Status of Legal Rights of Third Gender in Karachi

Ali Raza Shah¹, Abdul Karim Suhag², Sayed Tanweer Ahmed³

¹PhD Scholar, Department of Social Sciences, SZABIST Karachi Campus

²Lecturer, Department of Education, SMIU Karachi

³Lecturer, Department of Education, Sukkur IBA University, Sukkur

Corresponding Author, Email: aksuhag@smiu.edu.pk

Abstract

The study aims to analyze the status of legal rights of third gender community in the country. To do that, firstly constitution of the country along with important case laws and the transgender - specific law are analyzed; secondly documentary evidence is sought to analyze the actual status of rights of third gender in the country. The analysis of laws shows that third gender community, particularly after the enactment of the Transgender Person (Protection of Rights) Act 2018, are legally entitled to a comprehensive set of rights like right to inherit, right to education, right to employment, right to vote et cetera. An exploratory qualitative research approach is followed with documents analysis and phenomenology method. To understand the causes of this gap interviews from general public were conducted by employing convenience – based purposive sampling. A sample of fourteen respondents belonging to different economic and educational backgrounds was randomly selected. Semi – structured interviews were conducted with the help of open – ended questionnaire. Thematic analysis of interviews conducted provides four causes of third gender rights' violation: People generally think that they are not real trans genders and are pretending to be ones to earn money, they are considered inferior and even disabled, they are considered bad and that interaction with them will have an adverse impact on their reputation and because their family does not support them. Therefore, there is dire need to take concrete and practical steps to mitigate the ubiquitous violation of the rights of third gender like providing educational and employment opportunities to transgender persons, improving the law, creating awareness through media and establishment of separate facilities like jails and hospitals for transgender community.

Key Words: Legal, Rights & Third gender

Introduction

Transgender people form one of the most marginalized communities of the country and they are exposed to perpetual subjugation at the hands of the various segments of the society. They face grave issues ranging from public harassment to lack of employment opportunities to severe physical threats and torture. Though several legal safeguards exist to protect this vulnerable community from multidimensional threats they are exposed to, they are found to be less effective as the violation of their rights is ubiquitous notwithstanding. With the consonant of articles, four and nine of the Constitution 1973 Pakistan Supreme Court admitted to equal rights of transgender as properly as the former federal and provincial legislatures had well-known to provide necessary rights such as ideal to employment, perfect to get schooling and applicable to take positions indistinct authorities corporations for prolonged time span in 2013. The landmark ruling stated that as "residents they have been entitled to the equal attain and security of the regulation and referred to as upon the Government to take steps to guard Transgender people from discrimination and harassment (Iqbal, 2009).

The Federal Shariat Court of Islamabad on Friday ruled that the sections 2(f), 3 and 7 of the Transgender Act 2018 which relate to gender identity, the right to self-perceived gender identity and the right of inheritance for transgender people do not conform with their interpretation of Islamic principles. The Court ceased, with immediate effect, the sections deemed 'un-Islamic'. During the delivery of the verdict, the Court speculated that the Act could pave the way for rape, and sexual assault of women as they allege the Act makes it easy for a man to gain access to "exclusive spaces" intended for women, "disguised" as a transgender woman. There is no publicly available evidence of such incidents taking place in Pakistan.

However, the big breakthrough regarding the legalization of the basic rights of third gender came very recently when the parliament of the country passed Transgender Person (Protection of Rights) Act 2018. The Transgender Persons (Protection of Rights) Act 2018 in Pakistan, which has been widely considered a positive step in the advancement of transgender rights. This act guarantees all basic rights to the third gender community like right to property, right to employment, righty to inherit, right to education and so on. Nonetheless, the third gender community is deprived of all of the above rights.

In a public statement released on 17 May 2023, Amnesty International called for the government of Pakistan to reject all proposed amendments to the Transgender Act that violate international human rights laws and standards. The government must also stop any attempts at amending the Act that would prevent transgender people from to obtaining official documents that reflect their gender identity without complying with abusive and invasive requirements Laws of the country explicitly prohibit any form of discrimination on the basis of sexual orientation. For instance, Article 25 of the constitution of the Islamic Republic of Pakistan guarantees equality of all citizens before law. Moreover, clause 1 of Article 26 and clause 1 of article 27 of the constitution of the country unequivocally prohibits any type of discrimination on the basis of sexual orientation.

Statement of the Problem

There is as general societal disregard about the rights of the third gender community in Pakistan. Though transgender are guaranteed basic human rights in the constitution of the country, there is lack of understanding and awareness in public about their rights. Resultantly, they experience the violation of their legal, constitutional rights on daily basis; they are discriminated against in almost all social interactions and setups (Saddique & Cang, 2017). Therefore, this study will try to define the scope of rights of transgender in the country, assess the status of provision of rights to them, identify the reasons that stand in the way of realization of the goal of equal and just treatment of the third gender people in the country and suggest concrete steps to ensure fair and equitable treatment of third gender community in the country.

Research Objectives

- a. To analyze the availability and provision of several legal and constitutional rights documents to third gender community in the country.
- b. To explore the scope of legal rights of third gender in the country as stipulated in different laws of the country.
- c. To identify the causes of the violations of trans genders' rights in the countries.

Research Questions

- a. What are the availability and provision of several legal and constitutional rights documents to third gender community in the country?
- b. What is the scope of legal rights of third gender in the country as stipulated in different laws of the country?
- c. What are the causes of the ubiquitous violation of the rights of third gender in the country?

Literature Review

Third gender or Hijra as they are called in Pakistan is a general term for a person who is either eunuch, transvestite, hermaphrodite, bisexual or homosexual (Ahmed, 2010). In fact, this segment of the society comprises those individuals who do not find place in either male segment or female segment as the structure of the society strictly divides its members into the dichotomy of male and female genders (Reddy, 2005). In Pakistan Hijra is an established and accepted gender role where a man acts like a woman (Jami, 2005). Nonetheless, they are a marginalized and subjugated segment whose basic rights are rampantly violated despite the fact that legal safeguards are provided through various laws.

Legal Definition of Third Gender

According to article 2(n) of The Transgender Person (Protection of Rights) Act 2018 three types of people are categorized as transgender. First category is of Intersex. These persons have genital features of both male and female gender. They have inborn genital ambiguities. Second category is of Eunuchs. These are people though labelled as male at the time of birth but undergoes genital mutation afterwards. Third category comprises of all people who do fit into the traditional gender roles. They are the ones gender identities is different from social norms and cultural expectations owing to the gender they were assigned at the time of birth.

Legal Rights of Third Gender in Pakistan

There are two main sources of legal rights of third gender in Pakistan: The Constitution of Islamic Republic of Pakistan 1973 and The Transgender Person (Protection of Rights) Act 2018. Rights of third gender as provided in the above laws are mentioned and analyzed below.

The Constitution of Islamic Republic of Pakistan 1973

The Constitution of Islamic Republic of Pakistan 1973 is considered a mother legislations and other laws draw foundational strength from it. Therefore, its analysis is vital to understand the legal rights of third gender in Pakistan.

The constitution provides for the fundamental rights of all people of Pakistan in articles from 8 to 28. It guarantees fundamental rights ranging from security to life and liberty (article 9) to equality before law (article 25) to right to education (article 25A) to non-discrimination (article 26 and 27). Generally - accepted view is that the constitution provides for the rights of third gender as it guarantees for the equality of all citizens before law and non-discrimination on the basis of sex. Article 25, 26 and 27 are often quoted to justify this proposition. It is maintained that articles 25(1) and 25(2) provide for the equality of citizen and non-discrimination the basis of sex respectively. Therefore, it is plausible evidence of the non-discriminatory nature of the constitution. Moreover, it is argued that article 26(1) prohibits any discrimination on the basis of sex. Article 27 of the constitution is given as another argument to prove the non-discriminatory nature of the constitution. The article, it is argued, prohibits any discrimination in appointment of a person on the basis of sex.

However, if we closely analyze the language of the various articles of the constitution, we can observe that the prohibition of discrimination on the basis of the sex is construed in the traditional male – female dichotomy and it almost completely ignores the concerns of third gender. Take for instance article 26. Though it stipulates that there shall be no discrimination on the basis of sex in clause 1, in clause 2 it states that clause 1 does not prevent the laws or provision for women and

children. It shows that sex in clause 1 is taken in traditional sense of male - female dichotomy. Had the third been in consideration, it would have found the place the second clause along with women. Moreover, had it been true that right to equality and non-discrimination on the basis of sex given in the constitution includes third gender, third gender people would have got the right to identity and registration according to their as third gender. The practice shows that before it was not the case. Third gender persons were compelled to get themselves registered for various documents as either males or females as the law of the land did not provide an option for third gender category. Third gender persons actually had to fight a legal battle for the recognition of their right to identity which they got in 2009 (Khaki vs Rawalpindi, 2009). Therefore, it can be safely argued that even the constitution of the country was silent about or ignored the rights of third gender in the country.

The Transgender Person (Protection of Rights) Act 2018

The Transgender Person (Protection of Rights) Act 2018 is considered a milestone as far as recognition of rights of third gender in Pakistan is concerned. It provides, for the first time in the legal history of the country a comprehensive legal definition of a transgender person. Moreover, this act is rightly praised for giving the neglected and unrecognized third gender community a right to identity.

Recognition of Identity of Transgender Person

The act of 2018 entitles a transgender to be registered with all government departments as per his or her self – perceived gender identity including the NADRA (National Database and Registration Authority). In addition to the registration with government departments, the act enables transgender to get CNICs, passports, driving licenses and CRC. Besides this, the act allows the members of third gender whose documents like CNIC have already been issues to change the gender identity according to their self – perception.

The Rights of the Third Gender Persons

The act comprehensively covers the rights of third gender persons. Brief explanation of each right given in the act is given below:

Right to Inherit

In this regard, it divides the transgenders into two categories: Transgenders with identifiable gender and transgender with gender ambiguities. As far as transgenders with identifiable gender are concerned, the act stipulates that the share of a third gender person will be according to his or her gender mentioned on the CNIC. If it male, his share will be equal to that of males in the law. If the mentioned gender on CNIC is female, the share in the property will be equal to that of female in the law. With respect to the second category – the category of third gender with ambiguous gender characteristics – the law provides that if at the age of eighteen years a person feels that his self – perceived identity is that of male, his share in the inheritance will be equal to that of male.

Right to Education

The act under article 8 explicitly mentions that there will be no discrimination against third gender persons in getting admission in educational institutions irrespective of whether it is publically – run or privately – owned if a person meets the requirement of admission. That means gender identity or expression as a determinant of access to educational opportunities is prohibited under the law. Besides this, the act provides that educational institutions will provide equal opportunities with regard to provision of sports, leisure and recreational facilities to third gender. In addition to this, the act binds government to provide free and compulsory education to third gender persons as stipulated in the constitution of the country under article 25A. Furthermore, the act under article 8 clause 5 reiterates that there shall be no discrimination against third gender persons by educational institutions with respect to their admission and other opportunities related with education like training and student facilities.

Right to Employment

The act under article 9 binds the government to make sure that third gender persons in the country enjoy their right to enter in legitimate professions and are able to do lawful businesses as given in the constitution of the country under article 18. Moreover, the act forbids any form of discrimination against third gender person in employment including recruitment, promotion, transfer and appointment et cetera. Besides this, it declares any discriminatory attitude of employer against third gender persons unlawful like determining who should be appointed on the basis of sexual orientation and so on.

Right to Vote

The act under article 10 states that no member of the third gender community will be prevented from his or her right to vote. Moreover, it also mentions that whether a third person castes his or her vote in male or female booth of polling station depends upon the gender of that declared on his or her CNIC.

Right to Hold Public Offices

The act under article 11 provides that gender, sex or gender identity should not form the basis of any discrimination against a third gender person if he or she decides to contest election to hold public office.

Right to Health

The act also acknowledges third gender persons' right to health. It under article 12 binds the federal government to encourage medical research in order to resolve third gender specific health issues. Moreover, it also directs the government to ensure that third gender persons have access to hospitals and that the environment of the hospitals is safe for them.

Right to Assembly

In addition to the rights of the third gender persons given above the act under article 13 binds the government to ensure that they enjoy the freedom to associate and assembly as stipulated in article 16 of the constitution of the country. Besides this, the act directs the government to take concrete steps to ensure the safety of third gender persons.

Right to Property

The act under article 15 reiterates the third gender people's right to property. It states that third gender persons enjoy the rights with respect to property like purchase, rent or inherit like any other male or female.

Transgender in Pakistan

Pakistan has made some gains as far as status of transgenders in the society are concerned. However, the situation is far from being satisfactory. Transgenders are striving hard to earn their due respect and get recognition in the society. A good news in this regard came when, in the beginning of this year, a trangender, Marvia Malik, became the first transgender news anchor at a Lahore – based news channel Kohenoor News (Saifi, 2018). Similar trend is also evident from the fact that around thirteen transgenders contested election in the general election of 2018(Farhan, 2018). However, none of them could win a seat showing the general public's discriminatory attitude towards them.

Moreover, government has also taken steps in this regard after the enactment of the gender law (Bilal, 2018). For instance, recently, transgenders were issued driving license by the Islamabad Traffic Police (Qarar, 2018). Furthermore, a separate ward was also established for transgender patients at the PIMS (Pakistan Institute of Medical Sciences) hospital ("In a first, PIMS specifies two rooms for transgenders", 2018). Nevertheless, government's steps are not enough as discrimination against third gender persons continue unabated despite the enactment of the law. Besides this,

Though these gains must be appreciated, the level of violence against third gender is high and crimes committed against them are very severe. Take for instance the brutal murder of transgender person at a cab stand at Mall Mandi Chowk in Sahiwal by some unidentified perpetrators (Butt, 2018). The person was burnt alive showing the level of violence this vulnerable community bears. Another such incident of heinous crime was committed in Peshawar in which a trangender woman, Nazo, was killed and her body was chopped into pieces with an axe on the pretext that she was seeing another person (Sirajuddin, 2018). Trangenders are not safe even in areas which are considered 'posh' and 'secure'. It is evident from the murder of a transgender woman, Chanda, in Shahbaz Commercial Area which is considered one of 'poshest' areas of D.H.A. Karachi. According to S.H.O. of the area, Aurangzeb Khattak, culprits first threw eggs on transgender persons and then, while leaving, opened fire on them resulting in the death of Chanda due to bullet piercing into her head ("Transgender person shot dead in Karachi", 2018).

It is not that only individuals commit crimes against third gender persons. Even governments have been ignoring the issues of trangenders in the country. Take, example, the last census of 2017. According to it, there are around 10418 (0.005% of total population) transgender persons in the country. It is grossly wrong and untrue. According to estimates around 5000 to 10000 transgenders live in twin cities of Islamabad and Rawalpindi alone, let alone the whole country (Wasif, 2018).

Research Methodology and Method

An exploratory qualitative research approach is followed with documents analysis and phenomenology method. Firstly, the constitution of the Islamic Republic of Pakistan along with other relevant laws is analyzed to define the scope of the rights of the third gender community in the country. Secondly, relevant secondary data is collected through various sources like articles, newspapers et cetera to understand the prevalent situation regarding legal rights of the third gender community in the country. Thirdly, once the gap between legal rights as given in the laws and actual status of rights of third gender available is identified, respondents – general public – are interviewed to understand and identify the reasons behind this huge gap. These causes are identified after performing a thematic analysis of interview transcripts. Lastly, steps to ameliorate transgender rights' situation are suggested on the basis of conclusions drawn from data analysis.

Sampling Technique and Sample Size

Convenience – based Purposive sampling is used in the study. It is purposive because only those laws are included and analyzed which deal with the legal rights of third gender directly or indirectly. Similarly, it is convenience – based because respondents though selected randomly were those easily approachable. Besides this, as far as sample size is concerned, total number of respondents is fourteen. The number of respondents is restricted to this because saturation point was achieved by interviewing this number of respondents. Respondents belong to various educational and economic backgrounds making sample truly representative of population – the member of the society.

Sources of Data

The study uses both secondary sources and primary sources. Secondary sources include the constitution of the country, different legal precedents as available in various documents, specific legal documents like transgender – specific law, newspapers et cetera. Primary sources of data included the responses received through semi – structured interviews conducted with the help of an open – ended questionnaire.

Analytical Technique

Thematic analysis is conducted to reach the conclusions regarding causes of gap between legal status and actual status of rights of third gender in the country. Themes were identified through open – coding of transcripts of interviews of respondents.

Data Analysis

Demographic Description

Total of fourteen respondents were interviewed. The data collection process was stopped and sample size was restricted to fourteen because respondents started giving similar responses. Following table summarizes the demographic characteristics as discussed above:

Table 1. Demographics Description of the Respondents

Respondent No.	Age(Years)	Education	Profession
1	24	Matric	Waiter
2	32	Madressah Qualified	Prayer Leader/Pesh Imam
3	29	Madressah Qualified	Prayer Leader/Pesh Imam
4	26	Graduate	Banker
5	27	Graduate	Banker
6	30	Graduate	Commecial Officer(Wind Plant)
7	32	No Education	Waiter
8	52	Matric	Fruit Vendor
9	21	F.Sc.	Mechanic
10	22	Primary	Electrician
11	28	Matric	Mechanic
12	25	No Education	Cycle Mechanic
13	34	Matric	Dry Cleaner
14	44	Madressah Qualified	Prayer Leader/Pesh Imam

Source: Self-designed

Causes of Discrimination Against Third Gender

Four major causes of discrimination emerge after performing thematic analysis of the data.

Perceived pretense

One of the biggest reasons, the data analysis shows, behind the violence or discrimination against trangenders particularly at public places is the perceived fake identity of transgender person by public. It is found that people from different social and economic backgrounds agree on one thing: Most of tran-genders found at public places are not real trans-genders and that they are actually men who pretend to be transwomen. Therefore, if people harass them, it is not wrong as they are fake

and are themselves responsible. Take for instance the words of Asif, a waiter at tea cafe in the D.H.A. vicinity. According to him: I think most transgenders begging at signals are not true hijras. They are mostly boys who come from villages and pretend to be hiras for sake of money. People who harass these 'fake' hijras should not be punished. They (people who harass) are doing right thing. Similar are the views of another respondent who is a graduate from one of prestigious universities of the country and is currently working at a private bank. 'I agree that most of these transgenders are not real and they pretend to be transgenders to earn money', he said. According to another respondent: Real transgenders do not beg at signals. Another respondent went on say that 99% of transgenders at signals are males who pretend to be transgenders. '99% are actually men who pretend to be transgender, they have families. I know many such people', he added. This perception is the most important pretext on which people condone the violence against and harassment of third gender particularly at public places. As commented by a fruit vendor: I don't mind if people misbehave with 'fake' transgenders.

They are considered inferior and disabled

Data analysis shows that people perceive them as inferior. Majority of participants are of the view that they are different from males and females and, therefore, should have rights less than that those of entitled to males and females. As said one respondent: They should get less rights than males. 'They should neither be equal to males or females', added another respondent. They are also considered less as far as abilities to perform job are considered. In words of a respondent, 'they can not work at normal workplaces because they are different' implying that they lack the abilities to perform 'normal' jobs. Similarly, when asked if they would vote for a transgender candidate, the responses' analysis also shows that they are hesitant to vote because they feel they lack the abilities. As said one respondent: Only trangender will vote a trangender; 'normal' people will not vote. This statement implies that they(transgenders) are considered 'abnormal'. Similarly, another respondent said: I will not vote for them (transgenders). When asked about the reason, he laughed and said: we normal people can not vote a transgender. In the same way, when a prayer leader was if they(transgenders) should be given education, he replied in affirmative and said: They should have separate schools like blind and deaf people have.

The above discussion shows that people think that they are entitled to less rights and lack abilities that 'normal' people possess.

They are considered 'bad' company

The analysis of data shows that trangenders are considered bad and people do not want to interact with them thinking their interaction with them will have adverse consequences for them and will be other members of the society will look down upon them. Take for instance the statement of a respondent when asked about if transgenders should be given education with other children. He said: *Girls parents might object this and feel insecure that their daughter studying with transgender*. This biasness or fear of 'bad influence' is not limited to schools only. It is also present at workplaces. As said one respondent: *A person like me will not give them work. They will have to beg. I will not give them work because will look down upon me. My acquaintances will question my character if I interact with them.* Similar views were also expressed by a prayer leader who said: *Girls should observe purdah (seclusion) even from transwomen if they are of 'bad character'*. Then he added that normally they are of bad character. It shows that people do not want to interact with transgender in normal social settings. This attitude of keeping transgenders at arm's length has devastating impact on the lives of third gender persons. It deprives them of their right to education because parents, as discussed above, are not ready to send their children to schools in which transgender children are enrolled and also a big cause of violation of their right to a reasonable employment opportunity because people are not ready to give them jobs owing to social pressures.

Family disorganization

Family disorganization, data analysis shows, is also one of big reasons why trangenders are not provided the rights they are entitled to. The failure of support system in the form of family exposes them to the dangers they are forced to face. This exposure is considered one of big reasons for their rights violations. As said one respondent: *People will not harass them if they don't expose themselves to people*. People take advantage of their helplessness and feel free to harass transgenders. A prayer leader also expressed similar views. He said: *Family disorganization is the biggest cause of why they are forced to live in miserable conditions*. Family is an important support system particularly in our society which when fails forces children particularly transgender children to dangers of society and forces them to live in sub – human condition with little provision and protection of their rights.

Discussion, Conclusion and Recommendations Discussion

There are two important aspects to understand the status of legal rights of third gender in Pakistan: Theoretical or legal status and actual status. As far as theoretical or legal status of rights of third gender is concerned, analysis shows that now specific law has been enacted - Transgender Person (Protection of Rights) Act 2018 — which ensures all fundamental rights to members of third gender community. However, it is observed that the rights of third gender community are grossly violated

despite the enactment of law and stipulation of punishment therein. They are harassed and even killed with almost complete impunity.

Conclusion

Thematic analysis of interviews conducted shows that there are four major causes for this gap. Rights of third gender community are violated, the analysis shows, because people generally think that they are not real transgenders and are pretending to be ones to earn money, they are considered inferior and even disabled, they are considered bad and that interaction with them will have an adverse impact on their reputation and because their family does not support them. In short, discrimination against third gender is deeply – rooted in our social structure. Therefore, there is dire to take concrete and practical steps to mitigate the violence and discrimination against the third gender in the society.

Recommendations

- They should be given education. However, as the data analysis shows, people will resist transgender children inclusion into 'normal' schools. Therefore, a two dimensional strategy is required. One, awareness should be created among parents to enable transgender children to attend school along with other children. Two, separate schools should be established by the government for transgender community.
- They should be provided employment opportunities. In this way they will be able to earn reasonable living and will not be forced into begging and prostitution.
- Laws should be improved. A fixed quota should be established at educational institutions and punishment for the crime against transgenders should be increased.
- Media should play its to create awareness. It should debunk the myths that they (trangenders) are somehow inferior or disabled and should effectively communicate to public that discrimination against third gender is a criminal act.
- Government should fulfil its obligations as laid out in the Transgender Person (Protection of Rights) Act 2018.

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