

POLICY IMPLICATIONS OF SELF-PERCEIVED IDENTITY IN TRANSGENDER PROTECTION RIGHTS ACT (2018), PAKISTAN

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ABSTRACT

Transgender identity and rights are entwined with policymakers, legislators, and stakeholders. This amplifies the physical and biological manifestations of genders. However, there is an absence of transition for transgender people in the Pakistani society and these people are often ignored in the mainstream society as well as legislation. The policy conducted toward transgender safety and privileges remains appalling, as seen by the recently enacted law by the Parliament of Pakistan, highlighting self-perception problems for gender recognition. Given the recent discrepancies incorporated into Pakistani legislation by the Transgender Protection Rights Act, 2018, this study is to analyze the policy tool of self-perception under the Transgender Persons Protection of Rights Act (2018) and to examine the policy implications of the implementing self-perception as tool for the transgender recognition in Pakistan. A qualitative form of research is used to answer the questions through semi-structured interviews. The Act is deemed to worsen Pakistan's gender challenges due to ineffective policy implementation of self-perception. Hence, immediate actions are needed to evaluate self-perception to provide realistic solutions for Pakistan's neglected transgender community.

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1. INTRODUCTION

The debate on the transgender person's rights and willful change to other gender has been going on for many years. Various scholars, writers, and researchers have contributed to the adequate cause of providing rights to the transgender community (Alberse et al., 2019). The rights are common and equal for all genders existing in the areas and countries around the globe. However, experts believe that defining limitations is essential to see the nature and category of which someone falls as ambiguous nature may be adjusted (Alberse et al., 2019). Queering gender in the shape of lesbian movements or equalizing women as a gender for specific rights has its limits (Mueller et al., 2017).

Transgender self-perception presents several policy challenges. In Pakistan, the definitions and concepts are free to exist if they are followed by the legislatures (Waheed, 2019). In keeping with Islamic principles, the genders of people are determined solely by natural law. Human rights and fair representation for transgender people in society are essential considerations in developing this policy (Rodrigues, 2020). As a result of this research, the case for equitable representation via implementation has been considered while examining elements that have helped the transgender community (Ismail & Shah, 2018).

This study is not meant to critically investigate all the provisions of the Transgender Act. Instead, it tries to understand the success and failure of self-perceived identity as a tool for gender recognition and define its coverage and scope, which are the persons on and about whom this law works (Farhat et al., 2020). Self-perceived identity as a policy tool is, therefore, alien to Pakistan's policy framework because of the principles of policy mentioned in the constitution. Hence, no law shall be enacted that is repugnant to Islam's injunctions as laid down in the Holy Quran and Sunnah (Farhat et al., 2020).

While pursuing the Act presented to the parliament of Pakistan, there are conflicting and unnatural sections of the Act that need to be revised accordingly. The definition is explained as castration (undergoing genital excision) is against the ethical values of society—the permission for self-perceived identity questions the authenticity and validity of this Act. Furthermore, the right of inheritance is employed as per the permission provided to the transgender persons in which they can change their gender at any time of recognizing their gender. It provides that self-perceived characteristics qualify a transgender person for the right to inherit. The establishment of separate prisons, jails, and confinement cells for the transgender person involved in criminal activities artificially creates a difference among the genders. This is against the moral values of considering humans equal. It is also violating the principles of Islamic ideology in describing and defining the sense of equality. Similarly, the application of the law of inheritance is questioned based on the provided contradictory nature of gender and transgender. Therefore, based on these arguments, the objectives of the research are:

- o To analyze the policy tool of self-perception under the Transgender Persons Protection of Rights Act (2018).
- o To examine the policy implications of the implementing self-perception as tool for the transgender recognition in Pakistan.

2. BACKGROUND

The protection of transgender rights is explained and discussed among policymakers worldwide. In this regard, scholars, and researchers have different perspectives regarding transgender protection rights (Jones & Brewer, 2020). They consider the Act as a landslide victory in the fight for better equality for the lesbian, gay, bisexual and transgender (LGBTQ) communities worldwide (Blondeel et al., 2018). On the other hand, Bockting et al. (2019) illustrates that the global community, for an extended period, left parentless at the end of the state, and the state did not take responsibility for this gender at all. Now problems have arisen in how this gender is surviving in this country.

The law is more aligned to the global movement of the LGBTQ communities and suffers from severe definitional and intangible faults (ICJ, 2020). The issue of castration, according to Redding (2019), is the most relevant example here. Not all experts representing the stakeholders were taken on board while drafting the Act. The Act was drafted in an urgent manner without taking the senior legal fraternity on board to ascertain the potential loopholes and their implications once the Act was passed. The cultural setup has shaped transgender the way they are in our society. Educating transgender persons, according to Gichki (2020), is about streamlining their behavior and conduct with the ordinary masses is necessary to recognize and empower them socially.

There are 28723 gender change certificate applications that were processed to modify the gender of individuals. The details of gender change cases processed from July 2018 to June 2021 are presented in table 1.1.

Table 1.1 Statistics of applications for gender change certification (Senate of Pakistan, 2021)

No	Gender Category	Number of cases
1	Male to female	16530
2	Female to male	12154
3	Male to transgender	9
4	Female to transgender	0
5	Transgender to male	21
6	Transgender to female	09
Total		28723

Self-perception identity is being used for policy implementation by countries in North America, South America, and Western Europe, where transgender laws have been endorsed. On the other hand, there is a lack of self-perception procedures used as a policy tool to change gender identity in countries of the European Union and the United Nations (Fahad et al., 2021). According to the International Commission of jurists, self-perception as a policy tool of the Protection Rights Act of 2018 is essential for the development and sustainability of human rights (ICJ, 2020).

However, gender identities based on self-perceived identity serve as a "provocative" demonstration against traditional patterns of the society (Anderson, 2018). They ignore the anguish of individuals who are forced to live with sexual insecurity. Similar policies try to use the concept of 'nature-based on self-perception (Anderson, 2018). According to contemporary ideologies, self-perception traits are primarily based on psychological constructs between men and women (Ford, 2018). Moreover, laws and policies on one's self-perception play a crucial impact in deciding one's gender (Ford, 2018). Many governments reject the use of genital surgery to allow a person to change his or her gender and introduce the concept of self-perception is an alternative intervention through a systematic process of gender transition (Hanssen, 2017). Self-perception of a person may apply with the proper use of the system that guarantees a single time change in gender (Hanssen, 2017). Self-perception of a person means a person or the sex-related to the ambiguous genital and physical features (Brunner et al., 2016). The situation provides the cultural perspective where only female and male genders are recognized (Brunner et al., 2016).

(Martinez et al., 2017) defines self-perception in a biological context as inter-sex people with sex traits that can only be identified as male or female. However, in Pakistan, the Act defines 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 (Farhat et al., 2020). This includes transsexual, transgender, or other people who consider gender based on their self-perception (Barišić et al., 2014).

Pakistan's Parliament passed the Transgender Persons (Protection of Rights Act) in 2018, but the government's policy on self-perception is still absent (Fazi& Bibi, 2020). It might be an effort to safeguard the rights of the historically marginalized transgender minority (Fazi& Bibi, 2020). The majority voted in the Parliament in favor of the Act, but it may contravene the policy, legislation, and rights relevant to the transgender person (Munir,2019). It is because; no debate was permitted or done by the Parliament on the question of safeguarding transgender for what reason (Munir, 2019).

The legislature under the state is bound, among other things, to provide for all citizens within its available resources, facilities for work, and adequate livelihood with all proper rest and leisure (Farhat et al., 2020). The policy for self-perception of the transgender community is considered in this research as the ultimate reflection of continuous marginalization systematically and constitutionally (Shergill et al., 2019). It provides a lack of rights and access to social services (Ismail & Shah, 2018). For transgender to function as a diminished and devastated community is because of the no acceptance and policy recognition of various social segments and parts of the world (Snigdha, 2019).

Transgender recognition through self-perception is a tool for gender transformation (van der Miesen et al., 2020). When it comes to self-perception, it is crucial to know how a person or individual feels about their gender identity (van der Miesen et al., 2020). Hence all the legal and structural flaws need to be addressed. Blake

(2018) poses a fundamental question to determine if the people understood the term 'transgender' or did they mistake it with 'intersex' even while making this law. The study will examine differences between intersex and transgender, some technical difficulties of applying this policy tool mentioned in transgender Act and lastly, a conclusive remark on how this policy tool may have come into being and its implications.

3. METHODOLOGY

The study is qualitative in nature. There are two advantages of qualitative study, first, there are options for scholars and researchers to investigate the focus area from different angles and integrate the variables effectively (Mohajan, 2018). This gives strength to the problem's solution, and there are vibrant chances for practical use of research. Second, there are fewer chances for risk or mistakes in calculating the collected data (Mohajan, 2018). In short, the qualitative method is considered a comprehensive strategy for analyzing transgender and gender development problems in connection to human rights.

The data sources for this study are based on the nature of the objectives and questions mentioned to respond to the problem (Jameel & Majid, 2018). Direct personal interviews required the researcher to meet the concerned participants to collect the information. The data collection was done using semi-structured interviews. According to the designed Interview Guide, the people associated with the transgender persons and stakeholders like legal experts, Medical experts, educational experts and members of the parliament were interviewed to gain insightful data on the problem investigated.

This study employed thematic analysis. It focused on detecting and summarizing implicit and explicit ideas within the data rather than counting exact words or phrases. The researcher was able to create a clear structure in arranging the data using thematic analysis. Each topic and issue mentioned in the interviews was assigned a specific research theme. The researcher must be more involved and interpretive when conducting thematic analysis. Because the data item went with interpretation and codes were assigned to portions of the text (Guest et al., 2012), the interview questions were developed to address the critical areas of research which included:

Theme I: To identify policy procedures and adequate protection of rights

Theme II: To investigate the policy implications of Self-Perception

Theme III: To inform biological factors that influence transgender

4. DISCUSSION

The findings of this research were gathered from the semi-structured interviews conducted. The semi-structured interviews included important stakeholders like medical scientists, educational experts, members of the parliament and transgender community were interviewed in Pakistan. There were various aspects of the problems with legislation and Acts in developing countries like Pakistan. For such countries, violation of human rights is treated as normal cases and laws passed by the assembly are often poor in practice.

The respondents of the semi-structured interviews ensured that legal cover is there for transgender rights protection through national institutions like the Parliament of Pakistan. Furthermore, the concerned stakeholders of this research provide that there are some serious issues in the Act passed by the parliament. Problems associated with the Act are related to the self-perceived identity used as a policy tool for transgender recognition.

However, it is mentioned that one may not agree that gender expression or identity relates to representation. An important policy element of this research is the insecure social identity which lacks the confidence of a state in its citizens, and there is an object on the changing of gender at any time. One of the key respondents reflects that gender complex issues would be common among members of the transgender community if the Act is implemented.

Participants emphasized on amending the Transgender Persons (Protection of Rights) Act, 2018 and it is practical and substantial to bring meaningful and significant amendments to the Transgender Persons (Protection of Rights) Act. Gender transition from male to female and female to male has raised serious concerns among stakeholders. The self-perceived identity tool is in contradiction to injunctions of Islam and the constitution of Pakistan as it has the following effects.

- Legalization of homosexual marriages

- Repugnancy to Law of Inheritance in the Quran
- Violation of dignity/modesty of Muslim Women
- Making the Recognition of Gender a Subjective matter

During the interaction, participant viewed that Act presented to Parliament as a good attempt, underlying that such steps evolve the process of recognition of gender. However, others did not agree that gender expression or identity relates to representation as to the insecure social identity which lacks the confidence of a state in its citizens. In the same way the object on the changing of gender at any time and term this as gender complex issues. This shows a non-serious attitude to the protection and sustainability of the transgender community. Besides, there is a contradiction in which it states that surgical procedures and change in the gender significantly contribute to dysphoria, which is an illness of mental capacity, but it also states that there should not be a third gender. The basis for this is just the character and representation of transgender in the society. The expression and feelings of a transgender person should not be adjusted in such Act which devastates the already distorting rights of this community.

One respondent highlighted governance style under the law and legal affairs. This respondent mentioned that principles of theocratic governance have gained enormous public support across the world. However, the case of a bill passed by the parliament of Pakistan is quite relevant to the fact that there should be a judicial or constitutional review which could have made it acceptable for the society.

Another participant mentioned that there are Intersex people who have ambiguous genital organs at the time of birth. Medical Jurisprudence emphasizes that intersex persons have biologically ambiguous organs and they are represented by chromosomes such as XXY. Participants provided that there are several variations in the sex of a person having issue of sex characteristics which does not fit into the designated physical style of a male or female and similar approach is considered for this study and in responding the questions.

Similarly, a participant stated that policy making environment in Pakistan is more of a welfare for any segment of society than to facilitate the people sitting inside the well-furnished and stable conference rooms. Considering this, the draft of policy document as tabled in the Parliament of Pakistan left the key objectives and understanding of the instruments that need to be organized in a proper way. However, the state fails to acknowledge the legal and social rights of transgender community in Pakistan.

The study strongly supported that there should not be a third gender, or the clause should be mentioned to remove it. The basis for this is just the character and representation of transgender in our society. Further, the expression and feelings of a transgender person should not be adjusted in such a law which leads them to psychological problems. The idea of self-perceived identity should be removed and replaced with a single identity with no discrimination against the transgender community.

Table 4.1 Thematic Analysis

S. No	Themes	Analysis
1	<i>Policy Implications of Self-Perception</i>	Inter-linking and effects of policy enlarge the community response to the transgender person where they negatively portray their identity or the gender
4	<i>Reflect Policy Procedures & Protection</i>	The physical and policy procedure of transgender is strongly associated with transgender community protection
5	<i>Biological factors that influence transgender</i>	Feeling of transgender should not focus on emotional state of person against the biological sex a person contains from the time of his/her birth

Source: Author's Development

5. POLICY IMPLICATIONS AND RECOMMENDATIONS

Self-perception as policy tool in Act is endorsed by the Parliament of Pakistan that bounds the government to recognize transgender without any policy procedures. This is inconsistent with the current law, and according to the criminal procedure, self-harm is not allowed. Therefore, all means, and forms of castration are criminalized to stop the frequent practice of castration. It can be extended based on the nature and professional rights required for meeting the needs which can be possible with an advanced system of operations. The recognition based on self can lead to misuse in the form of homosexual marriage (Farhat et al., 2020).

The self-perception response from the interviews and the opinion gathered in following the research guideline suggest certain policy recommendations. Since there is a single Act, the research is limited to developing new areas in the broader context of transgender protection rights.. It is mentioned in chapter II, section 2, sub-section I and II of the Acts, Self-perception should have always been preferred for the preservation of culture, heritage, and the need for change that influence the rights.

For future, The Transgender Protection of Rights Act 2018 has the potential to bring major changes in the state or social community of Pakistan. It requires rigorous policy revision which needs to add for a favorable response from the stakeholders of the society. This research recommends that concerned organizations/stakeholders should be careful in implementing the Act for its implications on society.

This should be the pursuit of policymakers to provide the guidelines as to how to represent culture and the best form of rights to the transgender person. Islamic values and gender politics should not be an amalgamation of domestic culture, tradition, and heritage with international ideals. Such actions can present the true reflection of Pakistan in a contemporary era and the effects of transgender rights on the average person.

Unlike analogous laws in Pakistan, the Act's systematic interpretation does not provide a method for gender transition based on self-perception. The statute does not have reference to any surgical treatment, hormone therapy, medical intervention, or any medical evaluation to change one's gender by self-perception. In Pakistan, such inadequacies in giving no system or process for changing one's gender through self-perceived identity are pressing for a more favorable option that includes physical, medical, or surgical intervention.

The lack of any method exposes the failure of protection afforded to transgender people seeking to change their gender during the implementation process. When medical, surgical, or therapeutic measures/policies or procedures are present, policy success may be achievable in altering gender through self-perceived identity. It is intended for use in gender transitions based on self-perceived identity.

The research recommended future and extensive study on the Transgender Protection of Rights Act 2018, that is related to the implementation of self-perception as the policy tool.

In specific, this study recommends:

1. A comprehensive evaluation of self-perceived identity from the context of process, program and/or politics which could portray the successfulness of the tool implemented.
2. A revision on the the terminology of 'transgender' in the Act in considering the use is unclear.
3. A revision on the use of castration stated in the Act, which is classified by many experts as unlawful.
4. A revision on the procedure for implementing self-perception as a policy tool, in considering the current practice allows many 'normal person' to change their gender easily. In fact, the number of 'real transgender' is relatively small (as presented in Table 1).The suggested additional procedure, which is therequirement of medical board to verify gender identityshould be studied comprehensively.

6. CONCLUSION

The study concludes with a set of recommendations that can offer a practical suggestion on the use of self-perception mentioned in the Transgender Act. Recommendations made would provide the purpose of the Transgender Act and can apply better policy procedures for transgender recognition. Therefore, the study has achieved its intended objective. There are good policies that are well-formulated but ineffectively implemented, resulting in a large gap between policy intent and execution. Findings prove that the Transgender Protection Rights Act requires immediate revision through comprehensive debate and discussion. Each section needs to follow the principle of law that is effectively accepted and implemented in the common society. For example, castration, sex reassignment surgery or the procedures of surgical are distorting the issues of identity. There seems to be less room for balancing the human rights and those of the transgender community. Self-perceived identity and gender dysphoria are declared as mental illnesses to stop and verify the process of identity change. The study concludes that the existence of self-perception in this Act is seen as disconnected with the basic human rights of transgender. Therefore, future extensive studies should be conducted. Following the formulation of a policy, the next step is to put it into action. It is the process by which ideas are transformed into actions, although most of the time, this critical stage is overlooked. At the same time, the policy Legitimization stage receives the most attention. From before to the present time, the transgender community has struggled to attain their legal and social rights, which to a certain extent, are granted via the decisions of the honorable Supreme Court of Pakistan. However, the Act has been drafted and passed by the assembly shall be revised in favor of fulfilling the basic charter of human rights, adopted, and followed the United Nations.

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