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Keywords: Transgender Rights, Gender Identity, Social Inclusion, Legal Recognition, South Asia

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Perception and Practice of Transgender Rights in South Asia: A Comparative Analysis of India and Pakistan



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Abstract

The study offers a comparative analysis of transgender rights in Pakistan and India, drawing on insights into legal protections, attitudes towards transgender people, and the experiences of transgender individuals in both societies. Both countries have enacted legislation that acknowledges and safeguards transgender rights, yet transgender people remain subject to discrimination, social marginalization, violence, and limited access to education, healthcare, employment, and justice. This qualitative research also examines the histories and cultures of transgender communities in South Asia and the legacy of colonial law on gender identity. The findings are analysed through the lenses of social constructivism, queer theory, and intersectionality. The study aims to highlight similarities, differences, and gaps in the policies of Pakistan and India with respect to transgender rights, and to make recommendations for equality, social inclusion, and better protection of transgender rights.

Keywords: *Transgender Rights, Gender Identity, Social Inclusion, Legal Recognition, South Asia*

Introduction

A transgender person is one who has a gender identity that is different from what is typically associated with their biological sex. Gender identity is an individual's internal experience of self as male, female, both, neither or somewhere on the gender continuum. For instance, the biological male may see him/herself as a female, and the biological female may see him/herself as a male. Some transgender people may not, or may decide not to, change their name, clothing, appearance or undergo medical treatment to make their physical body match their gender identity. Transgender persons are found in all societies and cultures in the world, including traditional communities like the Khawaja Sira and Hijra community in South Asia. Although more people are becoming aware of trans-sexualism and trans-genderism and it is recognized legally in many countries, transgender people continue to be discriminated against, face violence, social exclusion, and may be denied access to education, health, and employment. Many are denied basic human rights because of the influence of rigid gender norms in society. However, transgender people remain fighting for equality, dignity and acceptance. The current emphasis of international organizations and human rights groups includes the need to safeguard the rights of transgender people and ensure their inclusion in all spheres of society, political, economic and social development.

Trans male and Trans female are significant concept of gender diversity and human identity in today's society. Trans male is a person who is assigned female at birth but identifies and lives as a male, Trans female is a person who is assigned male at birth but identifies and lives as a female. These identities are personal, and not based on biological sex assigned at birth. National awareness of trans male and trans female communities has started to rise in Pakistan and India as a result of legal changes, representation in the media and human rights advocacy. Yet, social stigma and discrimination, exclusion and misunderstanding in cultural and



institutional structures have continued in these communities, despite the increasing recognition. Trans male and trans female experiences vary based on social acceptance and availability of access to education, healthcare, employment opportunities, legal protection. So it is crucial to understand their identity and their lived experiences to create equality, dignity and inclusive human rights policies in South Asia.

If a transman or a transwoman does branch out of the Guru-Chela system, they are met with various hurdles. Apart from facing discrimination and bullying in schools, even if transmen/women get educated they face difficulties in finding a job, and enduring discrimination at workplaces once they do. There's a lot of sexualization of a transman/woman. From harassment in public places to gang rapes, humiliation and abuse is directed towards the transgender community across Pakistan. Cases of violence and abuse instil fear in the transgender community so much so that transwoman/man trying to make it on their own feel highly vulnerable. That's the reason, if they want to leave the Guru-Chela system, they still prefer to stay there as it is a place of protection. The societal pressures and oppression faced by transgendered people make suicide rates very high (Dairah, [2016](#)).

The transgender individuals in Pakistan regarded as a marginalized community because they face many challenges and discriminations in various forms i.e. they are called by discriminatory language (Chakka, Khusra, and Hijra), challenges in ID card procedure etc. They are not treated equally in society and their rights also violated. However, the Constitution of Pakistan provides the protection of rights to all citizens including Transgender community. Another main thing is respect and social acceptance of this community. There is a lack of social acceptance in Pakistan which leads to the further discrimination, violation of fundamental rights, and harassment on the base of their identity. According to the Supreme Court ruling 2009, families cannot take away the inheritance rights of Transgender individuals on the base of their identity but there is no proper action on this ruling (Rashid & Rashid, [2022](#)). They are still facing these issues in Pakistan.

In the 21st century, Pakistan has seen significant legal reforms aimed at improving the rights and recognition of transgender individuals. Recently the supreme court of Pakistan by eradicating the confusion termed the transgender people as third gender entitling them the rights of property and employment and protection of the rights of the third gender. This provided the necessary legal developments as subsequent (Rashid & Rashid, [2022](#)). Transgender Persons (Protection of Rights) Act 2018, this compound law was one of the biggest victories for the transgender community in Pakistan. That marked an important recognition for transgender people: it let them declare their gender on their own, without having to go through medical procedures, and vindicated them from discrimination in workplaces, education, healthcare, and housing. It also brought the right to vote and even to be an electoral candidate into the political recognition sphere (Pakistan, [2018](#)).

The political activism of the transgender community has come in to fore in Pakistan. In the same 2018, the country witnessed preparations for parliamentary polls have transgender candidates contesting in the election for the first-time (EFE, [2024](#)). A few activists including Nayyab Ali and others have been most vocal in demanding such changes especially on social and political front. Even in cases these individuals have come out publicly in search of reforms, more often than not they (transgender individuals) are still hounded by disdain and are economically and politically excluded from formal politics. Transgenders still face a range of difficulties on the social front in the country. Somewhat there is growth in the legal recognition of homosexuality, prevailing cultural and religious discriminations are primitive. This is more so because most transgenders are unable to secure employment in measure formal employment seeking to engage in begging or performing ritualistic dance. There is still much violence, discrimination and expressions of social out casting of the LBGTIQ+ to this day, especially in conservative and rural regions.

India has comparable history regarding the Transgender population to that of Pakistan. Transgender were actually appreciated in pre-colonial era and as like Pakistan the colonial laws suppressed the Gender and Sexual minorities into binary gender structures. Hence it can be seen that even after Independence the so called third gender or trans-gendered in India had no much choice other than staying on the peripheral of society and merely performing selective ritualistic roles.

The legal framework of India towards the rights of the transgender has touched some major landmarks like NALSA Judgment ([2014](#)) National Legal Services Authority and Union of India case one of the most significant for the rights of Transgenders in the country. In a legal judgment the Supreme Court of India has declared the existence of a third gender among the people and also its constitutional rights to equality, non-discrimination

and personal liberty. Among various things, this decision made it compulsory for the government to provide measures ensuring education, healthcare, and other public services for Transgenders, and ordered states to set up welfare programmes (Database, 2014). Transgender Persons (Protection of Rights) Act 2019, this law was enacted by India based on the NALSA judgment to extend the rights protections for transgender people. The rights laid in the law cover equality in schooling, employment, healthcare, and accommodation. However, it has drawn flak for asking for medical reports to support the 'transgender identity,' which activist feels is a direct violation of the right to self-identification as awarded by the NALSA judgment (India, 2019).

India has witnessed growing political representation of themselves as transgender persons. There are such personalities like Shabnam Mausi who became the first transgendered MLA in 1998 and many others inspired them to come in politics (Gangwal, 2021). Also, India has had transgendered judges while at the same time, the country has had Transgender activists demanding policy change at multiple levels of government. Nonetheless, such confidence does not translate to political voting as the political roleplays also exclude many transgender candidates from having an easy electoral victory. However, the social issues that Transgender face in India are still major ones even with legal reforms. Employment discrimination, health care, and social services are some practices among them and are most prevalent in the rural areas where the culture is conservative. As we have seen some social acceptance evidently compounded by activism amongst homosexual groups in urban regions across the country, the prejudice of being a homosexual/transgender remains a challenge across the country. The social, economic, and physical abuse of transgender persons are common in most societies today. Most hijra still participate in traditional customs of various ceremonies but the majority of them end up becoming beggars or sex workers since they cannot find any other opportunity.

Research Problem:

Transgender people in Pakistan and India are still experiencing the barriers even after the law was adopted to protect their rights. Although both nations have begun enacting legislation to acknowledge the existence of the transgender people and also provide protection for this community, the application of these rights is not consistent. Still they are facing prejudices, marginalization, discrimination, restricted rights to education, primary health care, and occupations etc. This shows that even as some states grant legal recognition to transgender people, they are still struggling to be accorded full acceptance in society in these countries.

Research Questions:

- Q:1 What are the differences between the legal framework of transgender rights in Pakistan and India?
- Q:2 What is the socio-cultural landscape, experience and recognition of trans male and trans female in Pakistan and India?
- Q:3 What are the impacts of attitudes, history, and culture on the differences between legal recognition and lived experience of trans people in both countries?

Research Methodology:

In this study the research design is comparative, qualitative research design is used to analyze and compare the rights of transgender persons in Pakistan and India. Qualitative approach is used because the study aims to understand the legal, social, political and institutional realities faced by transgender people and not measure them in numbers. Through the comparative design, the study focuses on the examination of similarities and differences between the two countries with regard to how laws are recognized and protected and how the government policies, and societal attitudes are implemented towards transgender communities. The first aim of this research is to look at transgender people's lived experiences and the impact of legal and public policies on their right to basic rights. A qualitative approach is essential as transgender rights are a multifaceted social, cultural and legal issue allowing for a more in-depth understanding of the issues faced and opportunities for transgender people in both countries as well as institutional responses. Primary data will be gathered from Pakistan by means of semi structured interviews. Semi-structured interviews are conducted with space for participants to share experiences and allow the researcher to delve into themes associated with legal recognition, discrimination, access to education and health care, employment, political involvement, access to justice and enactment of transgender rights legislation. The primary data collection for the Pakistan case will be based on

the semi-structured interviews conducted with transgender persons, human rights activists, lawyers, academics, policy makers and civil society representatives working on gender and human rights related issues. The interviews will give a deeper picture of the experiences and views of the participants regarding legal recognition, constitutional protection, discrimination, education and healthcare, employment, political participation, access to justice, enforcement of laws and policies for transgender rights and effectiveness of laws in Pakistan regarding transgender rights. Considering the geographical limitation and the challenges of conducting in-person interviews across the international boundaries, primary qualitative data for Indian case will be collected through online open-ended questionnaires created with Google Forms. The questionnaire will be disseminated via social media, transgender community groups and advocacy organizations to engage transgender people from various parts of the country. The researcher will also attempt to have qualitative inputs from transgender rights activists, academics and the representatives from the non-governmental organizations (NGOs) in India, either through online or interview, where possible. The open-ended responses will highlight the experiences of participants around legal recognition, discrimination, access to education, healthcare, employment, political participation, social acceptance and perceptions of governmental policies, and will be used to provide rich, qualitative data for comparative analysis. Secondary sources are also heavily utilized in the study to reinforce the comparative aspect. Secondary data will be gathered from books, peer-reviewed journal articles, government documents, census publications, constitutional documents, legislation, judicial decisions, policy documents, reports of international organizations and publications of national and international human rights organizations. These sources offer historical context, legal history, and policy context with an institutional lens on transgender rights in Pakistan and India. Transgender related constitutional provisions, legal reform, court decisions, government policies and reports from organizations actively involved in transgender issues will be analyzed through document analysis. These documents will provide a snapshot of how each country treats transgender people in the law, and how effectively those laws are applied in practice. By comparing the two countries, the study is able to systematically examine both countries, identifying common problems, important differences, and specific areas of good practice where transgender rights are being protected. The final goal of this research is to point out the policy gaps, challenges in implementation and institutional hurdles and propose some measures that can help to improve the rights of transgender people and increase social inclusion in Pakistan and India.

Conceptual and Theoretical Framework:

The study is guided by Social Constructivist theory which emphasizes that gender is not solely a function of biological sex but is socially and culturally shaped by institutions like the family, education, religion, media and the state. The theory is used to convey the idea that social norms influence perceptions of “masculinity” and “femininity” and often leave transgender people out of the definition of full social acceptance. Despite the enactment of the Transgender Persons (Protection of Rights) Act, 2018 and the Transgender Persons (Protection of Rights) Act, 2019, transgender persons still face discrimination in education, healthcare, employment, political participation, housing, inheritance and access to justice. This study will compare both countries to see if these legal changes have made a positive difference in the daily lives of transgender men and transgender women or if social attitudes, patriarchy and traditions, cultural beliefs, and institutional barriers still prevent the successful enacting of transgender rights.

The study is complemented by the theories of Social Constructivism and Queer Theory and Intersectionality, which offer a wider perspective on transgender rights in Pakistan and India. Queer Theory undermines the binary concept of gender and proposes that gender identity is not confined to the male and female poles but lies on a continuum. It assists in examining the ways in which laws, policies and social and institutional practices can both perpetuate and contradict discrimination against transgender people. Intersectionality is the understanding that discrimination against transgender people is not uniform, but varies according to class, religion, caste, education, economic status, disability or geographical location. The paper includes a combination of these three theoretical lenses, looking at both the legal recognition of transgender rights and the social, cultural, political and institutional landscape that affects how these rights are put into practice and the lived reality of transgender communities in both countries.

Literature review

The article “*Transgender Rights in Pakistan: A Complete Study under the Constitution and Pakistan Law*” by Nimra

Nawaz and Hussnain Safdar, published in 2023, It highlights that despite the major gains that have been achieved via judicial acceptance and legislative actions especially in recognizing gender identity and ensuring fundamental rights, actual enforcement of the safeguards is still feeble. Another theme highlighted in the literature is that of the lasting effect of colonial-era laws and the deeply ingrained socio-cultural conservatism that still continues to perpetuate stigma, discrimination, and exclusion. The initial legalization of transgender identity as a medical condition is also criticized by scholars, who believe that it was an additional marginalization and not empowerment. (Nawaz & Safdar, [2023](#)). It focuses on legal recognition of transgender rights in Pakistan but lacks in-depth analysis of policy implementation and real-life outcomes.

In his book *“Transgenders in India An Introduction”* by Veerendra Mishra, author focuses on the challenges and difficulties that the transgenders face in Indian society and lays down a in-depth understanding of their issues by analysis of their representation in Hindu culture. In following this representation, the book would endeavor to assess how the position of transgender is changing in the Indian society. It provides information of top issues like ‘coming out’ and ‘transitioning,’ which define the lives of transgenders. Furthermore, the book analyses how other factors such as race, ethnicity, sexual orientation, class, religion and ability affect the lives of transgenders meaning of their gender identities moving beyond the binaries of male or female (Mishra, [2023](#)). It does not explain that how contemporary legal systems or recent governmental policies have affected the rights of transgenders and their real employment

The Article *“Social implications of transgender individuals (protection of rights) act 2018”* by Muhammad Sharif, Dr. Farhan Ahmed Faiz, Muhammad Anwar published in 2023, explores the social and legal consequences of the Transgender Persons (Protection of Rights) Act 2018, both as a progressive document and as the subject of ongoing debates. Research indicates that transgender people have always been marginalized by the strict gender standards and culture, and the Act is a big step forward as it identifies them and guarantees the means of accessing fundamental rights, including education, medical care, and employment. Nevertheless, researchers observe that its application is still feeble because of the stigma of society, ignorance, and institutional constraints. Religious and conservative groups also criticize the Act, which causes ideological clashes in terms of gender identity and Islamic values (Sharif, Faiz, & Anwar, [2023](#)). It focuses on the legal recognition and theoretical debates surrounding the Transgender Persons (Protection of Rights) Act 2018, but it lacks in-depth empirical analysis of its real-world implementation and impact on the everyday lives of transgender individuals in Pakistan.

The Article *“Transgender community in Pakistan: A look into challenges and opportunities”* by Komal Sabir Dayani, published in 2019, explains that gender is a social construct that defines identity in binary models that consider male and female, and transgender individuals defy such strict labels by having identities that do not conform to their birth sex. Transgender has always been an established concept across the global culture, with the Khawaja Sara community in South Asia being no exception but in Pakistan transgender identities are still relegated, discriminated, and locked out of education, jobs, and social institutions. (Dayani, Minaz, Soomar, Rashid, & Dossa, [2019](#)). It focuses on the legal recognition and social challenges of transgender individuals in Pakistan, but lacks in-depth analysis of the actual implementation and effectiveness of the Transgender Persons (Protection of Rights) Act 2018 in everyday life.

In his article *“Effectiveness of Local Government Systems, Pro-Poor Budgeting, and Policies for Marginalized Communities”* by Dr. Ghulam Mustafa , author want to describe the issue of demanding self-governance at the local level needs to be put across to the citizens in Pakistan. Since Pakistan is an example of a culturally and traditionally diverse country, such requests cannot work under one universally applicable principle of decentralization. Local governments are also considered as important for succeeding in the protection and development of democracy and in the resolution of grassroots problems. (Mustafa, Anthony, & Arslan, [2020](#)). Although previous studies have examined local government systems and the challenges faced by women, religious minorities, persons with disabilities, and transgender communities separately, limited research has explored their combined experiences within the framework of local governance and pro-poor budgeting in Pakistan.

The Article *“Fleeing Gender: Reasons for Displacement in Pakistan’s Transgender Community”* by Laine P. Munir, published in 2018, explore that Trans women experience systemic and exponential discrimination in respect of family rejection, restricted job prospects, housing insecurity, inability to access education, and inaccessible healthcare services, frequently compelling them to resort to begging, entertainment, or sex work to survive.

Although there is a legal acknowledgement of this issue, like the third gender category and some legal decisions, the research indicates that there is a huge disparity between the advances in law and social protection because of poor execution, institutionalized favoritism, and extensive stigmatization in society. (Munir, 2018). It focuses on discrimination and legal rights but fail to examine how symbolic violence and social adjustment interact in shaping transgender lives. There is also limited research on highly vulnerable groups, such as those involved in begging.

Comparative Analysis of Transgender Rights in India and Pakistan

Transgender rights have come up in the larger context of human rights, social justice and inclusive governance. In South Asia, transgender people have been socially excluded, discriminated against, and denied access to education, health care, employment, and political participation, despite their extensive presence in culture. In recent times, however, both India and Pakistan have taken significant steps towards recognizing the rights of transgender people on the legal and institutional levels. In both countries, the guarantees of the constitution, judicial decisions and legislative changes have shown a strengthening commitment to equality and the dignity of the transgender person. However, many obstacles remain with regard to the implementation of these legal safeguards, stemming from long-standing social attitudes, institutional weaknesses, and policy gaps.

This comparison has looked at the perception and practice of transgender rights in India and Pakistan individually, with respect to the history of transgender rights, constitutional provisions, judicial development, legislative provisions and the social fabric experienced by transgender communities in both countries. It put the spotlight on the steps taken to ensure the legal and policy recognition of rights in every country and also on the remaining obstacles to the realization of equal rights. Both countries have enacted legislation and policies to enhance the situation of transgender people, but the nature, extent and impact of these measures is quite different. Hence, it is important to look at the comparative analysis, not only in terms of the common issues being experienced by both countries, but also in terms of their legal approaches, institutional reactions, and perception of the society.

Comparative analysis is a valuable approach to research in order to find similarities and differences between two cases with historical, cultural and political traits. India and Pakistan are the countries that are suitable for comparison, since they have received a similar legal heritage from the British, have similar socio-cultural heritage, and are grappling with similar issues of gender diversity and social inclusion. The two states share some historical commonalities, but have different approaches to transgender legal issues, policy, and administration. An analysis of those similarities and differences helps to learn about the effectiveness of current legal frameworks and their application. This chapter is not meant to repeat the detailed discussion given in the previous chapter but to summarize the findings through systematic comparison of India and Pakistan. It assesses how much constitutional safeguards, judicial rulings, legislative changes, and institutional processes have led to improvements in the lives of transgender people. The chapter also contrasts the attitudes of society towards transgender communities and explores the extent to which legal recognition has brought about changes in social acceptance and inclusion. This comparison can highlight aspects of improvement in each country, and also those areas of the country that have a great need for improvement.

The comparative analysis is structured on certain dimensions that arose from the results of the previous chapter. These are historical experiences of marginalization, constitutional and legal recognition, judicial protection, legislative development, access to education, job opportunities, health services, political participation, social acceptance, and policy effectiveness. These dimensions are shared between both countries, but their approach to these dimensions is different for each country because of the differences in legal traditions, governance systems, and social and cultural environment. Thus, the comparison offers a fair picture of the advantages and disadvantages of the current institutional structures in India and Pakistan. The aim of this chapter is in part to look for commonalities across the two countries in terms of transgender rights. Transgender people in India and Pakistan continue to be discriminated against, subjected to violence, excluded from the economy and denied access to critical public services, although there have been some important legal changes. Unfortunately, social stigma, family rejection, workplace discrimination and lack of institutional support are serious barriers for the successful implementation of their rights. These are just some of the common issues that highlight the need for a holistic approach to implementation, awareness and accountability to ensure the recognition of these rights in legislation. The chapter points out key differences in the legal and

institutional stance taken by India and Pakistan. There are disparities in judicial precedents, legislation, legal procedures for legal gender recognition, government welfare measures and mechanisms to advance transgender rights. The comparison also assesses the impact of these differences on the lived experience of transgender people and the extent to which social and economic conditions have changed for them in favour of the law. The study helps to fill this gap by highlighting these differences and fostering a deeper understanding of the rights of trans people in the South Asian context. This comparative study aims to fill the gap between legal recognition and implementation. Both countries have enacted laws and policies for the protection of transgender rights, but their success in doing so depends on institutional capacity, political commitment, public awareness, and societal acceptance. The comparison is therefore not only on the legal measures, but also on the results they yield, so that a more realistic picture of the progress made in both countries can be gained. This chapter serves as background for the recommendations that follow at the end of this study. It compares the similarities and differences of India and Pakistan in a systematic and logical manner and pinpoints practices that are successful, weaknesses that are common and further policy attention that may be needed. The results of this chapter are relevant to the broader research question of the perception and practice of transgender rights in South Asia through its comparative analysis and by providing suggestions that can help to improve the protection and promotion of transgender rights in South Asia in general.

Similarities Between India and Pakistan

India and Pakistan have distinct political systems and legal frameworks, but have similar viewpoints and experiences on transgender rights. They share a common history, have received similar colonial heritage and are still burdened with a similar social and institutional legacy. Both states have provided important legislative progress for transgender people, but there are still a number of obstacles in the way of achieving full rights. The following paragraphs illustrate some of the significant parallels between India and Pakistan.

Historical Marginalization:

India and Pakistan have a similar past in relation to transgender people, as both nations used to be a part of British India before their independence in 1947. Before the rule of the British, transgender people like Hijra and Khawaja Sira, were part of the society, and they were given respected positions in royal courts and cultural ceremonies. They were engaged in religious activities, music, dance and other social functions. They lived in many sections of society and they were given some dignity and recognition. The perception of transgender communities, however, was quite different under British colonization. Laws and policies were imposed by the colonial government to regard transgender people as suspect and socially undesirable. Discrimination and social exclusion were promoted by these laws and negative attitudes were formed during that time, which had negative consequences even after independence. This resulted in this legal system and social perception being handed down to both India and Pakistan, where transgender people have been discriminated against for many decades. Transgender people in both countries continued to be socially and economically marginalised after independence. Numerous people were turned away from their families, refused admission to schools and struggled to get a job. Because of this, many transgender individuals relied on traditional jobs like begging, dancing in ceremonies or engaging in sex work to survive. So even after the enactment of legal reforms, the legacy of discrimination is clearly having a negative impact on the lives of transgender people in India and Pakistan.

Constitutional Commitment to Equality:

Equality, human dignity and fundamental rights are constitutionally guaranteed in both India and Pakistan. There is no explicit reference to transgender persons in either of the constitutions in their original versions, but the principle of equality and non-discrimination have been used as a basis for guaranteeing their rights. These guarantees have helped bring the legal protection of the courts and the government to the transgender communities. Transgender people have been considered part of the definition of 'person' in India, as a result of constitutional provisions on equality before the law, prohibition of discrimination, equal opportunity in public employment, and protection of life and personal liberty. Likewise, the equality before law, equal protection of law, human dignity and fundamental rights protection are guaranteed to all under Pakistan's

constitution. These principles have played a role in judicial interpretation and legislation that has led to the recognition of the rights of transgender individuals. Thus, even if there are some differences in the definitions and interpretation of the constitution between the two countries, they both show that the constitutional principles are being applied to safeguard the rights of transgender people, thereby promoting equality. This constitutional pledge has been instrumental in the progress of the legal reform and the recognition of transgender persons in the national legal systems.

Judicial Recognition of Transgender Rights:

Judiciary has been important in fostering the rights of transgender people in India and Pakistan. In both countries, courts in advance of the introduction of comprehensive legislation acknowledged the rights of transgender persons. Judicial rulings contributed to a legal framework of recognition, fundamental rights protection, and policy guidance to governments about ways to better the social and economic lives of transgendered communities. Judicial rulings played some part in creating a legal framework of recognition, fundamental rights protection, and policy guidance to governments on how to improve the social and economic lives of transgendered communities. In India the Supreme Court declared transgender as a third gender and accepted their right to self-identify their gender. The Court also provided that transgender persons have a right to equality, dignity, education, employment, and healthcare. The ruling spurred both central and state governments to enact welfare policies and legal changes for transgender people. In the same way, the Supreme Court of Pakistan gave several landmark verdicts which required the government authorities to accept the rights of transgender individuals. The Court directed to public institutions to provide access to the national identity document, inheritance rights, educational and employment opportunities and protection from discrimination. The judicial orders had led to the subsequent amendments in the legislation in Pakistan. Judicial action in both countries thus served as one of the main actors in the movement for transgender rights, by broad interpretation of constitutional principles and through the call for legal and administrative reform by the governments.

Persistent Social Stigma and Discrimination:

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Although transgender individuals are legally recognized in both countries, there is significant social stigma and discrimination against them in both India and Pakistan. Negative attitudes towards transgender communities arise from in-depth cultural beliefs, gender stereotypes, and public ignorance. Gender diversity is still not understood by many people and hence it is being prejudiced and excluded from mainstream society. In both countries, family rejection is one of the major issues. Educators and parents often abandon their transgender students, leaving them to feel socially isolated or socially rejected after expressing their gender identity, or face emotional abuse or physical violence. Consequently, many flee their homophobic families at an early age and turn to transgendered communities for help rather than their own families. Because of this, some are forced to leave their homes at a young age and rely on transgendered communities instead of their families for assistance. This isolation can restrict their learning and employment choices. There is also discrimination in public facilities, places of work, schools, health care settings, and in the public sector. Numerous transgender individuals have reported being treated unfairly, experiencing verbal harassment or being refused services due to their transgender identity. While slow progress has been made over the past few years in raising awareness and combating negative social attitudes, they pose major barriers to social inclusion in both India and Pakistan.

Barriers to Education, Employment, and Healthcare:

The situation of transgender people in India and Pakistan is similar when it comes to education, employment and healthcare. While governments have enacted policies to support the inclusion of transgender people, many are still excluded from realizing benefits from such calls to action. Transgender students in the educational system may face bullying, discrimination, and a lack of support from the school. A high number of learners leave school prematurely due to low levels of safety and inclusion. Their financial independence and employment opportunities are less likely due to their limited education. Job prospects are also bleak in both countries. Transgender candidates are still being discriminated against by many employers in recruitment and promotion. As a result, transgender people continue to be over-represented in unemployment and underemployment. The absence of equal employment opportunities leads many to still undertake informal

employment. Other areas such as healthcare are also facing the same problems. Hospitals and clinics may discriminate against transgender persons, and many health care providers are not trained about transgender health issues. Many places still do not have easy access to gender affirming care, mental health services and special medical care. Quality health care is also limited in both countries due to financial access, social stigma and inadequate government services.

Weak Implementation of Laws:

Perhaps one of the biggest commonalities between India and Pakistan is the discrepancy between legal recognition and implementation. Both countries have enacted legislation, policies, and court rulings that safeguard transgender rights. But there is a lack of consistency in application of these laws because of administrative shortcomings, poor resource availability and low institutional commitment. Legal provisions have been challenging for government departments in both countries to turn into effective policies. Transgender rights are not well known by many public officials and mechanisms for the enforcement of the anti-discrimination laws are underdeveloped. This has led to the intolerance of many transgender people, even in the face of laws that protect them. Additionally, there are often delays, lack of funding, and poor coordination between government agencies, which hinders the effective implementation of welfare schemes and development programs for transgender communities. However, public awareness campaigns also are not enough to alter ingrained social attitudes. The impact of legal changes in the real world has therefore not yet been fully realized.

To sum up, there have been significant strides taken towards the recognition of transgender rights in both India and Pakistan, at the level of constitutional principles, judgments, and laws. However, challenges still exist with regards to effective implementation, minimization of social discrimination and access to education, employment, health services and public services. All of these problems illustrate that legalization is not sufficient, effective institutions, enforcement and public acceptance is needed if meaningful social change is to be achieved.

Dissimilarities Between India and Pakistan

Notwithstanding some commonalities in the recognition of the rights of transgender individuals in India and Pakistan, there are significant differences in the legal frameworks, policy perspectives, institutional help and the social contexts. Such differences have affected transgender persons' ability to exercise their rights. The comparison of the two countries in the following sections reveals the key differences between the two.

Legal Framework and Recognition:

The legal framework and recognition of the rights of a nation's citizens. India and Pakistan have taken different legal steps in regard to transgender rights. In India, the legal recognition of transgender persons has mostly occurred via the courts before it was formalized in law. In its NALSA judgment on 2014, the Supreme Court recognized transgender people as a third gender and the right to self-identify transgender as a gender. This decision was later followed by the Transgender Persons (Protection of Rights) Act, 2019, which offers legal protection against discrimination in various fields including education, employment, healthcare and access to public services. The Act has, however, faced criticism by transgender activists for some of its provisions as it is seen as not consistent with the Supreme Court principle of complete self-identification.

Pakistan took a different route by enacting the Transgender Persons (Protection of Rights) Act, 2018 following a series of Supreme Court judgments from 2009 to 2012. In 2018, the Act was seen as one of the more progressive laws for the transgender community in South Asia, as it guaranteed the right to define one's gender identity and barred discrimination in different fields. In Pakistan, however, the law is subject to much legal and political debate, as compared to India. There has been some uncertainty about the implementation of the Act due to petitions questioning some provisions of the Act. Thus, although both countries have laws in place that safeguard transgender people, the Indian legal regime has been firmed up by stronger judicial interpretation, while the Pakistani legal regime has been tested and challenged after the enactment of legislation.

Process of Legal Gender Recognition:

The process of acquiring legal recognition of gender is different in India and Pakistan. In India, transgender persons can get an ID card from the government authority under the Transgender Persons (Protection of Rights) Act, 2019. Transgender identity is acknowledged, but there have been many arguments about the requirement for administrative authorization adding unnecessary hurdles and restricting the Supreme Court precedent that allows people to self-identify. If a patient has had medical procedures in order to identify as a man or woman, they may also need to provide further documentation to do so. The Pakistan Transgender Persons (Protection of Rights) Act, 2018 initially provided for self-determination and self-registration of gender identity without relying on any medical examination or surgical procedures. This was seen as a substantial advancement in the rights of personal autonomy. But lawsuits and arguments over Act interpretation have left this topic of 'self-identification' unclear. Thus, in contrast to India, Pakistan's initial stance was more liberal in terms of legal gender recognition but legal conflicts have arisen over the years and have influenced the uniformity of its implementation.

Government Policies and Welfare Measures:

There are also variations in the government policies that affect the welfare of transgender men and women between the two countries. There are a number of welfare measures implemented by the central and state government in India. Various government bodies have introduced programs and initiatives for transgender communities focusing on education, healthcare, vocational training, monetary support, housing, and skill training. Certain states have created transgender welfare boards, special scholarship programs and healthcare. Due to the federated nature of India, however, these programs are available and effective in different states in various ways. Pakistan has also made significant efforts to the benefit of transgender individuals, though the number of government efforts is still relatively low. Government action has been primarily to issue National ID Cards, encourage voter registration, expand eligibility for social welfare and provide some employment opportunities within government agencies. Local governments have also launched certain programs relating to education and health care, but these programs have limited scope and funding. In general, welfare programmes are more widespread in India and their implementation is more firmly based in provincial policies and resources than in Pakistan.

Political Participation and Representation:

Political participation has developed differently in India and Pakistan. Transgender people in India have also been involved in democratic politics to contest local, state and national elections. A number of trans people have become social activists, legislators, municipal representatives and mayors. Greater political visibility has helped in the expansion of public discussion on transgender issue and has helped to build the advocacy within democratic institutions. Some significant improvements have also been made in Pakistan with regards to political participation since the transgender community has been granted registration as citizens. The Election Commission of Pakistan has implemented measures to ease the voter registration process and electoral participation. The number of transgender people running for elected office is still small, though, and transgender people's presence in elected bodies is still limited. Pakistan has made slower progress than India towards meaningful political representation, primarily due to social, financial and political barriers, and its marginalization of and disempowerment of transgender communities.

Public Perception and Cultural Acceptance:

The perception of transgender people among the people varies from India to Pakistan in a number of ways. The rise in awareness about transgender rights in India can be attributed to several factors, including the inclusion of transgender individuals in the courts, media coverage, educational initiatives, and the visibility of transgender activists. There has been a general shift of positive attitude towards gender diversity in urban spaces, and discussions on gender diversity are more prevalent in educational institutions, media and civil society groups. However, transgender people are still discriminated against, violently attacked and excluded from society, particularly in rural areas where traditional gender roles prevail. Transgender population, and Khawaja Sira in particular, have a visible cultural identity in Pakistan. Yet, in everyday life, there is a lack of social

acceptance. The rejection of transgender people by their families, the confusion and intolerance of religion, the discrimination at work, and the social isolation remain prevalent for many transgender people. Attitudes towards transgender people, as part of broader debates about religious, cultural and political identities shape public discussions of transgender rights, and social acceptance is lagging behind legal recognition. Thus, while both countries are plagued by prejudice, the situation is somewhat better in the public sphere in India than in Pakistan where there are more conservative attitudes in parts of society.

Institutional Support and Enforcement:

There are also institutional arrangements for the implementation of transgender rights in India and Pakistan. India has a broader array of institutions with the responsibility of enacting transgender welfare policies. Policy implementation is carried out by various ministries, state governments, human rights commissions, welfare boards, education institutions and civil society organizations. While coordination between these institutions is not always effective, there are multiple avenues for promoting transgender rights and monitoring government initiatives. There are not many institutions in Pakistan that focus solely on transgender rights. Government departments, provincial governments, the National Database and Registration Authority (NADRA), human rights institutions and civil society groups play a significant role in implementing policies. These institutions have made strides in providing ID documents and enhancing legal recognition, but various factors such as lack of financial resources, administrative capacity, and coordination often undermine policy implementation. Consequently, the overall administration in India is stronger as compared to Pakistan, where enforcement of legal protection is still a problem.

In general, the comparison highlights the fact that India and Pakistan have achieved considerable progress in promoting the rights of transgendered people, but have very divergent legal, administrative, welfare, political, public attitudes and institutional capacity. The institutional frameworks and welfare initiatives are generally stronger in India while those in Pakistan were more forward-looking as far as legal frameworks are concerned, but more uncertain as far as implementation is concerned. This is because the transgender rights in both countries are implemented differently due to these differences.

Comparative Table

Dimension	India	Pakistan
Constitutional Protection	Equality guaranteed under the Constitution and interpreted through judicial decisions	Equality guaranteed under the Constitution and supported through legislation
Landmark Judgment	NALSA Judgment (2014) recognized the third gender and self-identification	Supreme Court judgments (2009-2012) recognized transgender rights before legislation
Main Legislation	Transgender Persons (Protection of Rights) Act, 2019	Transgender Persons (Protection of Rights) Act, 2018
Legal Gender Recognition	Available but involves administrative procedures and has faced criticism	Initially based on self-identification, later subject to legal and political challenges
Education	Policies exist, but discrimination remains	Limited access and higher dropout rates due to stigma
Employment	Some public and private initiatives, but unemployment remains high	Fewer employment opportunities and greater economic exclusion
Healthcare	Gender-affirming healthcare is developing but uneven	Limited specialized healthcare services and awareness
Political Participation	Some transgender candidates have contested elections	Reserved opportunities and increasing electoral participation
Social Acceptance	Growing visibility in urban areas, but discrimination continues	Strong cultural recognition of the Khawaja Sira community alongside persistent social exclusion
Law Implementation	Moderate implementation with state-level variation	Weaker implementation due to institutional and political challenges

Key Findings:

- In both Pakistan and India there has been considerable legal development, both in the principles of the constitution, the judgments of the courts and legislation, that addresses and protects the rights of transsexuals and transgendered people.
- Transgender persons continue to be discriminated against and excluded from society due to the lack of institutional change in both countries, especially in India, where reforms have lagged behind societal acceptance.
- Both the transgender community of India and that of the United States are victims of the same feeling of marginalization, which is deeply entrenched in the history of both countries and stems from colonial and post-colonial social attitudes.
- The constitutional principles of equality, dignity, non-discrimination and equal protection have laid the legal groundwork for the development of transgender rights in both Pakistan and India.
- Judicial activism has been a significant factor in the process of recognizing transgender identity and championing legal changes in both countries.
- Pakistan and India have different legal considerations: Pakistan has implemented the Transgender Persons (Protection of Rights) Act, 2018, while post the NALSA judgment, India has enacted the Transgender Persons (Protection of Rights) Act, 2019.
- Pakistan originally had a more liberal approach on self-identification for legal gender recognition, whereas India has an administrative process.
- India has established a more inclusive and extensive welfare system of welfare schemes, while Pakistan's welfare system is comparatively a narrow and small one.
- India is more developed in terms of participation and representation of transgender people in public life in contrast to Pakistan.
- Although there has been some progress in legal recognition, social acceptance remains a significant issue in both countries.
- Institutional measures in India have improved for the implementation of transgender rights whereas Pakistan still has administrative and institutional issues.
- There is a large divide between the legal recognition and realization of transsexual and/or transgender rights in both countries.
- In Pakistan and India, transsexuals are still discriminated against in education, employment, healthcare, housing, and in the use of public services.
- The implementation of transgender rights needs to be strengthened, public awareness needs to be raised, social inclusion needs to be enhanced, economic opportunities need to be provided and healthcare access needs to be improved in both countries, in order to be effective.

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