
EQUALITY AND DISCRIMINATION: A COMPARATIVE ANALYSIS OF TRANSGENDER RIGHTS IN INDIA AND PAKISTAN

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Introduction

*"I am who I am, so take me as I am"*¹

Transgender rights have been a contentious issue across the world, with many countries grappling with how to protect this marginalized community. India and Pakistan, both South Asian nations, have taken effective steps towards recognizing and protecting the rights of transgender individuals. In India, the landmark 2014 NALSA judgment by the Supreme Court recognized transgender people as a 'third gender' and upheld their right to self-identify. This judgment paved the way for the Transgender Persons (Protection of Rights) Act, 2019², which provides for the protection of transgender rights and prohibits discrimination against them.

In Pakistan, the transgender community received legal recognition for the first time in history after a landmark judgment by the Supreme Court in 2013. This led to the passage of the Transgender Persons (Protection of Rights) Act, 2018, which provides protection to the transgender community and prohibits discrimination against them. This act also allows transgender individuals to self-identify. The passing of this act was a significant milestone for the transgender community in Pakistan.

Both the nations have taken steps towards recognizing and protecting the rights of transgender individuals, although there is still a long way to go in terms of implementation and ensuring that these laws are enforced. Nonetheless, these acts represent a crucial first step in ensuring that transgender individuals are afforded the same basic rights and protections as other

¹ The quote "I am who I am, so take me as I am" is often attributed to the German philosopher Johann Wolfgang von Goethe and was used by Justice Rohinton Fali Nariman in the landmark judgement by the Supreme Court of India in the Navtej Singh Johar & Ors. vs. Union of India & Ors. case in 2018.

² <https://www.prindia.org/billtrack/transgender-persons-protection-rights-bill-2019>

citizens.³ This paper seeks to explore the colonial roots of transgender law in the subcontinent and its impact on recent legal developments in both countries. Through a human rights perspective, it evaluates the efficacy of recent legislation in both the countries and offers recommendations for further legal reform to protect the rights and dignity of the transgender persons.

The Criminal Tribes Act and the Stigmatization of Transgender Community

The transgender community, known as 'Hijra'⁴ in India and 'Khawaja Sera'⁵ in Pakistan, has faced significant challenges since the British colonial rule in the subcontinent. The British portrayed Hijras as an immoral community⁶, and after 1850, the community became the target of hatred among British colonizers. They were seen as a "eunuch problem" and labelled as prostitutes by colonial courts⁷, criminalizing and stereotyping them. Their gender was considered morally offensive, and they were described as "pollution."

On the political front, colonial rulers were also insecure about the Hijra community's presence. Before British colonial rule, Hijras were entitled to rent-free land and other rewards in many small Maharaja/Nawab polities, such as during the precolonial Maratha's rule in the Bombay region. However, the colonial rule attempted to redraw the agreement between the Hijra community and the new colonial rule under the East India Company. These executive efforts made the issue more critical, particularly in terms of the "rights" that the Hijra community was entitled to in Maratha polities in the Bombay region.⁸

As a result, the Bombay presidency stopped all the rights that the community had received from previous rulers, such as rent-free land, the right to beg, and other small grants. This further marginalized the Hijra community, and they faced social and economic exclusion.

The Hijra community's discipleship system, which was based on a strict hierarchy, was seen

³ Muhammad Abdullah Fazi & Maryam Bibi, "Discrepancies in transgender persons (protection of rights) act, 2018: a comparative study of transgender's rights in Pakistan and India", Article in International Journal of Law and Management, November 2020, DOI: 10.1108/IJLMA-10-2020-0262

⁴ R. Gayatri (2005), "With Respect to Sex: negotiating Hijra Identity in South India", University of Chicago Press, Chicago, p. 237.

⁵ H Jessica (2019), *Governing Gender and Sexuality in Colonial India: The Hijra, C.1850–1900*, Cambridge University Press, Cambridge, doi: 10.1017/9781108592208.

⁶ S Nilanjan (2013), "Forbidden privileges and history-writing in medieval India", *The Medieval History Journal*, Vol. 16 No. 1, pp. 21-62, doi: 10.1177/097194581301600102.

⁷ Supra note 2, p. 33

⁸ Supra note 2, p. 32

by the British colonial rulers as a parallel political force that could potentially challenge their authority. This perception was fuelled by the fact that the Hijra community operated outside of the traditional Indian caste system and had their own codes of conduct and social norms. As a result, the colonial government appointed Charles Raikas to compile a detailed report on the Hijra community, with the intention of creating a special anti-Hijra law to control the community.⁹

The British colonial rulers also viewed the Hijra community as a threat to their legal system¹⁰, which was based on family, heterosexual, and reproductive sexuality. The Hijra community's gender identity and sexual orientation did not fit within the colonial legal framework, which further contributed to their marginalization and discrimination. The colonial government criminalized Hijras and portrayed them as immoral and sexually deviant individuals who were a threat to public morality.¹¹

In this context the Britishers introduced a legislation namely The Criminal Tribes Act in 1871 which was indeed a derogatory legislation aiming at tackling the "eunuch problem" in the subcontinent¹², which serves as a significant example of examining sexuality and gender policing, particularly targeting the transgender community. Despite the removal of Anti-Hijra clauses in 1911, the hatred, derogatory language, and discriminatory attitudes towards the transgender community still exist in postcolonial legislation in the subcontinent and other countries that were once colonized under the British empire.¹³

It is important to note that the Criminal Tribes Act (CTA) introduced in 1871, which was intended to tackle the "eunuch problem" in the subcontinent, included a part i.e., Part II that criminalized transgender people during the colonial period. The CTA, which was titled "An Act for the Registration of Criminal Tribes and Eunuchs," grouped the transgender community with the "criminal tribes" and gave the colonial authorities the power to surveil and control them. The categorization of transgender people as "criminal tribes" demonstrates the colonial

⁹ Supra note 2, p. 34

¹⁰ www.himalmag.com/long-history-criminalising-hijras-india-jessica-hinchy-2019/

¹¹ Criminals Tribes Act 1871, herein after referred as CTA.

¹² M Y Jami, (2019). Transgender Rights in Pakistan: The Role of Courts and Legal Reforms. *International Journal of Humanities and Social Science Research*, 8(2), p. 25-31.

¹³ S Khan, (2018). Transgender Rights in South Asia: A Legal Perspective. *Journal of South Asian Studies*, 6(2), p. 1-17. <https://doi.org/10.1177/2348448918762739>

mindset of viewing them as a potential threat to colonial rule.¹⁴

The part II of the CTA provides for the registration of “eunuch” under Section 24 as The Criminal Tribes Act (1871) states:

Section 24: Register of eunuchs and their property, under this section it was the duty of the local government to maintain a register including the name and details of the properties (residence) in possession of a eunuch in a town or place who are reasonably suspected to be involved in kidnapping and other immoral activities, other than talking about the registration of the properties by the local government this section also defined the word ‘eunuch’ i.e., as follows, “The term eunuch shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent.”

Further, Sections 26 of the CTA penalizes certain acts related to expression of their sexual orientation, clothing, way of life and public appearances by way of fine or imprisonment up to two years, or with both. Also, under this section the administrative authorities can arrest a eunuch without issuing a warrant. Then the transgender persons are even prohibited from adoption, making a will or making a gift or even acting as a guardian under Section 29 of CTA.

Then under section 21 of the CTA, it was required that every village headman was bound to report the entry of a transgender in his vicinity. In this regard, Section 21 stated as:

It shall be the duty of every Village-Headman and Village-watchman in village in which any person belonging to a tribe, class or gang which has been declared criminal reside, and off every owner or occupier of land on which any such persons reside, to give the earliest information in his power at the nearest police station.

AND

Any Village-Headman, Village-watchman, owner or occupier of land, who shall fail to comply with the requirements of section 21 shall be deemed to section 176 of Indian Penal Code.

These Sections of the Criminal Tribes Act are clear evidence of the discriminatory approach taken towards the transgender community by criminalizing their way of living, including their

¹⁴ Bittu Hossain and Shruti Sharma, "Transgender Rights in India: A Critical Analysis", published in the International Journal of Humanities and Social Science Research, Volume 2, Issue 2, February 2014

clothing choices, which contributed to their stigmatization. The language used in these sections also indicates that the colonial rulers did not recognize transgenders as a separate identity. Punishments for violating these sections referred to Section 377 of the Indian Penal Code, which was partially repealed in 2018 but still exists in the Pakistan Penal Code. This discriminatory treatment against transgenders has caused deep-rooted societal hatred towards them in both India and Pakistan.

The impact of the CTA 1871 was not just limited to the North West Provinces now Punjab, Uttar Pradesh, Uttarakhand but rather its implications have affected all transgender individuals even after the colonial era. The post-independent societies of India and Pakistan have inherited the colonial mindset of sexual morality. This is evident in the insertion of a new clause in the Police Act of Karnataka in 2011¹⁵, which gave authorities the power to regulate eunuchs in that state. This new section was derived from the Hyderabad Eunuch Act of 1919, which was based on the CTA of 1871.

Legislation on transgender rights in Pakistan and India

After the partition in the year 1947, India adopted the Penal Code drafted by Lord Macauley as The Indian Penal Code and Pakistan adopted The Indian Penal Code with minor changes made into it and named it as the Pakistan Penal Code. In the year 1950, the Constitution of India came into force and the Part-III of the Constitution talked about the fundamental rights of a Citizen i.e., Equality before law (Article-14) and no discrimination to be made on grounds of sex, caste, religion or race (Article-15). While in Pakistan, the first draft of the Constitution was enforced in the year 1956, the country's Constitution operates under the framework of Shariat and it was an Islamic Constitution where Part-II of the Constitution talked about the fundamental rights. Particularly, Article 25 of the constitution guarantees equality of citizen and special laws made for protection of children and women.

Pakistan abolished the CTA in 1949 and India abolished it in 1952, after gaining independence from colonial rule. However, many other colonial laws, including the penal code, continue to be enforced. Furthermore, the discrimination and animosity against the transgender community continue to be prevalent in society. As a result, the community still encounters financial

¹⁵ The said section was declared derogatory by the Karnataka High Court in 2016 in the case of Karnataka Sexual Minorities Forum vs. State of Karnataka, W.P. 1397/2015, after this case the word 'eunuch' in the said Act was replaced with 'person'.

difficulties, abuse, and various challenges. Due to the lack of awareness and concern for the transgender community, most cases of violence and mistreatment against them are not reported to the authorities or documented by local police stations.

The census conducted in 2011 was the first to include an option for individuals to self-identify as "third gender" in addition to male and female. According to the 2011 census, there were a total of 4.9 lakh (490,000) individuals who identified as "other" gender, which includes transgender individuals, in India¹⁶ similarly according to the 2017 census report of Pakistan, there are total 10,418 transgender in the country.¹⁷ The census reports show very less numbers of trans visibility in comparison to the population of both the countries. On the contrary, transgender organizations and NGOs claims a significantly higher number but that is not supported by empirical or scientific studies.

In the year 2012, a group of transgender individuals, transgender rights activists and organizations advocating for transgender rights in India filed a petition in the Supreme Court of India for legalizing of their rights. The lead petitioner in the case was Laxmi Narayan Tripathy, a transgender rights activist and founder of the organization Astitva. Other petitioners included the organization National Hijra Welfare Society and the well-known transgender activist and dancer, Naina Singh.¹⁸ The outcome of the NALSA case was a landmark judgment by the Supreme Court of India that recognized the legal and constitutional rights of transgender persons in India and gave them the status as "Third Gender". The judgment was delivered on April 15, 2014, by a two-judge bench consisting of Justice K. S. Radhakrishnan and Justice A. K. Sikri.

The court declared that transgender individuals had the right to self-identification of their gender, which was to be treated as a "third gender", and were entitled to legal recognition of their gender identity. The court also directed the government to take measures to provide transgender persons with various rights, including the right to education, employment, and healthcare.¹⁹ In 2015, the Delhi High Court held in case of a transgender man that "A transgender [person's] sense or experience of gender is integral to their core personality and

¹⁶ <https://www.downtoearth.org.in/blog/governance/non-binary-genders-need-more-visibility-in-india-s-census-2021-78844>

¹⁷ Population Census (2017), "Pakistan bureau of statistics", available at: www.pbs.gov.pk/content/population-census

¹⁸ The Hindu that mentions the petitioners in the NALSA case:

<https://www.thehindu.com/news/national/the-many-petitioners-behind-the-nalsa-case/article5842714.ece>

¹⁹ National Legal Services Authority (NALSA) vs. Union of India and Ors., (2014) 5 SCC 438

sense of being. Insofar as I understand the law, everyone has a fundamental right to be recognized in their chosen gender.”²⁰

Similarly, in 2009, the transgender rights movement achieved a major breakthrough in Pakistan with the filing of a constitutional petition by a transgender activist Almas Bobby, represented by his lawyer Dr. Muhammad Aslam Khaki. The petition sought the recognition of the national identity of hijras as "eunuchs". In response, the then Chief Justice of Pakistan, Iftikhar Muhammad Chaudhary, along with two other members of the Supreme Court, issued a landmark judgment in favor of the petitioner, recognizing transgenders as the "third gender" on national identity cards.²¹ This decision also gave them the right to vote in general elections, allowing them to participate in the political process of the country. As a result, many transgenders contested in national elections in 2013 and 2018.

Both the Indian and Pakistani Supreme Courts have recognized the fundamental rights of transgender individuals. However, upon closer examination, it appears that while the Indian Supreme Court acknowledges the right to "self-determination" in terms of gender identification, the Pakistani Supreme Court's ruling does not explicitly address the right to self-identified gender.

Comparative study of the Transgender Act: India & Pakistan

Transgender Persons (Protection of Rights) Act 2019 vs. Transgender Persons (Protection of Rights) Act 2018

In November 2019, the Indian Parliament passed the Transgender Rights Bill, which comprised of 23 Sections under 9 Chapters. According to the Clause 2 (k) of the Bill, the term "transgender person" referred to as:

‘Transgender person’ means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural

²⁰ Gaurav Bhatia v. Government of NCT of Delhi, W.P.(C) No. 1701 of 2015 (Del. HC 2015)

²¹ Dr. Mohammad Aslam Khaki v. Federation of Pakistan and Others, PLD 2011 Lahore 690

identities as kinner, hijra, aravani²² and jogta²³.

Here it is worth noting that the initial version of the transgender Bill in Pakistan, called the "Transgender Persons (Protection of Rights) Bill, 2017," was a direct or word-for-word copy without any changes or modifications of the Indian legislation passed in 2019, it has 21 Sections in total under 7 chapters. However, due to the influential advocacy and lobbying by various NGOs, the draft was later revised, and the Transgender Persons (Protection of Rights) Act, 2018 was finally approved as Pakistan's first-ever 'law on gender'. Under the Pakistani legislation, Section 2 (n) of the Transgender Persons (Protection of Rights) Act 2018 brings out a similar but a bit wider definition of a 'Transgender Person' as present in the Indian legislation:

"Transgender person" is a person who is:

- intersex (khusra) with mixture of male and female genital features or congenital ambiguities;
- eunuch assigned male at birth, but undergoes genital excision or castration; or
- a transgender man, transgender woman, Khawaja Sera 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.

Apart from the minor difference in definition clauses of both the legislations, the issue of right of self-determination and self-perceived gender is the key difference between Indian and Pakistani transgender laws. Both India and Pakistan have taken important steps towards ensuring the rights and protections of transgender individuals through their respective legislation. Pakistan being an Islamic republic state adopted the 'so-called pro LGBT law', whereas India being a Democratic republic made its own efforts in making an Act for the protection of rights of Transgender community. Here it is also important to note that both the countries legislations were introduced via a Private Member Bill²⁴ in the Parliament of the respective country. While Pakistan's Transgender Persons (Protection of Rights) Act, 2018 has

²² <https://www.boldsky.com/yoga-spirituality/anecdotes/2015/tragic-story-of-aravan-origin-of-the-third-gender-060821.html>

²³ <https://thelawmatics.in/transgenders-in-india-history-of-community-types-and-laws-applicable-to-them/>

²⁴ The Bill in India was introduced in the Rajya Sabha by Dravida Munnetra Kazhagam (DMK) leader Tiruchi Siva in 2014 and in Pakistan it was introduced by PGA Member Hon. Syed Naveed Qamar, MP Pakistan Peoples Party (PPA).

been commended by some international organizations and activists, India's Transgender Persons (Protection of Rights) Act, 2019 has also been praised for its provisions. However, both laws have also faced equal criticism and scrutiny for their shortcomings and loopholes.

With regard to right of “self-perceived gender” Pakistani legislation under Chapter II of “Recognition of Identity.” states as:

Section 3: - Recognition of identity of transgender person:

1. A transgender person shall have a right to be recognized as per his or her self- perceived gender identity, as such, in accordance with the provisions of this Act.
2. A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to, NADRA.
3. Every transgender person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to let himself or herself registered according to self-perceived gender identity with NADRA on the CNIC, CRC, driving license and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000) or any other relevant laws.
4. A transgender person to whom CNIC has already been issued by NADRA shall be allowed to change the name and gender according to his or her self-perceived identity on the CNIC, CRC, driving license and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000).

Section 3(2) of the Pakistani Transgender law also referred as “law of gender”, which grants the right of self-perceived gender without any authentication or examination, is a significant provision. While some consider it a progressive move in Pakistan, others see it as an opportunity for the LGBT and Queer movements. Without proper medical or psychological examination, the right of self-perceived gender could have far-reaching implications in Pakistani society, especially as a Muslim majority country. This provision could also shift the focus of the transgender rights movement in Pakistan to include LGBT rights, which was not the primary subject of the legislation. The lack of checks and medical examinations required for gender recognition could result in anyone claiming to be a transman or transwoman for

personal gain. This could potentially harm the credibility of actual transgender individuals in society. It is noteworthy that the earlier draft of the Pakistani transgender bill included clauses requiring medical examination for gender recognition, which were later removed from the final law due to strong lobbying by certain LGBT and Queer NGOs.

On the other hand, the Indian Act (Transgender Persons Protection of Rights Act 2019) provides a very detailed and elaborated criteria of assessment of gender in Part III of the Act as:

Section 4: - (1) A transgender person shall have a right to be recognized as such, in accordance with the provisions of this Act.

(2) A person recognized as transgender under sub-section (1) shall have a right to self-perceived gender identity.

Section 5: - A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

Section 6: - (1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

Section 7: - (1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or

Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

A closer look into the Indian legislation suggests that although the Indian Bill has also acknowledged the right of self-perceived gender, it has also imposed certain checks to avoid misuse of this law for the person who is not a transgender. For this, the Indian Bill requires an application in the office of district magistrate along with a “certificate of identity” as proof through which the applicant can undergoes for a surgery in the prescribed manner.

The major intention behind the formation of both the legislations was to protect the Transgender persons from any sort of discrimination and or harassment and to provide them with their basic fundamental rights. Both the legislation provides a list of rights to be guaranteed to a transgender person in the country, like in Indian legislation Part- VI talks about ‘education’, ‘social security’ and ‘health’ of Transgender Persons. On the other hand, in the Pakistani’s legislations a bunch of rights are listed as ‘right to inherit’²⁵, ‘right to vote’²⁶, ‘right to health’²⁷, ‘right to education’²⁸, right to employment’²⁹, etc., under various sections. Also, in the Indian Act there is a mention of creation of National Council for Transgender Persons under Sec. 16 with providing its functions under Sec.17 of the Act, whereas there is no such reference of creation of any such body in the Pakistani Act.

²⁵ Section 7 of the Transgender Persons (Protection of Rights) Act, 2018

²⁶ Section 10 of the Transgender Persons (Protection of Rights) Act, 2018

²⁷ Section 12 of the Transgender Persons (Protection of Rights) Act, 2018

²⁸ Section 8 of the Transgender Persons (Protection of Rights) Act, 2018

²⁹ Section 9 of the Transgender Persons (Protection of Rights) Act, 2018

Talking the offences and punishments in reference of both the Acts, the Indian one provided a wider coverage under Sec. 18, i.e., Offences and penalties.—Whoever,— (a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government; (b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use; (c) forces or causes a transgender person to leave household, village or other place of residence; and (d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.

On the contrary, the Pakistani legislation has a limited scope in regards with punishment as provided under Sec. 17 Offences and Penalties- (1) Whoever, employs, compels or uses any transgender person for begging shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

Recent scenario in both the Countries

Recently on May 19th, 2023, the Federal Shariat Court of Islamabad declared that sections 2(f), 3, and 7 of the Transgender Act 2018, which pertain to gender identity, the right to self-perceived gender identity, and inheritance rights for transgender individuals, are not in accordance with their interpretation of Islamic principles. The Court deemed these sections as 'un-Islamic' and ordered their immediate cessation. Interestingly, during the announcement of the verdict, the Court speculated that the Act could potentially lead to instances of rape and sexual assault against women. They claimed that the Act may facilitate men gaining access to women's spaces by disguising themselves as transgender women. It is important to note that there is no publicly available evidence to support these claims of such incidents occurring in Pakistan.³⁰ This judgment opened up a whole lot of new debate in the nation as the judgment is regressive and demeaning to the community.

³⁰ <https://www.amnesty.org/en/latest/news/2023/05/pakistan-revocation-of-rights-of-transgender-and-gender-diverse-people-must-be-stopped/#:~:text=In%20a%20public%20statement%20released,human%20rights%20laws%20and%20standards> (Last Accessed on 05.06.2023)

On the other hand, in India the Courts are playing a vital role taking leaps and bounds to make a progressive society for everyone and protecting the rights of the transgenders. There are various judgments not only by the Supreme Court of India but also by different High Courts in India which paved way for better scenario for the transgender community in India, e.g., In *G. Nagalakshmi v. Director General of Police (Nangai II)*³¹, the Madras High Court held that the Petitioner had the right to her self-determined “sexual identity” under Article 19(1)(a). In *Atri Kar v. Union of India*³², the Calcutta High Court held that not having a gender column for transgender applicants is a violation of their fundamental rights. In *Anjali Guru Sanjana Jaan v. State of Maharashtra*³³, the Bombay High Court held that a trans woman can contest elections from wards reserved for women. In *Arun Kumar and Anr. v. Inspector of General Registration*³⁴, a marriage solemnised between a cis man and a transgender woman was upheld by the Madras High Court. The Court noted that a ‘bride’ can include any intersex/trans person who identifies as a woman. The Court added: “[t]he only consideration is how the person perceives herself.” These are just few judgments showing the progressive and liberal approach of the Indian Courts in protecting and promoting the rights of a minority group.

Thus, after comparison of the legislation of both the countries we can see that India is taking gradual steps in order to protect and promote the rights of transgenders through various judicial pronouncements’ and creating an environment of inclusion, whereas Pakistan after its recent changes in the legislation has made the Act more regressive and it lacked in protection of the minority rights.

Criticism of Both the Acts

1. Criticism of the Indian Act

The Transgender Persons (Protection of Rights) Act 2019 in India has faced criticism from human rights groups and transgender activists. One of the major criticisms is that it falls short of recognizing the transgender community's right to self-identification. The Act mandates a district-level screening committee to certify an individual's gender identity, which activists

³¹ *G. Nagalakshmi v. Director General of Police (Nangai II)* WP No. 15223 of 2014 (Mad).

³² *Atri Kar v. Union of India* 2017 SCC OnLine Cal 3196 [120]

³³ *Anjali Guru Sanjana Jaan v. State of Maharashtra* WP (Stamp) No 104 of 2021 (Bombay High Court) [122]

³⁴ *Arun Kumar and Anr. v. Inspector of General Registration* WP(MD)No.4125 of 2019 and WMP(MD)No.3220 of 2019.

argue is a violation of privacy and autonomy.

Additionally, the Act has been criticized for its vague language and lack of clarity on certain issues, including reservation policies, healthcare, and employment opportunities for transgender persons. Some activists have also pointed out that the Act does not address the issue of violence against transgender persons or provide adequate support and resources for their welfare.³⁵

2. Criticism of the Pakistani Act

The Pakistan Transgender Act has received some criticisms too for its vague definitions and lack of clear guidelines on implementation and with the recent changes in the legislation the Act has seen a downfall in protecting the dignity of the transgenders. Some critics have also raised concerns about the potential misuse of the self-perceived gender provision, which could be exploited by individuals for personal gain or to avoid legal consequences. Additionally, the lack of provisions for affirmative action and reservations in education and employment for transgender individuals has been a point of concern. There have also been criticisms of the insufficient penalties for violations of the law, which could result in the law being toothless in protecting the rights of transgender individuals. Finally, some critics have pointed out that the law does not address the root causes of violence and discrimination against transgender individuals in Pakistan, such as stigma, lack of access to education and healthcare, and poverty.³⁶

Conclusion

Through a comparative analysis, this research paper has highlighted the similarities and differences in the legal frameworks in India and Pakistan, revealing the need for a nuanced approach that takes into account the unique cultural and political contexts of each country. It is clear that both nations have taken important steps towards recognizing the human rights of transgender individuals, but there is still a long way to go to ensure that these rights are fully realized in practice.

³⁵ "India's new transgender rights law is a mixed bag, but a step forward" published by the Al Jazeera news agency on December 29, 2019.

³⁶ "Pakistan's Transgender Law: Progress or Peril?" by Arafat Mazhar, published on the Human Rights Watch website in June 2018.

In light of the findings presented in this paper, it is recommended that both India and Pakistan continue to prioritize the protection of transgender rights through sustained legal and social reform efforts. This includes addressing gaps and discrepancies in current legislation, as well as promoting greater awareness and acceptance of transgender individuals in society. Ultimately, the goal must be to ensure that all individuals, regardless of gender identity or expression, are able to live free from discrimination and enjoy full equality under the law. Only by working together can India, Pakistan, and other countries around the world create a more just and equitable future for all individuals, regardless of their gender identity or expression.