



Governing (trans)gender in times of moral panic

Late-night commuters in Kohat found the Jarma Bridge blocked in the early hours of 12 February 2023. The mood was grim. After all, the bridge was the site of a gruesome murder. A man had sprayed bullets onto a car, killing one transgender woman and injuring two others. Arif Saleem happened to be the brother of the deceased, Mishi, and he had decided to put five bullets in her body to preserve the family's 'honour'. Mishi was 21 years old. Saleem confessed to receiving taunts from people about his sibling's identity and line of work, so he took matters into his own hands. The town is not unfamiliar with such stories. Two years ago, 18-year-old Dolphin met a similar fate at the hands of her own brother.

Mishi was returning from an event where she was the choice of 'entertainment' for the night. Such events, referred to as 'functions' in the community parlance, are fairly common in Khyber Pakhtunkhwa and the only major source of income for the ostracised transgender community. However, these male-dominated functions also become sites of bloodshed. A week after the attack on Mishi, another such targeted attack occurred in Swat. Mahnoor was returning from a function with her friend when both were shot by the former's resentful lover. Mahnoor died on the spot, making her the third transgender woman to be killed in a month.

In the week separating the two attacks, some two dozen senators with different political affiliations gathered twice at the Senate Secretariat to discuss the situation of transgender rights in the country. However, the subject that the learned senators sought to address was not the vulnerability of transgender persons to gender-based violence nor lacunae in criminal laws and barriers to accessing justice. It was not even strengthening laws and policies for the welfare and protection of the transgender community.

The committee, instead, deliberated upon several bills proposed in 2022 to remove the word 'transgender' itself from a law passed in 2018 that protects the rights of transgender people. Less than two weeks before, the chairman of the Senate Committee on Human Rights, Walid Iqbal, along with Minister of State for Foreign Affairs Hina Rabbani Khar, had proudly enlisted the measures taken by Pakistan to protect its transgender citizens, including passing and implementing the law in question, to the 122 state delegates at the United Nations Human Rights Council during Pakistan's fourth Universal Periodic Review.

The year 2022 has been a protracted U-turn on the rights of transgender people in Pakistan. While the federal 2018 Act that provides for the protection of the rights of transgender people faced intense backlash, over 19 transgender people were murdered and hundreds faced violence. That the members of an already marginalised community become more

vulnerable to persecution as the state gets cold feet on protecting their rights, is an unprecedented blow to the human rights situation of minorities in the country. Accordingly, *State of Human Rights in 2022* addresses this as a key theme in this report.

The law and its discontents

As the activists took their seats on one side of the conference table, the room began to fill with bureaucrats, parliamentarians, lawyers, academics and members of civil society. The chatter died down when the star of the show, the chairman of the Council of Islamic Ideology (CII), Qibla Ayaz, walked into the room and took his seat next to Senator Rubina Khalid. On the table were copies of a draft bill on the rights of transgender people. The activists and experts had been invited to provide feedback on a contentious clause that provided for the creation of district ‘screening committees’ for legal recognition of transgender people.

This room in the Federal Ombudsman Secretariat had witnessed months of work put into drafting comprehensive legislation on the rights of transgender people in consultation with a diverse range of stakeholders. The meeting on 16 January 2018 with the chairman and his research team was called to seek the advice of the CII as the Senate Functional Committee on Human Rights deliberated on two competing bills.¹ Senator Rubina Khalid gave the floor to the activists in the room. Medical research studies, global standards of care, medieval legal compendia, historical regional practices, rulings of *fuqaha* [Islamic jurists], exegeses and hadith references – nothing was left out. Activist Bubbli Malik spoke last and delivered an impassioned appeal to the *ulema* [religious scholars] to preserve the dignity of transgender people in the law by not having their bodies, identities and traumas subjected to the whims of a ‘screening committee’.

The chairman finally spoke in a kind but firm voice. He categorically reaffirmed the right to dignity of transgender people—a sentiment unmistakably reflected in the CII’s subsequent reports. This meeting proved to be crucial in turning the tide in coming weeks. With the CII’s input, the Senate Functional Committee gave its nod of approval to one consolidated bill in February 2018. The bill was read in its entirety on the floor of both houses. In a move that simultaneously righted a colonial wrong by attesting to the suffering levied on this community and affirming the dreams and joys of transgender people across the country and the region, Parliament passed the bill with a majority vote.

The consultative process lasted well over a year before the Transgender Persons (Protection of Rights) Act was passed in May 2018. The federal Act, with its basis in Articles 19, 25, 26 and 27 of the Constitution, prohibits discrimination in access to employment, education, healthcare, public spaces and services on the basis of sex, gender identity and gender expression. In addition to affirming the fundamental rights of transgender

people, including but not limited to the right to legal gender recognition, the Act obligates the government to undertake welfare measures and create shelter homes and separate prison cells for transgender people. Amnesty International hailed the Act as ‘one of the most progressive pieces of legislation’ of its kind,² moving Pakistan onto a growing list of states around the world that have similarly recognised the rights of transgender people.

Four years after its enactment, the law became a controversial document when a Jamaat-e-Islami (JI) senator from Khyber Pakhtunkhwa, Mushtaq Ahmed Khan, launched a bid to have the Act repealed for promoting ‘the legalisation of homosexual marriages’.³ Khan’s constituency has seen hundreds of murders and gruesome cases of violence against transgender people in the past few years.⁴ There were six attacks in March 2022 alone, leading to five fatalities. Faulty investigation methods and out-of-court settlements lead to perpetrators walking free in most cases and repeatedly targeting vulnerable transgender people in the form of organised gangs.⁵ The police have a history of threatening harm to activists who highlight the former’s direct or indirect complicity in these attacks.⁶

Instead of responding to a glaring gap in the criminal justice system and law enforcement practices, Khan’s explosive counter-claim that a law that protects the rights of transgender people has singlehandedly undermined the very foundations of an Islamic republic, managed to induce nationwide moral panic. Protests erupted to stop a bill that had already been passed four years ago. Resolutions were submitted in provincial assemblies to condemn the law. Even the Tehreek-e-Taliban Pakistan were prompted to issue a decree to ‘rid the holy land of blasphemers’ for passing such a law. A placatory press conference by the federal law minister and prime minister’s advisor did little to quell the flames.

In the next few weeks, the term ‘transgender’ blazed across online platforms in a widespread disinformation campaign. An expert analysis of online trends against the 2018 Act reveals that the content originated from accounts that associated themselves with a party that had championed the Act in Parliament in the first place. This content was then amplified by accounts affiliated with right-wing parties that game the algorithms of social media platforms as part of the larger disinformation ecosystem online.⁷

Misreported facts and exaggerated fears in incendiary speeches spread like wildfire.⁸ Those presenting a counter-narrative were not organised and fact-checkers had few resources. In an unprecedented display of legislative efficiency, five more bills were submitted in the Senate within a month to hastily amend the offending Act and bring it into conformity with Islamic injunctions.⁹ One such bill proposed an alternate Islamic definition for transgender person as someone who ‘keeps one hole for urination’.¹⁰ Other bills sought to create a requirement for transgender

persons to undergo a 'medical examination' in order for the National Database and Registration Authority (NADRA) to issue them correct national identity cards. Such a provision is tantamount to seeing all transgender citizens as 'suspicious' by default and denying them their right to equal recognition before the law.

A common theme underlying these amendment bills is that gender is not a subjective matter and the authority to decide the gender of persons who do not fit the binary of 'male' or 'female' should rest with a committee of medical professionals. This is notwithstanding the fact that 92 percent of transgender people report facing discrimination in healthcare settings and 74 percent avoid going to public hospitals altogether.¹¹ These bills outline no standard operating procedures. There is no mechanism for applicants to access information on their case. Nor do these bills address the glaring lack of capacity of healthcare professionals in this regard.¹² Notably, this lack of capacity leading to 'medico-legal and administrative complications' was accepted as reasonable justification for excluding transgender victims of rape from the protections provided under the Anti-Rape (Investigation and Trial) Act 2021,¹³ ignoring the fact that 56 percent of transgender people report being tricked into, lied to or forced into sexual activity; 35 percent experience drug-facilitated assault, including gang rape; and the majority of cases go unreported.¹⁴

Unwilling or unable to address these systemic issues, the Senate Standing Committee on Human Rights instead decided to debate nomenclature and go in for an old-fashioned rebranding. The committee's solution to the problem is to replace the word 'transgender' with '*khunsa*' [a term used by medieval Arab jurists to classify a set of non-normative bodies] in the law and constitute medical boards to certify '*khunsas*' in each district within 30 days for them to finally receive their much-awaited rights.¹⁵

From unix to intersex: What's in a name?

This rebranding is by no means a novel venture. What were 'she-males' in Aslam Khaki's acclaimed human rights petition in the Supreme Court in 2009, later became eunuchs (earlier, 'unix') in court dossiers and judgements. NADRA decided to create a third gender category of *mukhannas* in 2011, further subclassified as *zankha* [he-male] and *khawaja sira* [she-male].¹⁶ The revamped 2012 policy included not two, not three, but five categories of gender: *mard*, *aurat*, *khawaja sira mard*, *khawaja sira aurat* and *khunsa-e-mushkil*. This was later instituted as Rule 13-1 in NADRA's policies through a statutory regulatory order that provided for the registration of male eunuchs, female eunuchs and unisex persons. This rule was removed in 2022 as it was rendered redundant by the Transgender Persons (Protection of Rights) Act 2018.¹⁷

Since 2017, computerised national identity cards (CNICs) use the symbol 'X' in the gender column for transgender citizens. The Transgender and

Intersex Persons (Protection of Rights) Bill 2017 did little to change the NADRA policy itself. At the time, however, a senator from Balochistan managed to take offense at the word 'sex' in the title of the bill, leading to its eventual omission.¹⁸ Following the enactment of the Transgender Persons (Protection of Rights) Act in 2018, the government began to recognise 'transgender' as the new term for its official use,¹⁹ with an all-encompassing definition in the law that codified preceding domestic jurisprudence on the subject. The Rules of the Act notified in 2021 further clarified that citizens recognised as transgender under the law would only be registered as gender 'X', that is, not as 'F' (female) or 'M' (male). Notably, there is no provision for marriage for persons of 'X' gender in the law. Marriage is solemnised between 'M' and 'F' and registered as such in the official *nikahnama* [marriage certificate] document.

The process of governing these transgender citizen-subjects remained fraught with bureaucratic anxiety about impersonators laying claims on state welfare measures and quotas. It is pertinent then, that it has taken a decade for the quotas promised in the Supreme Court rulings (2009–12) to be realised in only one province so far. Sindh reserved a 0.5 percent employment quota for transgender persons in July 2022. In contrast to the 2018 Act, which does not provide for employment quotas nor mandates any medical screening, a transgender person is eligible to avail the quota under the Sindh Civil Services (Amendment) Act 2022 only after inspection by a standing medical board. In December 2021, the Sindh Assembly also passed the Local Government (Amendment) Act, which creates a 1 percent quota for transgender persons in local government bodies without such a requirement. The Musawaat programme by the Punjab Social Protection Authority for the welfare of transgender persons also became functional in 2022, albeit with a low uptake.

As criticisms of the 2018 federal Act grew due to lack of implementation in the provinces, the term 'intersex' saw a popular revival on the one hand and the spectre of men and women impersonating transgender persons raised on the other. Embroiled in controversy, the law was gutted and given a makeover by the learned senator from the JJ in the form of the Khunsa Persons (Protection of Rights) Bill 2022 in order to make it shariah-compliant. The new bill was virtually the same as the 2018 Act, with an added provision to constitute a 'gender reassignment board' delegated the task of inspecting people's genitalia as a prerequisite to receiving their elusive rights.²⁰ The bill, in direct contravention of domestic jurisprudence on the subject and medical standards increasingly being adopted around the world, also prohibits sex-reassignment surgeries on the basis of diagnosis of gender dysphoria.

In the service of this noble cause of protection of rights, the lawmakers of the day have responded to the complex and multi-layered problem of gender-based and sexual violence against transgender people, exacerbated by institutionalised discrimination on the basis of gender identity and expression, by simply trying to legislate transgender people

out of existence. The logic is impeccable. How can you be harassed or discriminated against on the basis of your gender identity and expression when the latter is itself a disputed matter in front of a medical board that must consult a 'district *khateeb* [one who delivers the sermon during prayer]' for guidance in determining your gender? You do not get the right to appeal the decision of this board either. Case closed.

Keeping it halal

But the case is far from closed. The quest for certainty in determining the gender of a person whose body, identity or expression are seen as defying the gender binary has led a range of parties to battle it out in the Federal Shariat Court. The court held no fewer than 14 hearings on these petitions in 2022. The petitions (filed in 2021) challenged primarily Section 3 of the 2018 Act (which provides for recognition of transgender persons on the basis of self-perceived gender identity) for being against the injunctions of Islam. Similar petitions filed before the Lahore High Court and the Sindh High Court, contending that the Act was contrary to social and cultural norms, were dismissed in 2022. Quoting a medley of *hadith* [sayings of the Prophet PBUH] and Quranic verses, these petitions in the Federal Shariat Court echoed a common apprehension: that the Act would provide recognition to persons who were not actually transgender.²¹ This is perhaps best epitomised in the ominous warning in the petition filed by Hammad Hussain:

This [Act] will open gates to a flood of immorality and haram practices in the Islamic society, which will ultimately give shoulder to the International Satanic Agenda of lesbians and gays being promoted in the Western world [*sic*].

This contention that a conspiratorial agenda was afoot was not supported by any evidence. In fact, there is more research to indicate that only one out of every ten transgender persons surveyed even consider obtaining a CNIC as per their gender,²² that transgender people are still required to submit medical or other proof to have their legal documentation amended,²³ and that NADRA centres, particularly in smaller cities, remain inaccessible for transgender people who face stigma, discrimination and even harassment at these centres.²⁴ The petitions also harboured the impression that the Act had opened the way for arbitrary changes in gender.²⁵ A thorough review of NADRA policies indicates that this claim is also incorrect.²⁶

The arguments made by the petitioners in the Federal Shariat Court also seemed unconcerned by the fact that the miniscule proportion of the Pakistani population whose gender has been successfully corrected on legal documents²⁷ continue to face human rights abuses, as evidenced by the number of petitions filed in the higher courts.²⁸ Transgender people continue to face abuse and assaults on their dignity in the public sphere. In April this year, a petition was filed in the Lahore High Court by

transgender rights activist Zanaya Chaudhry, seeking action against a film that included a dialogue that ridiculed transgender persons.²⁹

In a stark break from the tradition of local jurisprudence in which the rights of transgender people have been upheld by the higher courts, the petitions in the Federal Shariat Court seem to rely on instigating mass moral hysteria in the absence of solid evidence. However, on wading through the plethora of unfounded claims, one finds that these petitions mount a vigorous case against what the petitioners perceive as an over-reliance on the feelings of a person in the 2018 Act. Notably, the word 'feelings' appears nowhere in the text of the law; this criticism is directed largely at the definitions of 'gender identity', 'gender expression' and 'transgender person' in the law.³⁰

At the risk of simplifying the arguments made in the court, the assertion that feelings have no place in the law, specifically shariah, has been reiterated by the petitioners in the court. At a time when there is such callous disregard for the worth of feelings in adjudicating the rights to life, dignity and equality of the members of a marginalised community, it serves well to remember that Pakistan's judiciary has time and again displayed a remarkable degree of empathy for transgender people in a range of rulings concerning their fundamental rights. Justice Abid Aziz Shaikh of the Lahore High Court has observed:

Seldom Society realise[s] or cares to realise the trauma, agony and pain which the members of the Transgender Community undergo, nor appreciates the innate feelings of the Transgender Community, especially of those whose mind and body disown their biological sex [sic].³¹

The Federal Shariat Court bench has so far not shown much interest in considering the international human rights law as guiding principles in this matter.³² The Court has also paid little attention to the relevant jurisprudence from countries in the region.³³ There are valuable lessons to be learnt from reviewing how Pakistan's neighbouring states have risen to the challenge of protecting the rights of transgender people in a balanced and holistic manner.

Family values

'There shall be no discrimination on the basis of sex,' reads Article 25(2) of the Constitution of the Islamic Republic of Pakistan. The 2018 Act is in troubled waters precisely because it reads a dynamic social reality of gender into the static constitutional category of sex. It is built on the understanding that, when we talk about discrimination, we mean discrimination and violence meted out on the basis of oppressive gender norms, as held by the Supreme Court too, recently.³⁴ The impact of this violence is felt not just in the body, nor is this violence incurred merely on account of physiology. This violence is triggered by the expression

that identifies a body as gendered, and it is this psychic expression of identity—the possibility of being one’s true whole self—that such violence ultimately seeks to subjugate or destroy.

Thus, the 2018 Act too, prohibits discrimination on the basis of sex, gender identity and gender expression, and offers remedies for victims in order to create protections from gender-based violence. It does not simply cast its subjects as hapless victims in need of rescue. It confers on them precisely what the violence sought to take away — their ability and agency to determine and express who they are. They are recognised as equal before the law and entitled to equal protections of the law (Article 25(1)). Their freedom of expression is protected by the law (Article 19) and their dignity is restored by the law (Article 14). And it is by virtue of this, that they are able, once more, to enjoy their right to life (Article 9). This is why in *Mian Asia v. Federation of Pakistan*, the Lahore High Court held:

Gender identity is one of the most fundamental aspect of life which refer to a person intrinsic sense of being male, female or transgender. Everyone is entitled to enjoy all human rights without discrimination on the basis of gender identity. Everyone has the right to recognition everywhere as a person before the law

Conversely, this right to self-perceived gender identity has brought some deep-seated anxieties to the surface. In arguing that the 2018 Act threatens family values by paving the way for ‘same-sex marriage’, critics of the law have read an ideology of sexuality into the constitutional category of sex. Just as the sodomite was produced before the law in the nineteenth century by the colonial administration through a moral panic about *hijras* [a South Asian term for the ‘third gender’] in order to strengthen its control over local populations,³⁵ it is now the transgender (a homosexual in disguise, as per the JJ), conveniently rediscovered in times of political turmoil,³⁶ that has become the harbinger of ‘legal and social chaos’ which must be kept at bay by the Pakistani nation-state to ensure its survival.³⁷ This panic is perhaps best epitomised by the misguided ban imposed by the censor board on the critically acclaimed film *Joyland*, which features a trans woman as one of its central characters.³⁸

The search for this transgressive subject itself produces these subjects in the public discourse who must then be eliminated by law. This is made possible by obstinate schemes to police and redefine the nebulous legal category of ‘transgender’ (or its many avatars), that are fuelled by recurring panics about ‘fakes’ and ‘imposters’, which allow this category to be cast as a persistent threat to gender and sexual norms. Conveniently, this does not address the fact that the family itself is often the site of upholding these sexual and gender norms, that in their most oppressive form discipline, punish, abandon and even kill those who fail to obey these normative ideals based on a fictional gender binary. It gains particular significance then, that none of the laws on domestic violence

in Pakistan—with the partial exception of the law in Sindh—provide protections to transgender people.³⁹ To date, only one protection centre has been established in the country for transgender people.

A cure for cold feet

Pakistan has celebrated many ‘firsts’ in its journey to empower transgender people. The initiatives undertaken by the federal and provincial governments have been extolled at various human rights forums, most recently in the report to the Human Rights Council during Pakistan’s Universal Periodic Review.⁴⁰ The Transgender Persons (Protection of Rights) Act 2018 features prominently in Pakistan’s GSP+ assessment.⁴¹ At a time when transgender people are facing an onslaught of violence, Pakistan cannot afford to backtrack on its numerous human rights commitments to protect vulnerable communities.

Meanwhile, Mishi and Mahnoor have been surreptitiously laid to rest. Four other transgender women injured in the attacks languish in hospital. No one took notice. No one assured them of justice. The message from the state to the perpetrators of such violence is clear—we will keep looking the other way. Even though the National Security Policy explicitly calls for the protection of transgender people from gender-based violence as a key objective for ensuring human security,⁴² Pakistan has failed to live up to its own ideals as moves are made to chip away limited legal protections and an environment of impunity is created for perpetrators of violence against transgender people.⁴³ As Pakistan continues to gain global notoriety for being a death zone for transgender people, it seems that state institutions are failing to address the epidemic of violence consuming transgender people in the country. Forty-four transgender women have been killed in Pakistan since 2021.

Pakistan is at a delicate crossroads today. The country has the opportunity to show the world what it means to stand firm and defend an old and long-suffering indigenous people. A welcome move was the launch of a complaints portal by the Prime Minister’s Strategic Reform Unit in October 2022. However, regressive actions that are informed by fear, rather than evidence, such as amending the Transgender Persons (Protection of Rights) Act 2018, do not instil much confidence. As a result of such misguided campaigns, the process of enacting provincial legislation on the rights of transgender people has been indefinitely stalled.⁴⁴ There has been a sharp uptick in threats issued to transgender rights defenders in the country.⁴⁵ The word ‘transgender’ itself has become taboo in policy dialogues.

It is vital that the Government of Pakistan quash these amendment bills and protect a law that exemplified for the world what it means to undo a colonial wrong and restore the dignity of transgender people. In order to ensure proper implementation, it is crucial that provinces create adequate legislation on the rights of transgender people. It is imperative that such policy actions are guided by evidence and a careful review of international

standards and guidelines as well as good medico-legal practices adopted worldwide. At a time when the lives, dignity and security of transgender people are under threat, it is the duty of the state to protect a vulnerable minority. Above all, Pakistanis need to show the world what it means to embody empathy in times of uncertainty instead of letting fear and hatred win.

Endnotes

- 1 See infra note 19.
- 2 Amnesty International. (2018, May 25). Pakistan: Historic rights advances for tribal areas and transgender people. <https://www.amnesty.org/en/latest/news/2018/05/pakistan-historic-advances-for-rights-tribal-areas-transgender-people/>
- 3 The Statement of Objects and Reasons of the Transgender Persons (Protection of Rights) (Amendment) Bill 2021 submitted by Mushtaq Ahmed mentions 'legalisation of homosexual marriages' as a reason for amending the 2018 Act.
- 4 As per the organisation Blue Veins, 90 transgender people were killed in Khyber Pakhtunkhwa during 2015–21 and 150 others subjected to various forms of physical violence. See also: A. Mohmand. (2022, March 19). Trans persons are soft targets in Khyber Pakhtunkhwa. <https://voicepk.net/2022/03/transpersons-are-soft-targets-in-khyber-pakhtunkhwa/>
- 5 A. Khan. (2019, March 23). No respect for life, no path to justice. *The Express Tribune*. <https://tribune.com.pk/story/1935811/no-respect-life-no-path-justice>
- 6 S. B. Shah. (2021, October 13). DSP enters Peshawar press club, threatens transgender persons. *The News International*. <https://www.thenews.com.pk/print/899936-dsp-enters-peshawar-press-club-threatens-transgender-persons>
- 7 Digital rights activist and lawyer Shmyla Khan, who studies online disinformation campaigns, monitored Twitter trends on the 2018 Act in September 2022 and provided input for this article.
- 8 Fact check: Senator peddles disinformation about trans community changing gender. (2022, October 24). *The Correspondent*; H. Zaman. (2022, October 27). Associated Press report includes misleading info on trans rights act. *Soch Fact Check*.
- 9 The amendment bills were presented in the Senate by Mushtaq Ahmed (JI), Fawzia Arshad (PTI), Mohsin Aziz (PTI), Syed Muhammad Sabir Shah (Ind) and Abdul Ghafoor Haideri, Atta-ur-Rehman, Faiz Muhammad and Kamran Murtaza (JUI-F). One amendment bill by Qadir Khan Mandokhail was already unrelatedly under consideration in the National Assembly.
- 10 Transgender Persons (Protection of Rights) (Amendment) Bill 2022, submitted by Fawzia Arshad on 26 September 2022.
- 11 RHRN Young Omang. (2017). *Health and access to care and coverage for transgender individuals in Pakistan: A call for action* (pp. 3–4); Good Thinkers Organisation. (2016). *Recognition of third gender: Realising the plight and rights of transgender community in Punjab* (p. 18).
- 12 When asked if their education adequately prepared them to provide care for transgender patients, 34–46 percent of healthcare providers said they were unprepared or partially prepared. See: *Ibid.*, p. 7.
- 13 Senate of Pakistan. (2021, September 1). Committee press release. <https://senate.gov.pk/com/pressreleasedetail.php?id=152&pressid=4010>
- 14 National AIDS Control Program. (2017). *Integrated biological and behavioral surveillance in Pakistan, 2016–17* (p. 24); N. Kirmani & R. Hasnain. (2022). *The hidden crisis: The causes and consequences of sexualised drug use ('chemsex') amongst key populations in Pakistan*, p. 21. Dareecha Male Health Society.
- 15 Senate of Pakistan. (2022, March 3). News detail. https://senate.gov.pk/en/news_content.php?id=4794
- 16 The policy on third gender classification on CNICs based on some kind of test of hormonal levels was widely protested for its discriminatory and arbitrary nature and consequently scrapped. See: A. Khan. (2011, April 26). Transgender rights: SC tells NADRA to amend gender verification process. *The Express Tribune*.

- 17 H. Zaman. (2022, October 31). Fact check: NADRA cancels gender reassignment rule. Soch Fact Check.
- 18 This is based on the account of lawyer Sabahat Rizvi who was present at the Senate Committee deliberations on the said bill in July 2017. The JUI-F senator in question accused members of trying to promote 'Western values' in Pakistan.
- 19 The Punjab government was the first to make a change from 'she-male' to 'transgender' in November 2018 after a lawyer filed a petition against the Punjab Public Service Commission's use of the former derogatory term.
- 20 It is worth noting that, in 2017, a similar bill was proposed by Karim Ahmad Khawaja (PPP) with a provision for establishing a district screening committee. However, on consultation with the community, Khawaja decided to withdraw this bill and put his support behind the bill presented by Rubina Khalid (PPP), Kulsoom Parveen (PML-N), Rubina Irfan (PML-Q) and Samina Saeed (PTI), which proclaimed the right to self-perceived gender identity for transgender persons.
- 21 Two of these petitions misspelled the name of the court as 'Federal Shariyat Court'. Legal scholar Jeffrey A. Redding says that these 'hastily drafted [petitions] would clearly benefit from more research, fact-checking, and contemplation of its true goals.' See J. A. Redding. (2022). Islamic challenges to Pakistan's transgender rights law. *Melbourne Asia Review*, ed. 10.
- 22 The key reasons for this are lack of awareness and fear of discrimination. See also: M. Jameel & M. Osama. (2018). *In the eyes of the law: Legal challenges to being transgender in Pakistan* (p. 67). Naz Male Health Alliance.
- 23 M. Jameel & H. Zaidi. (2022). *Legal gender recognition in Pakistan: The hurdles and limitations* (p. 16). HOPE.
- 24 M. Fatmah & H. Yusaf. (2022). The (in)accessibility of NADRA and union council processes for women and gender minorities. *Gender Bi-Annual*, 3.
- 25 It was argued in the Federal Shariat Court hearings and in the Senate that nearly 38,000 people had amended their CNICs using the 2018 Act. A NADRA spokesperson later clarified that the figure was misrepresented. See: Fact check: Senator peddles disinformation about trans community changing gender. (2022, October 22). *The Correspondent*.
- 26 The 2021 Rules of the Act only allow for CNICs to be issued with gender X, and any correction of gender on CNICs can happen only once, unless further amendment is supported by cogent reasons. The NADRA policy also specifies that an application to have a CNIC amended from 'M' to 'F' or vice versa should be scrutinised by a zonal board that requires stringent medical evidence and final approval is provided by the director general. Only 14 such cases have been entertained by NADRA to date, mostly on court orders. For instance, in *Kainat Manzoor v. NADRA* (2022), NADRA responded to a Gujrat civil court that it had denied an application for gender change to a candidate who had failed to submit adequate medical proof.
- 27 As per a response submitted by the director operations NADRA to the Ministry of Human Rights on 27 July 2022, NADRA has registered 2,978 transgender persons to date. Out of these, 1,856 CNICs were issued on first-time registration, whereas 1,035 CNICs were changed from 'M' to 'X' and 87 CNICs changed from 'F' to 'X'.
- 28 In *Fiaz Ullah v. PPSC and others* (WP no. 3176 of 2021), the Lahore High Court found that the Punjab Public Service Commission had discriminated against a transgender person seeking employment. In *Muhammad Nawaz v. Government of Punjab* (WP no. 57820 of 2021), the Lahore High Court issued notices to police authorities for not providing employment to transgender people. In MA No. 8156/2020, CR. Appeal no. 371/2020, the Sindh High Court found that separate barracks were not provided for transgender people in prisons, leading to the abuse of a transgender person by inmates. In a separate case, the Lahore High Court also sought a report from the Punjab prisons department on the status of implementation of separate prisons for transgender persons.
- 29 The petition was filed by barrister Ahmad Pansota in April 2022. PEMRA has also previously imposed a fine on a private channel for airing offensive remarks against the transgender community (in a complaint filed by advocate Nisha Rao).
- 30 Section 2(e) defines 'gender expression' as 'a person's presentation of his gender identity and the one that is perceived by others.' Section 2(f) defines 'gender identity' as 'a person's innermost and individual sense of self as male, female, or a blend of both or neither that can correspond or not to the sex assigned at birth.' Section 2(n) defines 'transgender person' as '(i) intersex (*khusra*) with mixture of male and female genital features or congenital ambiguities; or (ii) eunuch assigned male at birth, but undergoes genital excision or castration; or (iii) a transgender man, transgender woman, Khawaja Sira or any person whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.'
- 31 See *Mian Asia v. Federation of Pakistan* (WP no. 31581/2016).

- 32 In a hearing on 3 March 2022, Justice Syed Muhammad Anwar admonished the director general of the Ministry of Human Rights for referencing the Yogyakarta Principles in its response to the court. The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity, first drafted in 2006. Although not binding, this document draws on the ICCPR and ICESCR and has been widely referred to in courts worldwide, as guidance on how to apply international human rights standards in relation to sexual orientation, gender identity, gender expression and sex characteristics.
- 33 In *NALSA v. Union of India* (2014), the Supreme Court of India affirmed the fundamental rights of transgender persons, including the right to self-identification. Similarly, *Sunil Babu Pant v. Government of Nepal* (2007) upheld the right to self-determination, granting equal protections on the basis of gender identity. Although surgeries for certain conditions have been practiced in Iran since the 1930s, it was not until the 1990s that the process was formalised. Following a fatwa by Ayatollah Khomeini, later affirmed by Ali Khamenei and others, transgender people are allowed sex reassignment surgeries and full recognition. In 2010, the Iranian Legal Medicine Organization formulated a standardised protocol in this area.
- 34 See, for instance, the Supreme Court's reading of 'gender equality' under Article 25 of the Constitution in *Uzma Naveed Chaudhary & Ather Farook Buttari v. Federation of Pakistan* (Civil Petitions No. 1347 and 1655 of 2019).
- 35 J. Hinchy. (2019). *Governing gender and sexuality in colonial India: The hijra*. Cambridge University Press.
- 36 The first time the JI rang alarm bells and took to the streets about an 'American conspiracy' to 'spread homosexuality' was in 2011 when the US embassy in Pakistan hosted a private 'Pride' event in Islamabad.
- 37 This was argued in a paper published by a conservative think-tank, the Institute of Policy Studies in Islamabad (founded by JI worker Khurshid Ahmed). See S. N. Farhat et al. (2020). Transgender law in Pakistan: Some key issues. *Policy Perspectives*, 17(1), 7-33.
- 38 Although the ban was lifted by the federal government and the film released, with some cuts, in parts of the country, the Punjab government reversed its decision to release the film and imposed a ban. Saim Sadiq's debut feature, with Malala Yousafzai as one its executive producer, has won numerous awards for its nuanced portrayal of gender and sexuality.
- 39 A recent study by UNDP also found that transgender people living with hostile families faced added stress and compromised health. See UNDP. (2020, August 6). Social inclusion of vulnerable transgenders in times of COVID-19. <https://www.undp.org/pakistan/stories/social-inclusion-vulnerable-transgenders-times-covid-19#:~:text=A%20community%2Dbased%20awareness%20mechanism,safe%20in%20their%20personal%20spaces.>
- 40 See A/HRC/WG.6/42/PAK/1.
- 41 European Commission. (2020). Report on the Generalised Scheme of Preferences covering the period 2018–2019. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020JC0003&rid=4>
- 42 National Security Division. (2022). *National security policy of Pakistan: 2022–26*, p. 47.
- 43 The International Commission of Jurists (ICJ) has found that, even where victims and their families pursue cases with the authorities, the police either fail to register complaints or carry out prompt, thorough, competent and effective investigations that could eventually lead to the prosecution and conviction of the perpetrators. See: ICJ. (2022, March 31). International Transgender Day of Visibility: End impunity for attacks against transgender people. <https://www.icj.org/international-transgender-day-of-visibility-end-impunity-for-attacks-against-transgender-people/>
- 44 The Punjab Transgender Persons (Protection of Rights) Bill 2020, the Sindh Transgender Persons (Protection of Rights) Bill 2021 and the Khyber Pakhtunkhwa Transgender Persons Welfare Endowment Fund Bill 2022 were introduced in the respective assemblies but have not been passed.
- 45 At least five prominent transgender rights activists have received threats of violence or been attacked by mobs since September 2022, including Pakistan's first transgender news anchor Maarvia Malik, who narrowly survived a gun attack in Lahore's Cantonment area and Karachi-based activist Shehzadi Rai, who evaded an acid attack.