

**TRANSGENDER -
(THE NEED FOR MAINSTREAMING)
INTERIM REPORT**

**FROM:
THE NATIONAL COMMISSION FOR
HUMAN RIGHTS**

Message from the Chairman, National Commission for Human Rights

A country where the rights of mainstream segments of the population are frequently trampled upon, the plight of marginalised segments of the society is unimaginable. Senate of Pakistan's Standing Committee on the Marginalised Segments of the Society entrusted the NHCR to work on the issues of the transgender community. "Transgender" includes a group of people who enjoy least amount of respect and rights in the country. The recent incidents of crimes i.e. rapes, murder and harassment etc. committed against the transgender community of Pakistan have prompted human rights bodies to call for the protection of the transgender community of Pakistan in all respects.

Not only the preamble to Universal Declaration of Human rights state equality, in dignity and rights, of all human being but also our constitution safeguards the fundamental rights of the citizens of Pakistan in Article 8 to 28. Despite such guarantees and safeguards, the living standards of the transgender community are improving due to variety of reasons- from segregation by the society to the executive apathy.

Transgender community, though miniscule, have significant presence across Pakistan in all ethnicities. As enshrined in the constitution, it is the responsibility of the state to confer on them their due rights and dignity. Their integration in the mainstream populace couldn't be achieved until and unless the "abnormality" associated with transgenders is transformed into new normal by giving them equal opportunities as given to other Pakistani- be it in Politics, education or public offices.

This report indicates that various government and state agencies, if assigned roles and responsibilities regarding the uplift of transgender community, can play a positive role in safeguarding the transgenders rights. Such a state level intervention is necessary to bridge the gap between mainstream population segments and marginalised communities like transgender persons.

Through this report NCHR submits workable and practical recommendations for the upliftment of the status of the transgender community. Furthermore, our commission proposes to draft a policy for the protection of the rights of transgender people in collaboration with the relevant stakeholders as a way forward.

I would also like to acknowledge the efforts of Ms. Mahwish Iqbal Rao and her team in preparing this report.

Justice (R) Ali Nawaz Chowhan
Chairman National Commission for Human Rights

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INTRODUCTION:

Gender is a socially constructed definition of women and men. It is not the same as sex (biological characteristics of women and men). Gender is determined by the conception of tasks, functions and roles attributed to women and men in society and in public and private life. Everyone has an internal sense of their gender and this sense is called gender identity.¹ Most people's gender identity is compatible with assigned sex on the birth certificate, but many people experience their gender identity to be discordant with their natal sex.² People whose gender identity differs from the assigned sex on their birth certificate are called Transgender people. The 'T' in the international initialism LGBT (Lesbians, Gay, Bisexual and Transgenders) represents the Transgender community. Transgender is also called Transexual if they undergo medical assistance/surgery from one sex to another. The transgender identity has also been listed as a psychological condition, labelled as Gender Identity Disorder. This pathologization of a gender identity further compounds transphobia. With significant advances in the fields of gender equality and mental health, and liberalizing attitudes, the World Health Organization has proposed to remove it as a disorder from the Diagnostic and Statistics Manual and International Statistical Classification of Diseases and Related Health Problems.

Unfortunately, transgender people face discrimination and inhuman behaviour globally, at every corner of their surroundings, for example at homes, schools, workplaces, markets, and police stations.³ Transgender community is a 'weaker segment' of our society and are looked with pity and disdain.

In Pakistan, transgender people (also referred to as '*Khawaja Sira*') are offered the least amount of respect or rights in our society and culture.⁴ They are bullied, tormented, insulted and harassed. Massive rejections are often faced by transgender people in almost all parts of Pakistan.⁵ Sadly, the rejection of the transgender people starts from their own family. Around 84 percent of transgender men and women in Punjab have faced hostility and abuse from their family members, especially men identifying as women.⁶ The 'gurus'

¹ Oxford Dictionary: A person's perception of having a particular gender, which may or may not correspond with their birth sex

² Lev, 2004, p. 397.

³ http://endtransdiscrimination.org/PDFs/NTDS_Exec_Summary.pdf

⁴ Transgender in Pakistan, By Mahwish Akhtar (Jinnah University for Women)

⁵ Human Rights Watch, Pakistan: Attacks on Transgender Women Surge

⁶ Published in Dawn, October 4th, 2016

(transgender community head) who take on the role of guardians, offer protection to the trans-children who are shunned by their families and become part of the transgender community.⁷

Illiteracy amongst the transgender people leads them to being marginalised and vulnerable in the society. Although, the transgender people are discriminated at every level starting from their homes, the inability and deprivation of the rights of education and health facilities is a great concern for this community as it limits their chances to live a better life.⁸ No census has taken place to calculate the population of the transgender persons but the estimated population of this community is 0.5 million⁹.

Rejection by the family and society, discrimination, violence, harassment, lack of employment opportunities, limited health and education facilities and legal protection as well as poverty and stigmatization are the major problems the transgender people face in Pakistan. Police often doesn't entertain the complaints of transwomen, and often-a-times harass them at their birthdays and dance events. No research, or data, is present on the prevalence of mental illnesses or psychological trauma in the transgender community of Pakistan.

Recently, many tragic incidents have occurred to the transgender people which necessitate resolutions and legislation to protect their rights.

A case in point is that of the 23 year old Alisha Ulibari, a coordinator for Trans Action Alliance, Khyber Pakhtunkhwa. It is reported that Alisha was shot five times by her boyfriend and died 3 days after the incident took place in May 2016 in the Lady Reading Hospital in Peshawar. *"She was neglected by doctors and medical professionals who taunted her, rather than treated her, and that three hours passed before Alisha went into surgery after arriving at the hospital. As she lay bleeding, the hospital's health workers crowded around her, making jokes and ridiculing her"* stated her friend Paro.¹⁰

It is pertinent to mention that the medical staff failed to give her the medical attention necessary to save her life because the hospital staff was indecisive as to whether to put her in a male or female ward, after protest by fellow transgenders, Alisha was shifted to the female ward.

Another incident came to notice after the graphic video clip was spread where a Transgender 'was brutally injured, harassed and tortured by a man. The man was beating the Transgender with his leather belt and placed his shoes on the victim's face making her unable to use force against him and defend herself.¹¹ After this incident another transgender named Jolie, primary witness of the incident, explained how the

⁷ Transgender in Pakistan: A "Forgotten People", by Alec Forss and Humaira Israr

⁸ Published in Dawn, January 15th, 2012, Transgenders need to be accepted into mainstream, Faiza Ilyas

⁹ Human Rights Commission of Pakistan (HRCP) -2013

¹⁰ Published in Dawn, Jun 14, 2016, Pakistan's transgenders mocked by most, abhorred by many

¹¹ Published in Express Tribune, 15th November, 2016

transgender people were being victimised by different groups in Punjab while the police, aware of their actions and localities, failed to act. She also lamented that the police, apart from making arrests due the media outrage, would not take any significant action that could actually contribute to the protection of the community, adding that even animals have some rights in Pakistan, while they were offered no support or protection by the government.¹²

Transgender people are down casted by the society and are treated as if it's a fault to be one. There are a few success stories who are educated and now working human rights activist but most of the Transgender people even if educated are not offered jobs or are forced to leave due to immoral behaviour of people. The trans-children are bullied by fellow students. They are taunted and abused for who they are.¹³

Julie another victimised Transgender was raped but she was told to be fine with it and not raise her voice as she was made for it, yet she had the nerve to purse rape case in court.¹⁴

The Transgender community is unable to attain education or work with dignity due to bigoted and disgusting attitude of other individuals who are not held accountable for their actions. Although the Third-gender acquire equal rights under the constitution but the lack of government aid and support system is the main hindrance for them to live a normal life. In fact our government bodies and institutions are known to harass this community and are offered least amount of protection from the government institutions in case of victimization or sexual harassment. The transgender people are engaged in begging, singing and dancing because no other option is available to them for earning money. Henceforth, our government needs to take effective steps by legislating laws for them and above all making sure of its implementation and execution. It is the job of Pakistani Government to make education accessible for them and create job opportunities. The Third-gender is even denied namaz-e-janza as maulvi sahabaan claims it is '*haram*'.¹⁵

¹² <https://www.youtube.com/watch>

¹³ Published in The Express Tribune, October 9, 2015

¹⁴ Published in the Guardian, September 7, 2016, 'I wasn't made to be raped and ridiculed' - trans woman makes a stand in Pakistan

¹⁵ Published on February 25, 2013, The tale of transgender people: When hate starts ruining lives by [Amna Nasir](#)

REFERENCE OF ISLAMIC TEACHINGS:

Pakistan being an Islamic State gives great significance to the Holy Quran, Sharia and Islamic teachings. The third-gender is a creation of God and should be respected and offered rights like other individuals of the society. Creating awareness in light of the Islamic teachings and removing the taboo should be of utmost importance. The acceptance of third-gender can bring positive change in the attitude of the society towards the Transgender and help in omitting the excruciating behaviour towards them.

In early times some Muslim rulers appointed them as intercessors in royal palaces, including those of the Ottoman and the Mughal.¹⁶ Ancient legend has it that khwaja sera's prayers and bad-dua are answered by God, bestowing them with the unique ability to bring good fortune and fertility. Despite their once respectable position in society, their status has significantly deteriorated over the years, forcing many into begging and prostitution¹⁷.

The spirituality of transgender people is considered as authentic as that of men and women. The Prophet treated the third-gender with respect and prohibited their ill-treatment, believing that they are dearer to God. In early times some Muslim rulers appointed them as intercessors in royal palaces, including those of the Ottoman and the Mughal.¹⁸

With regard to this subject, attention must be drawn to the Islamic Principles which can be of guidance to the society on how to treat Transgender people. The main principles include the following:

1. Islam manifests harmony with human nature, which implies that Islam seeks to respond positively to the legitimate needs of people. The Holy Quran, Surrah Yunus (10:25)¹⁹
2. Justice is a cardinal principle in Islam, as the Quran mentions that “*God commands justice and fairness.*”²⁰ The Holy Quran, Surrah Al-Nahl (16:90)
3. In Surah al Isra it is mentioned, “*And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference*”.²¹ The Holy Quran, Surrah Al-Isra (17:70)

¹⁶ http://www.huffingtonpost.com/liaquat-ali-khan/transgender-dignity-in-is_b_10089712.html

¹⁷ Mashal Shah: The Khwaja Seras: Pakistan's Endangered Minority (August 13,2013)

http://www.huffingtonpost.com/mashal-shah/pakistans-endangered-spec_b_3732591.html

¹⁸ http://www.huffingtonpost.com/liaquat-ali-khan/transgender-dignity-in-is_b_10089712.html

¹⁹ The Holy Quran, Surrah Yunus (10:25)

²⁰ The Holy Quran, Surrah Al-Nahl (16:90)

²¹ The Holy Quran, Surrah Al-Isra (17:70)

4. Prophet Muhammad (P.B.U.H) said that *“people are God’s children and the most beloved of them to God is the most compassionate of them to His children”*.²²

It is essential to highlight some of the traditions of the Prophet (P.B.U.H) with relevance to the Transgender. According to the scholar and hadith collector An-Nawawi, Transgender people were historically referred to as Mukhannath (in Arabic which means effeminate ones)²³, of which he provides the following definition:-

“A mukhannath is the one (“male”) who carries in his movements, in his appearance and in his language the characteristics of a woman. (Khuntha, a separate term, is usually taken to mean both genders) There are two types; the first is the one in whom these characteristics are innate, he did not put them on by himself, and therein is no guilt, no blame and no shame, as long as he does not perform any (illicit) act or exploit it for money (prostitution etc.). The second type acts like a woman out of immoral purposes and he is the sinner and blameworthy.”²⁴

This explanation comes from observations made from a number of Hadith and Sunnah, including the one below:-

“A mukhannath who had dyed his hands and feet with henna was brought to the Prophet. He asked: What is the matter with this man? He was told: Apostle of Allah! he affects women’s get-up. So he ordered regarding him and he was dismissed to an-Naqi’. (this is a region near medina) The people said: Apostle of Allah! Should we not kill him? He said: I have been prohibited from killing people who pray. (This is often reasoned to mean that Muslim trans women are accepted as they are “within the boundaries of Medina and Mecca”).”²⁵, Sunan Abu-Dawud, Book 41, Number 4910

In light of the above mentioned statements it can be derived that the transgender people should not be cast aside as an aberration, rather they should be accepted as a natural fact, a component of the humanity, and therefore should be afforded respect, dignity and rights indiscriminately.

²² How Islam Allows Transgender Individuals to be Treated Compassionately, dated 14 August, 2011, discussion by Dr. Muhammad Hashim Kamali

²³ Rights of Transgender in Islam <http://muslim-academy.com/rights-of-transgender-in-islam/>

²⁴ <https://joannadarrell.com/2015/09/07/transgender-and-islam>

²⁵ Sunan Abu-Dawud, Book 41, Number 4910

JUDICIAL APPROACH TOWARDS THE RIGHTS OF TRANSGENDER IN PAKISTAN

Pakistani legal system which is a combination of both Islamic and Anglo-Saxon colonial law, does not offer any protection of rights specifically of the Transgender people. On the positive side, however, the Constitution of Islamic Republic of Pakistan, 1973, does hold provisions which by implication, cover the constitutional rights of the Transgender people of Pakistan. Articles 8 to 28 of the Constitution deal with the fundamental rights provided to the citizens of Pakistan. The key provisions relatable for the subject matter include: the equality of citizens (Article 25), non-discrimination in respect of access to public places (Article 26), and safeguard[ing] against discrimination in services.²⁶ However, the implementation of these provisions is very weak.

In recent years the Judiciary of Pakistan has played vital role in giving recognition to the transgender people. The petition filed by Dr. Muhammad Aslam Khaki in 2009²⁷ and Almas bobby, leader of Pakistan's transgender community, led the Supreme Court battle that ultimately won transgender people the legal right to be listed as Third-gender and not male or female on their national identity cards.²⁸ The Honourable Supreme Court of Pakistan invited all the Provincial governments to recognize the rights of the Third-gender. The ground breaking decision was given by the Supreme Court (PLD 2013 S.C 188), in which the Court directed the National Database and Registration Authority (NADRA) to issue Computerised National Identity Cards (CNIC's) to the unregistered transgender people and the court also ordered to mention transman/transwoman on their CNIC at the place of sex.

The Supreme Court held that “...*eunuchs were not to be deprived from their legitimate right to movable and immovable property, their right to get education and their right of franchise-Participation jobs of eunuchs in all walks of life had to be ensured and they should not be intervened either by their relatives or by any other functionary-eunuchs enjoyed the same rights under the Constitution and were entitled to be respected by all segments of the society and they should be treated equally with other citizens...*”²⁹

Another positive act of the Pakistani judiciary was the case of thirty-one year old Shumail Raj who has lived as a transgender man for 16 years, after undergoing surgery to remove his breasts and uterus. He married his cousin, 26-year old Shahzina Tariq according to Muslim law in September 2006. This case was filed in Lahore High Court and its decision in the favor of couple set the precedent of marrying a transman to cis gender woman.³⁰

²⁶ Constitution of Islamic Republic of Pakistan 1973

²⁷ Published on March 30, 2012, A first for Pakistan's third gender, by Rabail Baig

²⁸ Published on September 3, 2012, Pakistan's Transgenders In A Category Of Their Own

²⁹ PLD 2013 S.C. 188

³⁰ This report was submitted by IGLHRCI to the UN Human Rights Council for its 2008 Universal Periodic

With this recognition, in May, 2013 general elections, five members of the Transgender community also contested elections, which a great achievement in itself and after 2009 they also earned the right to vote, right to inheritance along with other basic rights. In addition to aforementioned, strict orders were given to the police officials starting from the district level to cease harassment and intimidation of the third-gender³¹, hence it would not be off beam to state that the status of the third-gender in Pakistan is growing and progressing, yet a lot needs to be done since in practice this community is still shunned.³² The Third-gender claim that most of the steps introduced for them are more theoretical, for example, in 2012 the government ordered 2% quota in government employment, but the Transgender people are not enjoying any such right in reality. Also stated by one transgender individual, *“the judiciary is listening and doing its bit, but we have yet to see the government come forward without the [Supreme Court] nudging it.”*³³

Review on February 6, 2008. An electronic version of this publication is available on its website:
www.iglhrc.org

³¹ Published on March 30, 2012, A first for Pakistan’s third gender, by Rabail Baig

³² Published on August 30, 2015, Express Tribune, Transgender Pakistanis - Making ends meet

³³ https://www.ecoi.net/file_upload/1226_1376313580_report-09082013.pdf

INTERNATIONAL COVENANTS:

A group of distinguished experts in international law developed the ground breaking "Yogyakarta Principles" ³⁴ on sexual orientation and gender identity in March 2007, soon after the 2006 meeting of the UN Human Rights Council at which 54 nations called attention to human rights violations based on sexual orientation and gender identity and the need to take action to prevent further incidents of discrimination, abuse, cruelty and discrimination. The Principles were made to ensure the universal reach of human rights protections by the UN and individual governments.

The first United Nations resolution on sexual orientation and gender identity was adopted in June 2011, resolution 17/19³⁵, by the Human Rights Council, expressing “grave concern” at violence and discrimination against individuals based on their sexual orientation and gender identity. Its adoption paved the way for the first official United Nations report on the issue prepared by the Office of the High Commissioner for Human Rights A/HRC/19/41.³⁶ The report’s findings formed the basis of a panel discussion that took place at the Council in March 2012 – the first time a United Nations intergovernmental body had held a formal debate on the subject. In September 2014, the Human Rights Council adopted a new resolution 27/32, once again expressing serious concern at human rights violations and requesting the High Commissioner to produce an update of report A/HRC/19/41 with a view to sharing good practices and ways to overcome violence and discrimination, in application of existing international human rights law and standards³⁷.

Pursuant to the third resolution passed by the Human Rights Council, 32/2, on 30th June, 2016, for the rights of the LGBT persons, the decision to appoint an Independent Expert was taken to battle the challenges faced by LGBT globally³⁸. The Independent Expert will aim to:

- assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, while identifying both best practices and gaps
- engage in dialogue and to consult with States and other relevant stakeholders

³⁴ <http://www.yogyakartaprinciples.org>

³⁵ 17/19 Human rights, sexual orientation and gender identity, Resolution adopted by the Human Rights Council

³⁶ Report of the Office of the High Commissioner for Human Rights A/HRC/19/41, 2015, Discrimination and violence against individuals based on their sexual orientation and gender identity

³⁷ <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT>

³⁸ 32/2 Resolution adopted by the Human Rights Council on 30 June 2016. Protection against violence and discrimination based on sexual orientation and gender identity

- engage in dialogue and to consult with States and other relevant stakeholders, including United Nations agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions

The Office of the United Nations High Commissioner for Human Rights (OHCHR) represents the world's commitment to universal ideals of human dignity, published a “Born Free and Equal” booklet in September 2012. The 60-page booklet is designed as a tool for the signatory States, to help them better understand the nature of their obligations and the steps required to meet them, as well as for civil society activists, human rights defenders and others seeking to hold Governments to account for breaches of international human rights law.³⁹ In 2016, another publication came out from OHCHR which is “Living Free and Equal” which specifically offers guidance for States based on initiatives taken by Governments, courts, parliaments, national human rights institutions and others around the world to implement international human rights standards and United Nations recommendations to protect, respect and fulfil the rights of LGBT and intersex people.^{40,41}

Following are the guiding principles laid down by the United Nations resolutions and reports:

- enact hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing.
- conduct prompt investigations of incidents of hate motivated violence against and torture of LGBT persons, holding perpetrators to account, and providing redress to victims.
- collect and publish data on the number and types of incidents, while providing for the security of those reporting.
- prohibit incitement of hatred and violence on the grounds of sexual orientation and gender identity, and holding to account those responsible for related hate speech.
- train law enforcement personnel and judges in gender-sensitive approaches to addressing violations related to sexual orientation and gender identity.
- ensure that police and prison officers are trained to protect the safety of LGBT detainees, and holding to account State officials involved or complicit in incidents of violence.

To discourage discrimination, the states must:

³⁹ OHCHR, Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law (New York: United Nations, 2012).

⁴⁰ <http://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

⁴¹ <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LivingFreeEqual.aspx>

- revise criminal laws to remove offences relating to consensual same sex conduct and other offences used to arrest and punish persons on the basis of their sexual orientation and gender identity or expression.
- ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds, and also protects intersex persons from discrimination.
- integrate analysis of violations based on sexual orientation and gender identity in national plans of action, thereby ensuring coordination and adequate resourcing of related activities, accountability for perpetrators, and redress for victims.
- sensitize health-care workers to the health needs of LGBT and intersex persons, including in the areas of sexual and reproductive health and rights, suicide prevention, HIV/AIDS and trauma counselling.
- establish national standards on non-discrimination in education; developing anti-bullying programmes and establishing helplines and other services to support LGBT and gender-non-conforming youth; and providing comprehensive, age-appropriate sexuality education.
- ensure that housing policies do not discriminate against tenants based on sexual orientation and gender identity; and establishing shelters for homeless LGBT persons, with specific attention to youth, older persons and those in emergency situations.
- issue legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce.
- support public education campaigns to counter homophobic and transphobic attitudes, and addressing negative, stereotypical portrayals of LGBT persons in the media.
- ensure that LGBT and intersex persons and organizations are consulted with regard to legislation and policies that have an impact on their rights.

In addition to the aforementioned, issues of stigma and discrimination, violence, poverty, human rights violations and inequality based on gender identity and sexuality have widely been recognized as major obstacle to the TG community's access to HIV&AIDS prevention and treatment services. UNAIDS strategy 2011-2015 "Getting to Zero" addresses these issues and clearly states its goals towards "promotion of HIV response for marginalized populations including MSM and TGs" and "advancing human rights and gender equality for HIV response" through efforts to end stigma, discrimination, gender inequality etc. It also contributes UNAIDS objectives to work on "countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality that block effective responses to be reduced by half".

United States of America

The constitution of the US does not expressly contain any provision that prohibits discrimination based on gender identity, however, a number of federal courts have ruled that the constitutional guarantee of equal protection under the law restricts the government from such discrimination. For a person to get the gender marker changed on their birth certificate, a court order is usually necessary.⁴²

A 2011 national survey by the National Center on Transgender Equality and the National LGBTQ Taskforce found that around 64 percent LGBTQ had experienced discrimination in hiring which is against their equal right to employment.

In around 19 states and more than 200 cities and counties, there are clear laws that in varying degrees, that prohibit identity discrimination in employment, housing and public accommodations. The states protect the equal rights to employment of the gay and transgender people through a law or an executive policy.

The New Jersey Law against Discrimination has prohibited discrimination on the basis of sexual orientation since 1992. The New Jersey Legislature amended the law in 2006 to protect people from adverse treatment due to “gender identity or expression.”

Text of statutes: New Jersey Statute Annotated § 10:5-4. Obtaining employment, accommodations and privileges without discrimination; civil right.

“All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.”

Similarly, Massachusetts law was amended and effective from 1 July, 2012, to prohibit discrimination in employment based on a person's "gender identity." Massachusetts's existing anti-discrimination laws, including the Massachusetts Fair Employment Practices Act (sometimes referred to as "Chapter 151B"), was revised to make gender identity a protected category. The amendment defines the term "gender identity" as a person's "*gender-related identity, appearance or behavior, whether or not that gender-related*

⁴² <https://www.aclu.org/know-your-rights/transgender-people-and-law>

identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth."⁴³ New Jersey and Massachusetts are many other states of the US have amended laws and inserted penalties in their legislations to prohibit discrimination against gays and transgender people at workplace.⁴⁴

In 2011 the Nevada legislature passed Assembly Bill 211, which prohibits discrimination in employment based on gender identity or expression. The bill Amends Chapter 613 of Nevada's legal code to include gender identity or expression under its enumerated classes.⁴⁵

Nevada Revised Statute Annotated § 613.330. Labor and Industrial Relations. Unlawful employment practices: Discrimination on basis of race, color, religion, sex, sexual orientation, age, disability or national origin; interference with aid or appliance for disability; refusal to permit service animal at place of employment. Nevada law provides following penalties to counter discrimination in employment rights for LGBT:

- With respect to remedies, Nevada law provides that if attempts to settle a complaint fail the Nevada Equal Rights Commission, or NERC, may order that a person cease and desist from unlawful employment practices and restore the benefits of the aggrieved person, including rehiring and back pay up to two years. The NERC may also apply to the district court to order injunctive relief with respect to any employment practice it deems to be unlawful.
- complainants also have a statutory right to submit an application to the district court for an order to restore rights after an unfavorable NERC decision. But Nevada law also provides that a NERC order is a "final decision in a contested case for purposes of judicial review."
- after NERC completes an investigation it issues a right to sue letter (valid for 90 days) if it finds illegal employment discrimination. NERC is not invested with statutory power to act upon its own initiative to eliminate discriminatory behavior.
- plaintiffs must exhaust administrative remedies before they can file a complaint in civil court.
- the law precludes plaintiffs from receiving compensatory damages.
- it also precludes litigants from receiving punitive damages.
- litigants are not allowed to recuperate attorney's fees from the party at fault.

⁴³ Massachusetts Passes Legislation Protecting Transgender Employees In The Workplace, By Christopher Kaczmarek And Joseph Lazazzero On , November 29, 2011

⁴⁴ A State-By-State Examination Of Non-Discrimination Laws And Policies, AmericanProgress.org, Jerome Hunt, 2012

⁴⁵ <http://www.leg.state.nv.us/nrs/nrs-613.html>, Chapter 613: Employment Practices, Nevada Revised Statute

In 2014, President Barack Obama passed an executive order to protect the equal right to employment of the transgender people and prohibit discrimination against them by the federal government and its contractors.⁴⁶

Around 18 states have laws that protect transgender students from discrimination and harassment in school. Others also have laws that provide protection from discrimination to transgender students in public accommodation. In 2013, California passed a law allowing school students access to gender-specific school activities such as sports teams, and facilities such as locker rooms, that match their gender identity. California bathroom bill has also become a law to be effective from 2017 to make single-stall toilets gender-neutral.⁴⁷

In May 2016, the US Justice and Education departments under the Obama Administration issued guidance that public schools must allow transgender students to use bathrooms, locker rooms and other intimate facilities of their choice rather than those matching their gender assigned at birth. However, this move has been dissented by 13 states, and in August 2016, a U.S. judge blocked this policy.⁴⁸

⁴⁶ Published on 21 July, 2014, The Huffington Post (US edition), Obama Signs Executive Order On LGBT Job Discrimination

⁴⁷ California Gender-Neutral Restroom Bill Becomes Law. *NBC Bay Area*. Retrieved December 4, 2016.

⁴⁸ <http://www.reuters.com/article/us-usa-lgbt-idUSKCN10X18O>

India

April 2014 decision, *National Legal Ser.Auth vs Union Of India & Ors*, 15 April, 2014, India's Supreme Court for the first time recognized a third gender category, giving transgender individuals formal recognition, legal status, and protection under the law. As a result of this recognition by the Indian, Madhu, 35, belonging to Dalit community, became first transgender woman to get elected as mayor Chhattisgarh's Raigarh Municipal Corporation.⁴⁹

In 2015, a Delhi High Court affirmed a 19-year-old transgender man's right to recourse against harassment by his parents and the police.⁵⁰

In August 2016, the upper house of the Indian Parliament tabled the Transgender Persons (Protection of Rights) Bill, 2016. The bill recognizes gender identity as a non-binary, and for the first time, acknowledged that the gender assigned at birth may not necessarily match the person's own sense of the gender they belong to, and allows a person to identify themselves as man, woman or transgender.⁵¹ It protects transgender people from discrimination in education, employment, and the right to rent or buy property. The Bill⁵² contains significant provisions which can fight the discrimination against the transgender people, the main provisions of the bill include the following:

- it extends to the whole of India.
- transgender person are defined as a person who is (a) neither wholly female nor wholly male; or (b) a combination of female or male; or (c) neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.
- chapter II provides for prohibition of discrimination against the transgender person on various grounds including education, employment, health care services, freedom of movement, freedom to reside, purchase, rent, occupy property. Hold public or private office.
- chapter III provides for the recognition of the transgender person and issuance of certificate of identity as a transgender person.
- the bill also states the welfare measures to be taken by the government to secure full and effective participation of transgender person and their inclusion in the society, facilitate access to welfare

⁴⁹ Now, a Trans-Gender Mayor. Meet Madhu Kinnar , <http://www.ndtv.com/article/india/now-a-trans-gender-mayor-meet-madhu-kinnar-643926>

⁵⁰ https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf

⁵¹ <http://indianexpress.com/article/explained/transgenders-persons-bill-provisions-explained-2952316>

⁵² <http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf>, The Transgender Persons (Protection of Rights) Bill, 2016, Bill No. 210 of 2016

schemed framed by the government and formulate schemes which are transgender sensitive, non-stigmatizing and non-discriminatory.

- chapter V lays down the obligation of establishment and prohibits them to discriminate against the transgender person in any way and ensure compliance with the provisions of the bill. Further it also directs the establishments consisting of one hundred or more persons to designate a complaint officer to deal with violations relating to transgender person.
- The bill also provides the right of residence for transgender person and specifically states no transgender person shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the best interest of such person. Furthermore, every transgender person shall have (a) a right to reside in the house-hold where parent or immediate family members reside; (b) a right not to be excluded from such house-hold or any part thereof; (c) a right to enjoy and use the facilities of such house-hold in a non-discriminatory manner.
- where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.
- chapter VI of the bill safeguards educational rights and obligates the institutions to offer equal rights to education, sports, recreation and leisure activities. It also directs the government to provide transgender person with vocational training and self-employment through welfare schemes and programmes.
- section 16 of the bill gives equal right to health care facilities to the transgender person and to facilitate their access in the hospitals and other healthcare institutions, further it adds to provide coverage of medical expenses by insurance scheme for the transgender person.
- chapter VII directs the Central Government to constitute a National Council for Transgender to exercise the powers and to perform functions assigned to it under the bill.
- Section 9 provides for offences and penalties against any discrimination or violence committed on the transgender person. Whoever is involved in such act shall be punishable with imprisonment for a term not less than six months which may extent to two years and with fine.

United Kingdom

Since 1970, LGBT people in the United Kingdom have been representing in politics since the 1970s. The first openly lesbian MP was Maureen Colquhoun. LGBT people are also allowed to serve openly in police and, in 1990, the Lesbian and Gay Police Association (LAGPA), now the Gay Police Association (GPA), was founded to promote equal opportunities for gay and bisexual men and women. There are also large LGBT communities most noted in Blackpool, Brighton (LGBT community of Brighton and Hove), Liverpool (LGBT culture in Liverpool), London (Old Compton Street) and Manchester (Canal Street), who all also host annual pride festivals. Pride London is the biggest and oldest festival, and has been organised annually.

To discourage the discrimination in employment on basis of sexual orientation, Regulations were introduced in 2003, following the adoption of an EC Directive in 2000, providing for the prohibition of discrimination in employment on the grounds of sexual orientation. Since 4 April 2005, as per the Gender Recognition Act 2004, it is possible for transgender people to change their legal gender in the UK, allowing them to acquire a new birth certificate, affording them full recognition of their acquired sex in law for all purposes. Under the Gender Recognition Act, trans people who experience severe gender variance, and have medical treatment for the condition, may apply to the Gender Recognition Panel for a Gender Recognition Certificate. The certificate then allows them to the recognition of the gender specified on it “for all purposes”.

- Section 22 of the Gender Recognition Act 2004, provides that it is an offence for person who has acquired protected information in an official capacity to disclose the information to any other person. Section 22 of the Act is designed to protect the privacy rights of transsexual people under Article 8 of the European Convention on Human Rights by criminalising the disclosure of information.

In furtherance to the above, Sexual Orientation Regulations also came into force on April 30, 2007 which provides a general prohibition of discrimination in the provision of goods and services on the grounds of sexual orientation.

The Equality Act 2010 received Royal Assent on 8 April 2010.⁵³ The primary purpose of the Act was to organise the complicated and various array of Acts and Regulations, which formed the basis of anti-discrimination law in the UK including the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and three major statutory instruments protecting discrimination in employment on grounds of religion or belief, sexual

⁵³ "Equality Act 2010". Equalities.gov.uk. Retrieved 2 June 2010.

orientation and age. The Equality Act provides the following provisions to discourage any kind of discrimination against any individual:

- reduce socio economic inequalities, sexual orientation, gender reassignment, sexual orientation is also included in the 'protected characteristics' of the Act.
- it offers protection against direct and indirect discrimination, harassment and victimisation on the ground of sexual orientation.
- the Act, provides for equal rights with relevance to various types of employment categories and protection against discrimination at workplace or equal rights to employment, extending protection against harassment of employees by third parties to all protected characteristics.
- the basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions, premi, work, education, associations and transport.

RECOMMENDATIONS (A WAY FORWARD):

Now is the time to propose prompt and expedient legislation and amendments in the national legal system for the betterment of the transgender community.

To incorporate in our report the perspective and recommendations of different stakeholders, especially the transgender community, the NCHR was a part of a multi-stakeholder consultation held by Forum for Dignity Initiatives (FDI) in support with Heinrich Boll Stiftung on 27th December, 2016, with media personnel, legal experts, educationists, transgender community representatives and human rights activist from Islamabad and Rawalpindi as participants. The main concern of the consultation was to identify the issues of transgender and the possible solutions for it.

Taking into account of the above-mentioned International Guidelines, Conventions, Islamic teachings, Laws from different Jurisdictions and consultation with the stakeholders, following are the recommendations proposed by the National Commission of Human Rights (NCHR) to amend and introduce Laws on ‘transgender’ in order to protect the best interest of the transgender people within the Jurisdiction of Pakistan.

SPECIFIC RECOMMENDATIONS

Specific Legislative Measures

- The provincial and federal government may legislate laws for transegnder person on the same pattern as Women Harassment Act, 2010 and Punjab Women Protection Act, 2015, to protect rights their rights.
- Specific and comprehensive law for the protection of rights of the transgender people may be drafted with coordination of all the stakeholders, outlining the mechanism and the procedures as to how institutions should integrate the transgender in the community and shield their rights of residence, employment, education, etc.
- Following the 18th amednment, the provincial governments can dtaftrt their own laws to safeguard the rights of the transgender persons. The provincial governments should enact legislation that would protect the fundamental rights of this community.
- Enact hate crime laws to combat hate crime and hate speech that establish transphobia as aggravating factors for purposes of sentencing. PEMPR laws may be revised for this purpose and a specific provision may be added to prohibit hate speech against the transegdner persons on electronic media.

- Section 8 of the Pakistan Penal Code, 1860 (PPC), defines gender as "he" and its derivatives are used of any person, whether male or female. This provision shall also include transman/transwomen along with male or female in order to apply this law equally on all citizens of Pakistan whether male, female or third gender. Similarly section 10 may also include transman/transwomen.
- Section 375 and 376 of PPC read with section 100 of the PPC which pertains and provides law as part of general exception which offers protection to victim of rape be extended in the cases against transgender or transwomen as already provided to males and females.
- Lawful sexual intercourse in Pakistani law is defined as penetrative sex between a man and a woman, with the penetrative member being the man's penis. Any other kind of sex is criminalized as *zina*. While there have been limited prosecutions under section 377, it and other sexual offences are used to threaten and extort sex workers, including Khwaja Siras, who then fall victim to monetary extortion and sexual violence from law enforcement officers. Henceforth, ensure that individuals are not arrested or detained on the basis of their sexual orientation or gender identity, and are not subjected to baseless and degrading physical examinations intended to determine their sexual orientation. Amend section 377 of the Pakistan Penal Code, 1860, and include a provision making molestation of transgender people a crime and an offence under PPC.

Recognition of Identity of Transgender People and Obligation of Establishment and other persons

- Necessitate the issuance of the identity papers which indicate a person's gender/sex — including birth certificates, CNICs, passports, electoral records and other essential documents. The government should make sure that such procedures are unbiased, expedient and non-discriminatory. Respect, dignity and privacy of the person must be guaranteed.
- The government may in every establishment consisting of one hundred or more persons designate a person to be a compliant officer to deal with complaints relating to violations against the transgender people.
- The transgender people may have the right to live/reside with their family and given right to enjoy and use facilities of such their house in a non-discriminatory manner. No person should separate the trans children from their family/family except if court allows to for the best interest and welfare of such person.
- Family laws may be amended where transchild protection is responsibility of parents and without court intervention such child may not be forced to leave their house.
- In circumstances where family is unable to take care of a transgender, the court may by an order direct such person to be placed in rehabilitation centre.

- The blood relatives must be penalised if a transchild is forced to leave the house or any trans under 18 found at the “Dera”, the parents and the guru, both must be held responsible.

Equal Right to Education

- Pursuant to Article 25-A and 37-B of the 1973 constitution, the government may take effective and rapid legislative measures to ensure equal access to education from primary level to post graduation.⁵⁴
- The public educational institutions may provide education and other activities to the transgender people without discrimination on equal basis with others. To encourage the transgender students, scholarships may also be offered to them.
- The government may allocate funds for the trans-children to ensure they enjoy the right of education and ensure that laws and policies provide adequate protection for students, staff and teachers of transgender people against all forms of social exclusion and violence within the school environment, including bullying and harassment.
- The transgender people who have already suffered such forms of discrimination in the educational system must be accommodated and be given the opportunity to continue education in a friendly and healthy environment and the aid legal recourse may be available to them.
- Workshops must be given to the teachers and sensitise them.
- Chapter of ‘gender identity’ may be added in the school syllabus to educate them and make the transgender an acceptable community.

Equal Right to Employment

- The government may legislate measures to eliminate and prohibit discrimination of the transgender people in public and private employment by providing protection under the Pakistani labour laws. Further identify the transgender people in the definitions of workers, employees and all the relevant interpretations.
- The government may allocate employment quota for transgender people and guarantee strict implementation of such policy by the respective authorities and contains penalties and aid of legal recourse in case of non-compliance.

⁵⁴ Article 25 A: “Right to education - The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.”
Article 37-b: “remove illiteracy and provide free and compulsory secondary education within minimum possible period.”

- Introduce exclusive learning classes in educational and vocational institutes. Government may establish skill development/vocational centres and introduce welfare schemes to provide them with employment skills.
- The micro-finance institutions may revise their loan policies to create some flexibility for the transgender people and release loan for those skilled persons who incline to initiate their own small businesses.
- The government for the welfare of Transgender people may introduce subsistence or ‘guzara’ allowance for the unemployed individuals of this community.

Equal Right to Health

- In pursuance of Article 9 and Article 38 of the 1973 constitution, the government may take necessary legislative, administrative and other measures to ensure that the transgender people enjoy safe health standards, without any discrimination.⁵⁵
- Separate human immunodeficiency virus Sero-surveillance Centres should be created for them. The government may order the review of medical curriculum and research for doctors to address their specific health issues and facilitate access to the transgender persons in the hospitals and other healthcare bodies and centres.
- A comprehensive insurance or welfare schemes may be initiated for coverage of medical expenses for transgender people.
- The transgender people may be provided with the HIV/AIDS preventive items and National Family Planning Programme and civil society organisations should raise awareness and educate them with the preventive measures. Proper facilities shall be given to the affected for screening or testing (VCT) of HIV/AIDS.
- It may be adequate to introduce a third ward for the transgender people along with the male and female ward and the government may direct the hospitals to insert the option of transgender patients in the admission forms.
- Introduce and implement policies and programmes of education and training, necessary to enable persons working in the healthcare sector to provide the highest attainable standard of healthcare to the transgender people.

⁵⁵ Article 9: Security of a Person, which is jeopardized if proper healthcare is not available
 Article 38, Promotion of social and economic well-being of the people which places a positive responsibility on the government to provide citizens with access to healthcare.

Equal Right to Political Representation

- It is imperative to allow the individuals of this community to represent their fellow transgender people. The legislators and government shall ensure proportionate representation of trans-persons among enacting laws and formulating policies respectively. At least one seat may be reserved in the national and the provincial assembly each.
- The leading political parties shall be encouraged to include the advancement of the Transgender people in their mandate and give them party tickets to contest for elections.

Accountability

- The government may establish a Council for the transgender people. The council may consist of representatives of; each ministry not below the rank of joint secretary, representative from the National Commission for Human Rights, provincial and local governments, experts of the non-governmental organisations working for the welfare of the transgender and representative of any other stakeholder required. It may also include a transgender representative.
- The council may advise the government on formulation of policies, programmes, legislation and projects with relevance to the transgender community. The council may also have the power to monitor and evaluate the impact of policies aimed for achieving equality and full participation of the transgender people.
- Special ombudsman may also be appointed for the protection of rights of transgender people and to monitor the formulation and enforcement of laws and policies by the public authorities to ensure the elimination of discrimination and violence against this community.
- Establish accessible, adequate and effective, civil, criminal administrative and other procedures, as well as monitoring mechanisms, to ensure the accountability of committers for human rights violations related to them.
- The individuals or institutions who do not abide by laws and policies formulated for the transgender and discriminate or force them into activities such as begging, prostitution or uses harms them in anyway must be punished and penalties may be imposed on them.

GENERAL RECOMMENDATIONS

- Allocate budget for the welfare of transgender people.
- The government shall direct the Police department to minimize unnecessary raids and illegal detention, show compassionate behaviour, and register the FIRs reported by trans-community. The civil society including NGO's should conduct sensitisation sessions with police officials in order to mainstream respect and rights of the Transgender people.

- Ensure that any attack on the Transgender people whether by government officials or by any individual or group, are promptly investigated, and that, where strong evidence is found, those responsible are prosecuted, tried and duly punished under law.
- Introduce protection policy for human rights defenders who are supporting transgender human rights as they are equally under threat
- The government may take necessary measures to secure full and effective participation and inclusion of the transgender in the society.
- Programmes may be initiated to provide social support and awareness amongst the society in relation to the Transgender people. The government and civil society shall step up, and run awareness-raising campaigns.
- Enlightening the society with the help of media (print, electronic and social), local leaders, schools teachers and religious persons will be of essential help. The government must take some transgender-specific initiatives to increase their acceptance in society.
- The integration and sensitizing the society must start from the schools by educating the children of primary schools and teaching them how the transgender people are ‘one of us’.
- Educate police and other law enforcement agencies regarding the arbitrariness of arrest, violence and detention of the Transgender people.
- Train and bring awareness for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to the transgender people.
- Train law enforcement personnel and judges in gender-sensitive approaches to addressing violations related to sexual orientation and gender identity.
- Reasonable steps must be taken to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated on the Transgender people and offer appropriate remedies including redress and reparation and, where appropriate, medical and psychological support.
- Transgender people must be given access to strengthen their contacts various stakeholders of the society including legislators, policy makers, government departments, NGOs, INGO’s, bar associations, private sector employers, local governments, political parties, religious authorities and media.