrict ourselves to the province of Punjab as the referral point for the scope of this study.

### **The Transgender Persons (Protection of Rights) Act, 2018**

In Chapter VI titled Enforcement Mechanism, under Section 18 of the Transgender Persons (Protection of Rights) Act, 2018, it has been provided that, “ *In addition to 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), the aggrieved transgender persons shall have a right to move a complaint to the Federal Ombudsman, National Commission for Status of Women and National Commission of Human Rights (NHCR) if any of the rights guaranteed herein are denied to him*”.

If we breakdown different parts of Section 18 of the Act, it is clear that three specific enforcement institutions have been designated therein and any other constitutional, criminal or civil remedies as are available to all citizens of Pakistan under respective laws, the transgender persons are also equally entitled to them, as well. Although provisions of Section 18 of the Act are widespread, however, it may be appropriate to briefly see as to what are these institutions which have been specifically mentioned as designated enforcement bodies for safeguarding rights of transgender persons.

### **Federal Ombudsman**

According to the Presidential Order No.1 of 1983, the institution of Federal Ombudsman is mandated to diagnose, investigate, redress and rectify the injustice done to any person from maladministration of an agency of the Federal Government which includes a Ministry, Division, Department, Commission or office of the Federal Government or statutory body, corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court.<sup>xxxvii</sup>

Although the Act of 2018 has specifically mentioned the office of Federal Ombudsman as one of the three enforcement bodies for safeguarding rights of transgender persons, however, this institution does not have any dedicated institutional setup to deal with grievances of transgender persons.

### **National Commission on Status of Women**

A permanent National Commission on Status of Women(NCSW) was established through a Presidential Ordinance in 2000. Subsequently, The National Commission on Status of Women Act was passed in 2012. The role of NCSW is to promote social, economic, political and legal rights of women as provided in the Constitution of Pakistan and in accordance with international declarations, conventions, treaties, covenants and agreements relating to women.<sup>xxxviii</sup>

Although the Act of 2018 has provided for the role of NCSW to act as the

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enforcement body for rights of transgender persons, however, there is no institutional arrangement available in the Commission to assume that role.

### **National Commission for Human Rights**

The National Commission for Human Rights (NCHR) was created through an act of the Parliament in 2012. The role and functions of the NCHR are given herein asunder:

The primary functions and powers of the NCHR include, among others, to conduct investigations into allegations of human rights abuse(s), either on petitions filed by individuals or institutions, or through suo-moto action; review existing and proposed legislation in relation to human rights principles; carry out research and advise on policy matters pertaining to the situation of human rights in Pakistan; contribute to national human rights awareness-raising and advocacy initiatives in the country; review and report on the Government's implementation and monitoring of the state of human rights; make technical recommendations and follow up on the implementation of treaty obligations and develop a national plan of action for the promotion, protection and fulfillment of human rights in Pakistan.<sup>xxvix</sup>

NCHR published an interim report in January 2017, on mainstreaming of the transgender persons and safeguarding their rights by calling for the need to bring in a comprehensive legislation.<sup>xi</sup> Similarly, another report published by the NCHR, on the marginalized segments of Pakistani society also finds special mention of the alienation of transgender community.<sup>xli</sup>

### **Other Enforcement Mechanisms**

In addition to the enforcement bodies specifically designated under Section 18 of the Act of 2018; the higher courts in Pakistan continue to safeguard the enforceability of fundamental rights under their Writ Jurisdictions. Moreover, since the Supreme Court judgment in Dr. Aslam Khaki vs SSP Operations case and subsequent developments such as the passage of the Act in 2018 and repeated directives from higher courts on the subject; there is an increasing tendency on the executive side for mainstreaming the transgender community by either activating the already available enforcement mechanisms or evolving new ones. Some of these are mentioned herein asunder.

#### **Federal Ministry of Human Rights**

According to the Second Schedule attached to the Federal Government of Pakistan, Rules of Business, 1973 (As amended up to 12<sup>th</sup> June 2017), the Human Rights

Division is entrusted the task of enforcement of human rights laws and policies, as well as, mandated to deal with all gender related issues.<sup>xlii</sup> Moreover, the Ministry of Human Rights (MoHR) also administers the NCHR and the NCSW, which are two enforcement bodies specifically provided under the Section 18 of the Act of 2018. In these capacities, the MoHR is the key responsible ministry at the federal level, for issues related to enforcement of rights of transgender persons in Pakistan.

#### **Social Welfare & Bait ul Maal Department Punjab**

The Social Welfare & Bait ul Maal Department in the province of Punjab has been declared as the focal department by the Provincial Government for dealing with issues related to transgender persons in the province. Although there exists a separate Provincial Department for Human Rights and Minority Affairs in Punjab, however, due to issues of departmental capacities and outreach in districts and given the blanket mandate assigned to the Social Welfare and Bait ul Maal Department for eradication of social evils and ensuring social protection under the Second Schedule attached to the Punjab Government Rules of Business 2011, the enforcement of rights of transgender persons is primarily coordinated by the SW&BM Department under executive directions of the Provincial Government.<sup>xliii</sup>

#### **Provincial Monitoring Committee**

After the Supreme Court took cognizance of issues related to rights of transgender persons in June 2018, the Government of Punjab constituted a Provincial Monitoring Committee (PMC) headed by the Chief Secretary and comprising of all stakeholders, as the apex forum, to supervise affairs of transgender rights in the province by monitoring the performance of District Committees and collectively troubleshooting any problems which arise vis-à-vis matters related to transgender persons in the province.<sup>xliv</sup>

#### **District Committees**

In all 36 Districts of the province of Punjab, the Provincial Monitoring Committee constituted the District Implementation Committees (DICs) headed by the Deputy Commissioner of each District and comprising of all relevant stakeholders from that district with the objective to initially facilitate the process for registration of transgender persons with the NADRA for issuance of CNICs to them.<sup>xlv</sup> However, these DICs have also been mandated to deal with any issues related to transgender community of the district vis-à-vis enforcing their lawful rights, under the overall guidance and directions of the Provincial Monitoring Committee.<sup>xlvi</sup>

### **Section III: Analysis-Tests of Sufficiency & Effectiveness**

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While having discussed rights granted to transgender persons in the legal corpus of Pakistan and having identified various mechanisms available to enforce them, we shall now test the sufficiency of these rights and effectiveness of the enforcement mechanisms in this part of the paper.

In order to determine the sufficiency parameter of rights, we shall make a comparison of scope of these rights with the international best practices through special reference to rights available to transgender persons in Argentina and the neighboring state of India. Whereas, reliance has been placed on results of the primary stakeholders' survey solely conducted for the purpose of this study, interviews held with relevant officials and the responsiveness of enforcement forums with the objective to gauge the effectiveness dimensions.

### **Sufficiency of Rights**

For the purpose of this study, the term sufficiency of rights means the adequacy of rights or the minimum acceptable threshold of rights. The issue of transgender rights continues to be advocated around the world. Though the general protections are available under constitutional guarantees of fundamental rights in majority of countries. However, there are still not many countries who have legally recognized these rights either through specific legislative instruments or other special policy measures. All those countries who have acknowledged these rights and have affirmed them either through special legislations or dedicated policy documents, have thus, taken the initial step. These legislative instruments and policies need to be assessed for sufficiency in order to determine as to whether these laws and policies provide for adequate protections to transgender persons for their socio-economic and political mainstreaming.

Pakistan is one of about two dozen countries around the globe which have, so far, legislated upon issues of transgender rights and have successfully brought in special enactments through their Legislatures. The Transgender Persons (Protection of Rights) Bill, 2018 was passed by the Pakistani Parliament and it became an Act after it was assented by the President of Pakistan on 24<sup>th</sup> May 2018.<sup>xlvii</sup> Although this Act specifically provides for categories of social, economic and political rights of transgender persons, however, keeping in view any unforeseen limitations of the scope of these rights, it also re-affirms all the constitutional guarantees which are generally available to all citizens of Pakistan under the Constitution.

#### **Scope of Transgender Rights in Pakistan**

The scope of transgender rights usually begins with their legal recognition of identity

and expands to other social, economic and political rights. The sufficiency of transgender rights thus needs to cover all these aspects. Since the transgender persons are predominantly a marginalized community which suffers from historical societal neglect, therefore, grant of their rights is to be considered adequate only when they enable removal of any barriers to opportunity with the aim to achieve substantial equality rather than formal equality, which is perhaps the objective of the general constitutional guarantees of fundamental rights. In other words, the substantial equality is characterized upon principles of equity instead of equality. Therefore, prohibitions against all kinds of discriminations, affirmation of fundamental rights and grant of any special rights are essential parameters of a legal and policy framework which strives to attain the threshold of sufficiency of rights. Based on these touchstones, we shall now evaluate rights granted to transgender persons in Pakistani legal corpus in order to find out as to what extent these essential components of sufficiency of rights are available therein.

#### Recognition of Identity

The Transgender Persons (Protection of Rights) Act, 2018 in Pakistan defines the terms *gender identity* and *gender expression* distinctively and provides for legal recognition of transgender identity on the basis of gender identity which is self-perceived and self-determined. This is an exalted recognition of identity provided legally through the Act without any bureaucratic or medical pre-conditions attached to it. In this regard, it is the most liberal and almost ideal form of legal recognition of identity which has been granted under the Act. It may also be noted that the Act contains the right of recognition of identity of transgender persons as a self-contained and distinct chapter, in order to overemphasize its significance in the context of transgender rights.

#### Social Rights

The transgender persons in Pakistan have been granted some substantive social rights under the Act of 2018. These include prohibition against harassment (for which a comprehensive definition is contained in the Act), right to education, right to health and right of access to public places, places of entertainment and places intended for religious purpose.

#### Economic Rights

The Transgender Persons (Protection of Rights) Act, 2018 also provides for certain economic rights to transgender persons in Pakistan. These include the right to inherit, right to employment and right to property. Aimed at the economic mainstreaming of transgender community, the Act also prohibits to forcibly engage transgender

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persons in beggary and whosoever does so, is to be punished for committing an offence under the Act. Since abandonment of transgender persons by their families at early ages due to social stigmas attached to it in the Pakistani society, it was perhaps deemed necessary to specifically provide for their legal entitlement to inherit their share in the family properties under the relevant laws of inheritance in Pakistan. The Act does not only grant the right to transgender persons to inherit their share in the family property, but also contains an elaborate share determination formula on the basis of their legal gender identity. The Act has basically codified declarations of the Supreme Court of Pakistan made in the Constitutional Petition No.43 of 2009 in *Dr. Aslam Khaki vs SSP (Operations) Rawalpindi*.<sup>xlviii</sup>

#### Political Rights

The right to legal recognition of identity is incomplete if it is not complemented by providing opportunities for representation and assuring that the voices of a recognized identity matter in the statecraft and societal affairs. With that basic premise, the Act of 2018 in Pakistan has also granted political rights to transgender persons. These include right to vote, right to assembly and right to hold public office.

#### Guarantee of Fundamental Rights

In addition to protecting the legal recognition of identity, social economic and political rights of transgender persons in Pakistan, the Act of 2018 also re-affirms the guarantee to transgender persons of all fundamental rights contained in Part II of Chapter I of the Constitution. It also duty-bounds the Government to ensure prohibition of all kinds of discriminations on the basis of sex, gender identity or gender expression in protecting the fundamental rights of transgender persons unequivocally. The emphasis made under the Act on constitutional guarantees of fundamental rights reflects that the scope of rights is not specifically restricted to only those which are given in the Act, but generally covers the applicability of all constitutional guarantees.

#### International Comparison-Argentina and India

It may also be appropriate to draw international comparison between the transgender rights available under the Pakistani legal and policy framework and the international scenario.

#### Argentina

Amongst the list of countries which have protected transgender rights through special legislations, Argentina leads the world as having bestowed the legal

recognition of transgender identity through first of its kind legislation passed in 2012 which is considered to be the most progressive law on the subject.<sup>xlix</sup>

The Argentinian Gender Identity Law(GIL) provides for legal recognition of identity of transgender persons on the basis of both the gender identity as well as gender expression<sup>l</sup>. The GIL protects all rights of such persons according to their legal entitlements accruing to them either before the modification of their gender or afterwards. It also provides for modification of gender identity by minors with their consent obtained through parents or legal representatives.

#### India

In India, the Transgender Persons (Protection of Rights) Bill was introduced in 2016, which was passed by the Lok Sabha in December 2018.<sup>li</sup> The same is now pending before the Rajya Sabha for approval. However, the trans associations and rights activists have criticized the Bill in its present form due to the fact that the Bill provides for legal recognition to transgender identity, after the District Magistrate approves the case, on the basis of input obtained from a District Screening Committee to be constituted for the purpose of such determination.<sup>lii</sup> The critics to the Indian Bill maintain that such provisions inviting bureaucratic and medical checks are barriers to the self-determination of the gender and the Rajya Sabha must amend these effects.<sup>liii</sup> The Indian Bill does have a distinctive provision for establishment of National Council for Transgender Persons as a dedicated body for protection and enforcement of rights of transgender persons.<sup>liv</sup>

After reviewing the international context of transgender rights in Argentina, where such laws exist in the most progressive form and in India, where the Bill granting transgender rights is being heavily criticized for its regressive nature even before its final legislative approval, it may be essentially correct to declare the Pakistani law as one of the progressive laws on the subject. Accordingly, the Act of 2018 in Pakistan along with the judicial declarations on the subject and other policy instruments, sufficiently provide for protection of transgender rights. Pakistan, being an Islamic country, has never advocated the western parameters of rights movements of LGBTs. However, Pakistan is definitely amongst those very few countries in the world which have sufficiently assured the legal guarantees for rights of transgender persons in an affirmative way, through a special legislation on the subject, which can obviously be further improved upon in future, if there arises any need for doing so.

#### **Effectiveness of Enforcement Mechanisms**

In order to determine the effectiveness of enforcement mechanisms provided under the Transgender Persons (Protection of Rights) Act, 2018 and other derivative

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instruments under the legal and policy framework of Pakistan, we shall look at three things. Firstly, results obtained through a community survey carried out for the purpose of this study have been evaluated. Secondly, issues highlighted during interviews held with officials of stakeholder departments/organizations which have marred the effectiveness of enforcement of transgender rights have been critically examined to bring out their contextual relevance. Thirdly, the performance reports of enforcement bodies which have been specifically designated under the Act of 2018 have been examined to test their responsiveness to transgender rights in Pakistan. The overall picture which emerges from the cumulative assessment of these three parameters gives us a fair understanding of the effectiveness of the enforcement mechanisms available in Pakistan for transgender rights.

#### Community Survey

A community survey with a sample size of 100 was conducted in Lahore to determine as to the existing status of the social indicators for the transgender community and to what extent are they aware of mechanisms provided to them under the Act of 2018 for enforcement of their rights. Although it is difficult to expect such quick translation of any impacts of the Act which was passed less than a year ago, however, results of this community survey definitely provide an indication as to whether the enforcement mechanisms given under the Act are really correctly identified or there is a need to provide alternative options. Moreover, since the higher courts in Pakistan were the sole and ultimate recourse for safeguarding rights of transgender persons prior to introduction of the Act in 2018, therefore, the survey also produces some interesting results regarding this aspect.

The survey questionnaire is placed at *Appendix 1*, which was formulated in Urdu Language due to the literacy constraints of the community. Results obtained through the survey were then translated into English Language and have been tabulated in two parts which are respectively reflected in *Figure 1* and *Figure 2*.

#### Findings of the Survey

According to data contained in *Figure 1*, out of the total of one hundred transgender persons living in Lahore, who participated in the survey, 47% fell in the age bracket between 18 to 40 years, followed by 32% who were aged between 40 to 60 years. More than 80% of them have acquired the CNICs as transgender persons on self-determined gender identity basis, which reflects positively on the enforcement of the right of legal identity. Two out of total one hundred participants were legally minors and hence the CNIC parameter did not relate to them. 73% of the transgender persons

who were surveyed had never been to any school and declared themselves as illiterates. Only 2% were satisfied with the treatment response that they get at public sector health facilities, whereas, 13% recorded their satisfaction on the same parameters regarding the private sector health facilities.

88% were into sex-work, beggary and dancing for earning their livelihoods. 24% positively acknowledged efforts being made by the Government for their rights and other issues.

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**Figure 1**

**COMMUNITY SURVEY PART 1\***

Age Bracket	CNIC as TG	Literacy				Health Facilities Response Satisfaction		Employment				Govt. Efforts Satisfaction		Income		Police Behavior		Responsible for Miseries of TGs			Inheritance of Property Share								
		No. of Respondents	Illiterate	Primary	Secondary	Post-grad	Govt. No	Govt. Yes	Private No	Private Yes	Self-employed	Govt. No	Govt. Yes	Govt. No	Govt. Yes	Govt. No	Govt. Yes	Govt. & Society	Society	Govt. & Society	Govt. & Society	Govt. & Society	Govt. & Society	Govt. & Society					
18 Y	2	0		1	1	0	2	1	1	1	0	0	1	1	1	1	1	1	1	1	0	0	0	2					
18 to 40 Y	47	35	29	8	4	3	3	0	47	6	41	17	18	7	5	13	34	28	19	3	44	3	5	33	2	4	6	25	16
40 to 60 Y	32	28	26	4	2	0	0	0	32	2	30	21	4	4	3	7	25	22	10	1	31	4	2	26	0	0	2	23	7
Above 60 Y	19	17	18	1	0	0	0	2	17	4	13	16	0	0	3	3	16	17	2	1	18	1	3	12	1	2	3	14	2

**Sample Size = 100**

\*Survey conducted for research purposes in Lahore, by Sajid Zafar Durr, Participant of 25 Senior Management Course, SMF, National Management College, Lahore from 2<sup>nd</sup> April to 20<sup>th</sup> April, 2019.

Source: Community Survey conducted by the Author, April 2019

71% earned less than PKR 15000 per month from occupations that they have adopted. 95% reported bad behavior of police officials towards the transgender persons. 82% held the government and society collectively responsible for miseries of transgender persons. 27% reported that the issue of inherited property did not relate to them, whereas, 15% of the remaining participants reported that they had gotten their inherited share in family property. Overall, these results reflect that except for the legal recognition of gender identity, the enforcement paradigm in all other areas is very weak which has translated into poor social indicators for the transgender community in Pakistan. Moreover, we may also deduce that the enforcement of socio-economic rights of transgender persons is ineffective, which continues to marginalize them in the society.

The community survey questionnaire also contained two questions which were asked with the objective to ascertain the familiarity of respondents with the enforcement bodies provided under the Act of 2018 and their preferred recourse to government organizations in case of any community issues.

Figure 2

**COMMUNITY SURVEY-PART 2\***

SURVEY QUESTIONS		No. of Respondents saying 'yes' out of 100
<b>Q: Have you heard of the following offices/ departments/organizations/facilities?</b>		
1	Federal Ombudsman	3
2	National Commission for Human Rights	2
3	National Commission on Status of Women	2
4	Office of the Deputy Commissioner	37
5	SHO of Police Station	69
6	Social Welfare Department	44
7	Akhuwat	12
8	Office of the Union Council	17
9	Aurat Foundation	3
10	Punjab University	57
11	Fatima Memorial Hospital	6
12	Services Hospital	33
<b>Q: Which Government Office do you contact for any of your community's issue?</b>		<b>Recorded Responses</b>
	Courts	47
	NGOs	28
	Social Welfare/DC Office/SHO	18
	Did Not Respond	07

\*Survey conducted for research purposes in Lahore, by Sajid Zafar Durr, Participant of 25 Senior Management Course, SMIT, National Management College, Lahore from 2<sup>nd</sup> April to 20<sup>th</sup> April, 2019.

Source: Community Survey conducted by the Author, April 2019

According to the data contained in Figure 2, only 3% of total 100 respondents showed some familiarity with the office of Federal Ombudsman, 2% each had heard names of the National Commission for Human Rights and the National Commission on Status of Women; whereas, predominantly most of respondents were more familiar with the local offices such as the Station House Officer (SHO) of local police station (69%), Social Welfare Department (44%) and the office of the Deputy Commissioner of the District (33%). Likewise, 57% of all respondents had heard the name of Punjab University and 33% of the Services Hospital, both situated in Lahore. From the community survey, it has also transpired that majority of all respondents numbering 93, as 7 transgender persons did not respond; recourse to Courts is the priority of 51% as first point of contact in case of any community issues followed by 30% taking them to the NGOs and only 19% cumulatively preferred to contact either of the government offices of social welfare, the Deputy Commissioner and the SHO of local police station. These results signify that distinctions among the executive, the judiciary and even the non-government organizations are not clearly understood by the community, however, notwithstanding that, the government offices generally lack confidence of the community.

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Point of View of Stakeholder Officials

According to Director of Social Welfare, Punjab, out of a total of 6709 persons recorded as transgender in the province of Punjab according to the Census of 2017, the Social Welfare Department Punjab has registered 3185 transgender persons with their field offices up till April 2019 and 2407 of them have been issued the CNICs by the NADRA authorities. The process of issuance of identity cards to transgender persons was accelerated after the passage of Act of 2018 and the Supreme Court of Pakistan's directions in the subject matter. According to the field surveys carried out by the Social Welfare Department and keeping in view the Census 2017 figures on their population in the province, the total number of transgender persons eligible for holding the CNICs is around 4000 as the remaining population out of 6709 is below the age of 18 years. However, the task of identification is constrained by social environment in which the identity is not generally disclosed due to social stigmas attached with it. Moreover, some of the transgender persons prefer not to get themselves registered with the NADRA as transgender persons and continue to carry their dominant gender binary. She also informed that a comprehensive system of registration as per the self-identified gender is in place in the province of Punjab which is being led by the NADRA and being proactively facilitated by the Social Welfare Department and its field formations through the District Implementation Committees and under the regular supervision of the Provincial Monitoring Committee headed by the Chief Secretary of the Province.<sup>lv</sup>

The Specialized Healthcare and Medical Education Department Punjab has designated separate wards for transgender persons in all the tertiary hospitals of Punjab since September 2018, particularly for the infectious diseases.<sup>lvi</sup> It was done in pursuance to provisions of the Act of 2018 and Supreme Court directions. However, in addition to such immediate interventions, the government is also working on to come up with a comprehensive plan for ensuring right of health to transgender persons, as affirmed under the Act of 2018.<sup>lvii</sup>

In Lahore District, there have been neither any cases processed nor refused, relating to the inheritance of property, by transgender persons, during years 2018-19.<sup>lviii</sup> The Additional District Collector of Lahore informed that the revenue department is fully aware of provisions of the Act of 2018 and all its functionaries have been trained on how to determine the share under the Act.<sup>lix</sup> However, he emphasized upon the need for its proactive processing in collaboration with other stakeholder departments who had the specific data of transgender persons belonging to district Lahore.

The Schools Education Department of Punjab has not yet taken any noticeable

measures in pursuance to specific provisions under the Act of 2018 relating to the right to education for transgender persons. However, the department is conscious of special needs of transgender persons in their access to education and is working out different proposals in collaboration with the Social Welfare Department as how to cater them in the most suitable manner.<sup>lx</sup>

#### Performance of Enforcement Bodies given under the Act of 2018

The National Commission for Human Rights (NCHR) in Pakistan has a robust complaints redressal mechanism which provides for filing of complaints against any human rights violations and the NCHR is also legally enabled to take suo-moto actions. The Commission was established in 2012 and since its inception, it has so far, dealt with 19 cases of human rights violations relating to transgender persons.<sup>lxi</sup> It has been observed that there is no special or exclusive mechanism provided in the Commission for addressing complaints filed by transgender persons and these are handled in routine, along with the other complaints.

The office of Federal Ombudsman in Pakistan (Wafaqi Mohtasib Secretariat-WMS) appointed a Commissioner for Transgender and Children, in January 2018.<sup>lxii</sup> Though the office of Commissioner acts as the focal point in the WMS for transgender issues and has been giving its policy input in the subject matter, however, it has been observed that it is not enabled to carry out the enforcement of transgender rights as entrusted to the office of Federal Ombudsman, under the Act of 2018.

Although the National Commission on Status of Women has also been designated as one of the enforcement mechanisms under the Act of 2018; however, except some advocacy work undertaken by the Commission on transgender rights bill as a part of Senate Committee in 2017, it does not have any enabling systems in place to enforce rights of transgender persons.

#### **Conclusion**

From the analysis of legal provisions of transgender rights in Pakistan and their assessment carried out in the international context, we can safely draw conclusions that the legal corpus of Pakistan, not only sufficiently, rather very affirmatively, through a special legislation, covers all the essential aspects of transgender rights. The entire legal framework in Pakistan offers some of the most progressive legal guarantees available to the transgender community around the world. Instead of getting into controversies of LGBT movements and their demands which go contrary to the religious narrative and attract penalties under the criminal laws of the country, Pakistani law has solidified its grounds on basis of historical evidence of transgender

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rights in Islam on principles of social equity. This has led to legal provisions for not only the identity of transgender persons but also an elaborate procedure for determination of their share in the inheritance of family properties.

Although the sufficiency of rights of transgender persons in Pakistan leads us to believe that theoretical foundations of the subject are correctly laid, however, these have not translated into enforceable rights as yet. Such gaps have occurred due to complete ineffectiveness of enforcement mechanisms provided under the Act of 2018. It is observed that neither the National Commission for Human Rights nor the office of Federal Ombudsman and the National Commission on Status of Women have designed any enforcement tools specifically for transgender persons to which they can take recourse for enforcement of their rights. The absence of devising any proactive methods to ensure rights of transgender persons is further necessitated, all the more, because hardly any members of the transgender community have shown any familiarity with these organizations, as depicted in results obtained through a community survey conducted in Lahore. Perhaps, it is one of those flawed provisions of the Act of 2018, in which, these bodies have been wrongly declared as enforcement channels merely on presumptions of their complaint management responsibilities in case of violations of rights. It is to be understood that the enforcement of rights is a proactive exercise and redressing general violations is ordinarily reactive. Therefore, these organizations are not essentially designed as enforcement or implementing agencies.

The situation analysis of enforcement of transgender rights in the province of Punjab through its executive arrangements in the shape of high-level cum multi-departmental monitoring committees at provincial level and district implementation committees are hopeful signs that the subject issue is finally getting its due recognition in the Government domain. However, these institutional designs are still ad hoc arrangements which may not yield any positive outcomes until and unless some permanent body is set up to achieve objectives of the Act of 2018 for mainstreaming the transgender community.

### **Recommendations**

Based on our positive findings on the sufficiency of rights of transgender persons but ineffective mechanisms available for their enforcement under the legal corpus of Pakistan, following recommendations are made to fill in gaps identified through this study which may lead to bringing about improvements in the existing situation. These may also provide timely course-correction on the subject as the Act of 2018

is still in its nascent stages.

Chapter VI, Section 18 of the Transgender Persons (Protection of Rights) Act, 2018 which enlists the enforcement mechanisms may be suitably amended. There is a need to either provide for a National Transgender Council such as the one given in the Transgender Persons (Protection of Rights) Bill, 2016 of India or identify more potent government agencies such as the provincial departments of the Social Welfare and designate them as the statutory-bound enforcement agencies for rights of transgender persons in Pakistan. Federal Ministry of Human Rights in Pakistan has an Administrative Tribunal for the Disadvantaged Persons, as one of its attached arms. One of the policy options could be to declare the transgender persons as disadvantaged persons under the respective laws and the Tribunal may be activated to function as the prime body for enforcement of their rights under the Act of 2018.

The Government needs to frame and notify rules to carry out purposes of the Transgender Persons (Protection of Rights) Act, 2018 as mandated under Section 20 of the same Act. While doing so, it may provide for a well-knit institutional design for enforcement of rights of the transgender community in Pakistan.

There is a definite requirement to sensitize stakeholder departments at Federal, Provincial and District levels, particularly the Health, Education and the Land Revenue departments so that they must assume roles assigned to them under the Act of 2018 relating to the right to education, health and inheritance of transgender persons in Pakistan, in a more proactive fashion.

All the stakeholder departments need to be pressed upon to proactively reach out to the transgender communities. Being historically a marginalized segment, their familiarity and access to public facilities is compromised due to persistent collective neglect of the society.

Transgender sensitive advocacy campaigns and trainings need to be imparted to officials of those departments who have direct or indirect responsibilities of enforcing transgender rights. Such trainings may be designed to highlight the peculiar physical, psychological and other social needs of transgender persons so that officials handling their matters are equipped with the right attitudes to win confidence of the community.

Since decades of alienation will take some time to be addressed, therefore, the Government of Pakistan is required to introduce social protection schemes exclusively for transgender persons, as a stop-gap arrangement, in order to alleviate their sufferings, at least till such time that their socio-economic rights become effectively enforceable.

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## Endnotes

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- <sup>i</sup>The Oxford Dictionary meaning of transgender is denoting or relating to a person whose sense of personal identity and gender does not correspond with birth sex
- <sup>ii</sup>Zanan Khana is the term in Urdu language used locally to describe the living place reserved for females in a household.
- <sup>iii</sup>Asad Ullah Khan, “Gendered Justice: Constitutions, Trans-genders and Equality”, *LUMS Law Journal* 3, no.1 (2016): 70.
- <sup>iv</sup>The Transgender Persons (Protection of Rights) Act, 2018 was passed by the Parliament of Pakistan and later received the assent of the President of Pakistan on May 18, 2018 and was notified in the Gazette of Pakistan on May 24, 2018 as Act XIII of 2018. In this paper, it has been interchangeably referred to as either ‘the Act’ or ‘the Act of 2018’.
- <sup>v</sup>*Dr. Muhammad Aslam Khaki v S.S.P. (Operations) Rawalpindi*, PLD 2013 SC 188.
- <sup>vi</sup>The National Assembly Secretariat, *The Gazette of Pakistan (Extra)*, Act XIII of 2018, (Islamabad: Printing Corporation of Pakistan, 2018).
- <sup>vii</sup>Jami K Taylor et.al., *The Remarkable Rise of Transgender Rights* (Ann Arbor: University of Michigan Press, 2018), 4.
- <sup>viii</sup>Compendium of Human Rights Case Studies, “The Third Sex-On the Fringes of Society”, LEAD Pakistan, [http://www.lead.org.pk/hr/attachments/Compendium/01\\_Civil\\_Political\\_Rights/The\\_Third\\_Sex.pdf](http://www.lead.org.pk/hr/attachments/Compendium/01_Civil_Political_Rights/The_Third_Sex.pdf) (accessed 25 March, 2019)
- <sup>ix</sup>*Ibid*
- <sup>x</sup>Hassan Bin Usman Shah et.al., “Challenges faced by marginalized communities such as transgenders in Pakistan”, *Pan African Medical Journal* (June 2018), <http://www.panafrican-med-journal.com/content/article/30/96/full/> (accessed 02 April 2019).
- <sup>xi</sup>Gender Equity Program, “Silent No More - Transgender Community in Pakistan”, Aurat Foundation, <http://af.org.pk/gep/images/GEP%20Gender%20Studies/Transgender%20Community%20in%20Pakistan.pdf> (accessed 02 April, 2019)
- <sup>xii</sup>*Ibid.*
- <sup>xiii</sup>*Ibid.*
- <sup>xiv</sup>*Ibid*, 274.
- <sup>xv</sup>*Ibid.*
- <sup>xvi</sup>*Ibid*, 275.
- <sup>xvii</sup>*Ibid.*
- <sup>xviii</sup>*Ibid*, 275-276.
- <sup>xix</sup>*Ibid*, 276.
- <sup>xx</sup>*Ibid*, 277-281.
- <sup>xxi</sup>*Ibid*, 281.
- <sup>xxii</sup>*Ibid*, 275.
- <sup>xxiii</sup>*Ibid*, 277.

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<sup>xxiv</sup>Transgender persons in Pakistan live in different family like communities under the guardianship of a senior known as *Guru*. The *Guru* is commonly identified as the social guardian of his family members known as *Chelaz*.

<sup>xxv</sup>*Ibid*, 278-279.

<sup>xxvi</sup>*Ibid*, 276.

<sup>xxvii</sup>*Ibid*.

<sup>xxviii</sup>*Ibid*, 279.

<sup>xxix</sup>*Ibid*, 276.

<sup>xxx</sup>Kamran Saddique et.al, “Transgender Issues in Pakistani Community”, *European Academic Research*, iv, no.10, (January 2017): 9054.

<sup>xxxi</sup>*Ibid*, 276.

<sup>xxxii</sup>*Ibid*, 280.

<sup>xxxiii</sup>*Ibid*.

<sup>xxxiv</sup>*Ibid*, 277-278.

<sup>xxxv</sup>Supreme Court of Pakistan, “In the matter regarding issuance of CNIC to transgender”, *HRC No.32005-P of 2018*, (Islamabad: 2018).

<sup>xxxvi</sup>Law and Justice Commission of Pakistan, “Press Release Dated 09.08.2018”, [http://ljcp.gov.pk/nljcp/assets/dist/news\\_pdf/8ace7-press-release-of-transgender-seminar-9-8-2018.pdf](http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/8ace7-press-release-of-transgender-seminar-9-8-2018.pdf) (accessed 24 April, 2019).

<sup>xxxvii</sup>Wafaqi Mohtasib (Ombudsman)’s Secretariat, under “Legal Framework”, <http://www.mohtasib.gov.pk/images/pdfs/presidential-order-1983.pdf> (accessed 24 April, 2019).

<sup>xxxviii</sup>National Commission on the Status of Women, under “Functions”, <http://www.ncsw.gov.pk/about-us/functions> (accessed 24 April, 2019)

<sup>xxxix</sup>National Commission for Human Rights Pakistan, under “Who We Are”, <https://nchr.gov.pk/who-we-are/> (accessed 24 April, 2019)

<sup>xl</sup>National Commission for Human Rights Pakistan, under “Interim Report on Transgender”, <https://nchr.gov.pk/2018/06/08/interim-report-on-transgender/> (accessed 25 April, 2019).

<sup>xli</sup>National Commission for Human Rights Pakistan, under “Report on Marginalized Segments”, <https://nchr.gov.pk/2019/01/24/report-on-marginalized-segments/> (accessed 25 April, 2019).

<sup>xlii</sup>Cabinet Secretariat, “Rules of Business 1973 (As Amended up to 12 June 2017)”, <http://www.cabinet.gov.pk/cabinet/userfiles1/file/%5BROB%20amended%2012th%20June,%202017.pdf> (accessed 27 April, 2019).

<sup>xliii</sup>Director Social Welfare Punjab Ms. Zaib un Nisa, interview by author, Lahore, 12 April, 2019.

<sup>xliv</sup>Services and General Administration Department Punjab, “Notification Number 1228/2018, Dated 21 June 2018”, (Lahore:2018).

<sup>xlv</sup>Services and General Administration Department Punjab, “Notification Number 1227/2018, Dated 21 June 2018”, (Lahore:2018).

<sup>xlvi</sup>Director Social Welfare Punjab, *interview by author*.

<sup>xlvii</sup>*Ibid*.

<sup>xlviii</sup>*Ibid*.

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<sup>xlix</sup>Ines Aristegui et.al, “Impact of the Gender Identity Law in Argentinean transgender women”, *International Journal of Transgenderism* (April 2017), <https://www.tandfonline.com/doi/full/10.1080/15532739.2017.1314796?scroll=top&needAccess=true> (accessed 20 April, 2019).

<sup>l</sup>Transgender Europe (TGEU), under “Argentina Gender Identity Law”, <https://tgeu.org/argentina-gender-identity-law/> (accessed 20 April, 2019)

<sup>li</sup>PRS Legislative Research, “The Transgender Persons (Protection of Rights) Bill, 2016: Comparison of the 2016 Bill with 2018 amendments”, [https://www.prsindia.org/sites/default/files/bill\\_files/Note%20on%20Amendment%20-%20Transgender%20Bill%20-For%20Upload.pdf](https://www.prsindia.org/sites/default/files/bill_files/Note%20on%20Amendment%20-%20Transgender%20Bill%20-For%20Upload.pdf) (accessed 22 April, 2019).

<sup>lii</sup>*Ibid.*

<sup>liii</sup>International Commission of Jurists (ICJ), “India: parliament must revise problematic transgender persons (protection of rights) bill, 2018”, <https://www.icj.org/india-parliament-must-reverse-problematic-transgender-persons-protection-of-rights-bill-2018/> (accessed 22 April, 2019).

<sup>liv</sup>*Ibid.*

<sup>lv</sup>Director Social Welfare Punjab, *interview by author.*

<sup>lvi</sup>Specialized Healthcare and Medical Education Department Punjab, “Notification No.SO(PHP)9-163/2011(P) dated 14 September, 2018”, (Lahore: 2018).

<sup>lvii</sup>Special Secretary of Specialized Healthcare and Medical Education Department Punjab Mr. Muzaffar Sial, *interview by author*, Lahore, 30 April, 2019.

<sup>lviii</sup>Additional District Collector (Revenue) of Lahore Mr. Muhammad Awais, *interview by author*, Lahore, 28 April, 2019.

<sup>lix</sup>Additional District Collector (Revenue) of Lahore, *interview by author.*

<sup>lx</sup>Special Secretary of Schools Education Department Punjab Mr. Muhammad Jehanzeb, *interview by author*, Lahore, 15 April, 2019.

<sup>lxi</sup>Director General of Ministry of Human Rights Mr. Muhammad Hassan Mangi, *electronic communication by author*, Islamabad, 2 May, 2019.

<sup>lxii</sup>Director General of Wafaqi Mohtasib Secretariat Mr. Moeenuddin Ahmed Siddiqui, *electronic communication by author*, 3 May, 2019, Islamabad.