



In this Issue

Integrating Transgender Persons: Towards Inclusive Policymaking

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Introduction

Giving transgender persons a fuller measure of their citizenship rights in Pakistan has been a staple objective of political party manifestos since the last three elections. Several legislative and policy measures allowing for the socio-economic uplift and political participation of transgender persons have taken place over the last decade, overturning a modicum of their civic and political marginalisation. These policies have so far followed medium term ‘provision’ models where transgender beneficiaries stay at the receiving end of resource allocations and power dispensations. They are patronised, never fully empowered, and longer term measures to transform the political economy of their marginalisation are not initiated. Transgender persons share this patronage with other disenfranchised groups receiving state hand-outs, but their integration in society is far more challenging owing to deeply ingrained social prejudices that prevent a normalisation of their presence and participation in everyday life. With due recognition to the steps taken by successive governments and judiciary, whose combined efforts have improved the quality of citizenship enjoyed by transgender persons in recent years, it is worth setting the bar higher on provision of entitlements and their planned outcomes. To ensure the welfare of citizens is a duty of the state, in addition to dismantling the barriers that prevent them from accessing it.

This requires periodic stocktaking of policymaking and governance to gauge if any benefits have accrued. One way to do this is to look for evidence for the “participation of marginalised groups in existing representative processes, institutions and decision making with the aim of creating equitable access, ownership and recognition.”¹ We know that evidence on this is thin, as later sections of this brief will show. We also know that participation is a necessary but insufficient measure to integrate marginalised communities; among other things, it lays the onus of integration on marginalised groups to become part of unrepresentative and often hostile processes and institutions. Another way to create greater entry points for them and normalise their participation, is by way of supporting social cohesion. This aims at fostering common value systems across the ‘whole of society’ which enable acceptance and mutual empowerment among all citizens.² The policy learnings from social cohesion are still being tabulated, but its major advantage is focusing on social majorities rather than problematising minorities.

The transgender community is perhaps the most disadvantaged among excluded groups. Their plight has been documented in several policy and academic publications, as well as an increasing number of government documents that recognise the challenge confronting transgender persons in Pakistan. This brief explores some of that ground by looking at physical violence and threats to life experienced by transgender persons; low health and education indicators despite provisions for their access to schools and hospitals; their primarily stereotypical representations on the media and thus the formation of biased public perceptions; and their low voter turn-out and political representation. This brief advances the idea of social cohesion and integration as a necessary step in stemming violence, discrimination and prejudice against transgender persons. It charts the interventions undertaken through legislation and jurisprudence that have had a net positive impact on their protection and socio-political participation. It also highlights areas that need redress, such as access to justice and healthcare, in addition to seeking a normalisation of transgender portrayal in popular media through sensitive and informed programming.

Policy Measures Undertaken

The last few years have come with landmark decisions for transgender persons in Pakistan. In 2009, the Supreme Court passed a judgement calling on NADRA to add the ‘third sex’ on national identification cards, to provide for citizens defining themselves as “eunuchs, intersex persons, and transgender men and women”. This awarded transgender persons the right to hold an identification card, enter electoral rolls and participate in ballots, among other things.

Transgender persons’ identity is unique in that they share it by virtue of an innate characteristic that is unalterable and so fundamental to their identity that they cannot or should not be forced to renounce it.³ That the state accepted this and allowed for this identity to enter the country’s legal imagination is a significant step in cementing the transgender identity as an integral and very real part of the country’s populace.

In 2017, the Supreme Court ordered the Pakistan Bureau of Statistics to add a separate category of transgender persons in the census surveys; this led to their enumeration in 2017 to be as few as 10,000, widely considered an under-representation due to poor enumeration methodology, as well as transgenders and their families not disclosing their identity. The Supreme Court’s move aligned with international donors’ long-standing emphasis to create population data disaggregated by gender to assist interventions for specific population cohorts and governance domains. Ironically, transgender persons were classified as *cisgender* and ‘disabled’ prior to this, conflating the number of transgender persons and differently abled persons. The apex court’s judgement thankfully bifurcated this gross conflation, sending across the important message that transgender is a subcategory of gender, rather than a type of disability. So too, in May 2019, WHO updated the International Classification of Diseases (ICD-11) to reclassify gender identity disorder - identifying as transgender in terms of sexuality - as “gender incongruence”, and not a “mental disorder”.⁴

In May 2018, the Transgender Persons (Protection of Rights) Act was passed in Pakistan. The bill ensures inheritance shares, prohibits discrimination and harassment, and requires the government to establish protection centres, provide medical facilities, establish mechanisms for awareness and support livelihoods.⁵ The bill grants transgender persons the right to own and inherit property; rights to education, healthcare and employment; rights to vote, hold public office, assembly, and access to public places.⁶ This is so far the most comprehensive law

regarding transgender persons enacted by Parliament, whose on-ground implementation is both challenging and contested.

The Punjab government enacted a comprehensive ‘Transgender Persons Welfare Policy’ prepared by Punjab Social Protection Authority in 2018. The document defines transgender person as anybody “who identifies emotionally or psychologically with the sex other than one’s biological or legal sex at birth, irrespective of any later biological change.”⁷ The document highlights long-standing challenges faced by the transgender community, as well as interventions aimed at mitigating harassment and vulnerability; lack of education, promoting skills and livelihood; emotional and psychological challenges owing to rejection, fear and hatred for transgenders.

The KP government has also made significant strides in way of transgender rights, being the first provincial government to have notified a special committee with the participation of transgender activists, about the welfare and protection of transgender persons. The provincial government has also approved a budget for the uplift and empowerment of transgender persons in the province.⁸

Developments in Sindh consisted of the Sindh Police setting a quota of five per cent for transgender recruitment into the police in April 2019.⁹

Political Participation

Donor-driven democracy programming since 2013 has brought about considerable gains for institutional strengthening and election oversight, in addition to drawing in large swathes of unregistered cohorts onto electoral rolls. There is still a long way to go in realising meaningful political participation for excluded communities, however, transgender voters have been acknowledged as a constituency and attempts made to mainstream them through this process.

Nadeem Kashish was one of the thirteen transgender people who ran in last year’s elections. Kashish contested the general seat from Islamabad, running against political heavyweights such as Imran Khan and Shahid Khaqan Abbasi. Speaking about her experience of campaigning in the city, she said, “People hear about my election run and think it’s a joke, they start to laugh.” Kashish added that while canvassing door-to-door, people mocked at her appearance. PTI-Gulalai approached Kashish offering her a party ticket, but she declined reasoning that “she (will have) to follow party discipline and her dream of securing a better future for the transgender community would remain unrealised.”

Prior to 2009, before a third gender was recorded by the state, only one transgender person ran for elections. Five transgender persons ran for elections in 2013 for Pakistan’s national and provincial assemblies. In 2018, this number more than doubled when 13 transgender persons stood for general elections, of whom four contested on party tickets awarded by the Pakistan Tehreek-e-Insaf- Gulalai (PTI-G). Thus far, no transgender person has won a party-backed or independent candidature in Pakistan’s elections, nor have major political parties considered giving a seat to transgender representatives in the federal or provincial legislatures.

Political parties including the PML-N, PPP, ANP and QWP have mentioned the welfare of transgender persons in manifestos and during

their election campaigns. Manifestos recognise the importance of protecting transgender persons and providing rights, but fall short on policy mechanisms to enable their meaningful inclusion or uplift. While there is recognition of transgender persons as an excluded community, there is little to suggest that party culture will change any time soon to accommodate their demands, or give them presence beyond a voting constituency.

As women's inclusion in mainstream parties will show, it took several election cycles and repeated directives issued by the judiciary and Election Commission before women were given quotas in parliament and entrusted with senior party leaderships. Even two decades after the quotas were reestablished, women's ability to legislate and support gender and child related policies seldom enjoy the broad support of their party peers. It has taken women well beyond a critical mass to make an impact in parliament and mainstream politics, whose cumulative effect upon society at large is yet to be tabulated. Even so, what started as an affirmative action mechanism in the early 2000s has brought about a transformed political culture.

Political participation certainly goes a long way in normalising presence of excluded communities in the mainstream. However, political participation for transgender persons may only mean exercising the right to vote for now, and campaigning for local candidates at most. No mainstream political party is likely to give them candidature in Pakistan's 'cut-throat' political culture that does not see transgender persons as equal citizens, let alone as political agents. Expecting quotas for transgender persons in political parties, reserved seats in parliament or quotas within electoral districts may seem like a tall order, but it is the correct thing to demand. Support from mainstream political parties and representation in law making bodies will help mainstream transgender persons in society by sending across the message that transgender persons are worthy of being elected to the country's highest offices.

Political participation also extends to franchise. Names of persons with their new (transgender) identity first appeared on electoral ballots and rolls in the 2013 elections. Transgender persons could vote prior to this, but using the identities they were assigned at birth. Statistics for transgender voters are not available, but testimonial evidence reports that many transgender persons refrained from voting as it required them to go to their hometowns where they were alienated or outright rejected by their families, making it very difficult for them to cast their vote.¹⁰ While this issue was resolved after transgender persons were able to reissue CNICs on their chosen genders with new addresses, another problem emerged. Saudi Arabia criminalises transgender identification transgender persons to go for Hajj or Umrah using their new identity cards and passports. For this reason, it is reported that many transgender persons have not obtained new CNICs. This situation puts transgender persons in a conundrum where they have to choose between their freedom to participate in the elections or in religious duties.

Areas in Need of Redress

Despite having a comprehensive policy framework for mainstreaming transgender persons, there is a wide gap between the State's intention and capacity to secure rights for excluded communities, and further still between the majority's social attitudes towards this minority. Some areas are identified below which have been critical barriers to participation, recognition, benefit sharing and security. They have appeared in policy literature repeatedly to reflect that the challenge is as yet unresolved, and may very well be growing.

Threat of Physical Violence, Intimidation and Harassment

46 transgender women were killed in KP alone and 300 were violently attacked violently between January 2015 and July 2016. The number of domestic abuse incidents for transgenders in Punjab was 70 in 2015. A study in Sindh found that 82 per cent of transgender people suffered sexual abuse in their childhood.¹¹ Whereas government representatives estimate that 500 transgender people have been killed in Pakistan since 2015,¹² the Transgender Association maintains that 62 transgender people have been killed and 478 have been victims of violent attacks between 2015 and 2018. According to TransAction Pakistan, at least 1,133 cases of violence were committed against members of the transgender community in the province between 2015 and 2017.¹³

Although these statistics may be estimates at best – given the absence of a database of all crimes against transgenders – it is evident that the violence continues unabated. On many occasions, police officials are known to have refused taking action in cases involving transgenders, or are subjected to harassment, physical and sexual violence at police stations or in lockups.¹⁴ Because transgender persons work as entertainers and sex workers, torture or sexual violence is routinely meted out to them by patrons as well as law enforcement officials for ‘protection’ or retribution. Their calls for help or recourse to justice against maltreatment, abuse or casualty is seldom given a priority by office holders.¹⁵ For a majority of transgender persons, lodging a complaint may never be an option for the dangers it subsequently exposes them to.

Resilience Skills and Social Safety

30 per cent of transgender people have attained primary schooling; 23 per cent have attended secondary school, whereas only 7 per cent received a higher secondary or college level education. The remaining 40 percent have not received any formal education.¹⁶ Even those who have a college education struggle to find gainful employment, and resort to traditional forms of earning money such as entertainment workers. Educational institutions and work places alike fear bad reputation, or are unable to manage harassment or alleged “risks” associated with transgender persons. Furthermore, bullying or harassment in educational institutions and work places increase the likelihood of their dropping out. The lack of vocational skills in combination with employers’ prejudices presents a veritable barrier to earning a decent livelihood and forces the transgender community into poverty.

The shame and social stigma attached to being transgender compels their family members to hide their identity. Family members are most often responsible for inflicting immense trauma, physical and psychological abuse on transgender persons, forcing them to seek refuge with other transgender persons in close-knit and regimented communities. The “shame, fear, and internalised transphobia” associated with divulging their identity or pressures to adapt or conform to surroundings; fear of relatives or loss of relationships; as well as self-constructed limitations on expression or participation in public life; fear of being or humiliated and harassed in private or public develops several mental health risks in transgender individuals.¹⁷ Factors leading to a high incidence of mental health problems among the transgender community can mostly be attributed to the stress of social stigma and prejudice.¹⁸

Furthermore, the lack of financial support from family members denies transgender individuals the common safety networks available to other marginalised groups. In the event of a financial crisis, there may be few assets or lenders to fall back on. In this regard, the

transgender establishments (which accommodate a large portion of transgender persons, but not all of them) provide the upkeep, and safety net in case of emergencies. Transgenders earning an income do not use banking channels for fairly common reasons – there is little income to go by, and the added benefit of banking is not known. The establishments they live and work in demand a portion of their earnings. In 2018, renowned transgender activist and leader Almas Bobby, availed a tax amnesty scheme to declare Rs. 100 million worth of assets, amassed through the contributions of multiple transgender community members.

Reduced Access to Healthcare

The greatest barrier yet may be access to healthcare. There are routine reports of transgender persons being denied medical attention and treatment due to healthcare practitioners having a prejudiced view of them. Additionally, almost all hospitals in Pakistan lack dedicated wards for the third gender. This coupled with a general lack of awareness and sensitivity towards the transgender community add to their barriers to access. Introducing a third ward for transgender people along with the option of transgender patients in hospital admission forms may help facilitate their access to more equitable healthcare.

Media Portrayal of Transgender Persons

Media portrayal of transgender persons comprises a small percentage of television programming, and the few television drama serials that depict transgender persons use comical or derogatory tropes, rehashing the familiar stereotypes in behaviour, dialogue and screen presence.¹⁹ Transgender persons are most often shown as beggars, entertainers, domestic helpers, or cast as evil or negative characters. ‘Morning shows’ with large television audiences, albeit controversial content, have invited transgender persons to sing and dance onscreen. Late night comedy shows on political satire have depicted transgender persons as outspoken characters who draw as much ridicule as raise criticism.

Portrayal of transgender persons corresponds directly to the media personnel’s sensitivity and understanding of their issues. By constantly referring to stereotypical depictions of transgenders as entertainers, sex workers or ‘loud mouthed’ social critics, the media has reified a gender characterisation for trans-people that is translated into everyday behaviour. Because transgender persons are treated as anomalies on screen, their social exclusion becomes justified in social structures, institutions, processes and interactions.

However, both dynamics feed each other – as media houses will argue – and the blame for accentuating a regressive gender norm may not be applicable to media portrayals alone. Surely, there are other institutions and actors preventing the normalisation of transgender presence and participation in daily life. While this is true, the far reaching and outsized impact of media on public opinion, value systems and political participation is also well known. Therefore, the responsibility to depict characters, especially excluded minorities, in ways that enhance their stakes in public life and assist their integration falls upon media stakeholders as much as the government office holders.

At the same time, it is worth recognising instances where transgenders have invited on media as equally capable and talented individuals. Coke Studio’s decision to include two transgender women as singers in 2018, and the inclusion of a transgender person as a news anchor on a private television channel present two examples of effective integration. Their inclusion

carries immense symbolic value for integration that can pave the way for recognising the transgender community as regular citizens, and normalising their presence beyond the gender norms expected of them.

Recommendations

- i. While existing laws have not resulted in the intended impact on transgender persons' lives and the systems they can draw support from, legal frameworks constitute a necessary basis for enabling inclusion and integration of transgender persons in Pakistan. There is a constant **need to review laws and policies in conjunction with implementation mechanisms** to find models of best practice, with due participation of transgender stakeholders. There should be greater legislation, public discourse and legal activism on the issue of transgender rights, not less.
- ii. Safe public spaces for transgender persons must be prioritised. Transgender women report harassment by police officers and security guards, or humiliation by the general public when they attempt to access markets, public parks, transport or hospitals.²⁰ Not only should urban citizens be sensitised to their needs, **urban infrastructure should be customised for excluded groups**, especially in the provision of social services. Other countries (including Muslim majority states) have developed separate toilets, prayer areas, and seating in public transport systems. The larger challenge lies in *access* to public goods and services, and not solely in their provision. Reforms must address equitable access to all citizens of the state.
- iii. Transgender persons also struggle to find dignified employment with essential benefits such as paid leave and health insurance. In 2009, Pakistan's Supreme Court announced a 2 per cent government job quota for transgenders, which led to their employment in public canteens, junior managerial jobs in the Sindh government and across NADRA offices. In April 2019, Sindh's Chief of Police announced that transgender individuals will have the same opportunities and responsibilities as other as duty officers. In 2019, the Ministry of Human Rights employed a transgender person. These are long-due steps in the right direction, and to ensure institutionalised inclusion of transgender persons, **all provinces must be pushed to introduce quotas in government jobs and police forces**. Additionally, all three wings of Pakistan's military forces should introduce quotas for transgender persons. Creating prestigious and dignified employment will create a multiplier that lifts transgender persons out of vicious socio-economic cycles, normalises transgender identity and allows their meaningful integration in society.
- iv. This can be further aided through programming **more diverse and inclusive party structures**. To this end, the People's Representation Act of 1976 must be amended to include transgender persons. Currently, the law requires political parties to have a quota of at least 33 per cent for women party members. This should be extended to transgender persons, and political parties should be allowed to contest the elections only after they have met these requirements. Transgender rights groups in Khyber Pukhtunkhwa also suggested that a two per cent quota for transgender persons be introduced at the local government level.²¹ This suggestion must be taken up, and extended to all provinces. Additionally, quotas in national assemblies, provincial assemblies, and the senate should also be considered.

- v. Measures to remove social stigma and prejudice against transgender persons must be introduced, as socio-cultural attitudes present a formidable barrier to implementing policies. The government must focus on **awareness programs that result in social support and integration for transgender people**, both directly, and through civil society organisations already dedicated to this cause. Changes in education curricula; gender-sensitive programming on media (radio and social media); greater representation of transgender persons on television; as well as their purposive portrayal through dramas will help normalise their presence and recognition.
- vi. Efforts must be targeted specifically at **sensitising institutions and personnel that have a direct and significant impact on marginalised groups** within the society, especially a group as vulnerable as the transgender community. Law enforcement agencies, judges, lawyers, educators, healthcare professionals and other public service providers must be trained to understand gender related issues, and to become more sensitive in their public dealing with them.
- vii. Lastly, it is important to point out that publicly available data on transgender persons in Pakistan reveals little about their demographics, socio-economic well-being, access to finance, et cetera. **The National Bureau of Statistics must deploy an improved strategy to enumerate their numbers.** Public and private studies should be conducted to ascertain a more accurate picture of the transgender community, especially as new resources allocations are directed towards poverty alleviation and social protection. Evidence based policy making will undoubtedly aid the integration of transgender persons by a large extent.

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