

TRANSGENDER PERSONS WELFARE POLICY



PUNJAB SOCIAL PROTECTION AUTHORITY
GOVERNMENT OF THE PUNJAB, PAKISTAN

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1. Introduction

Mostly known as Khwaja Sira, albeit with many pejorative variants for their personal and social identity, transgender persons have long been a vulnerable group in Pakistan. Unlike the narrow understanding of a transgender person in terms of biological anomalies, World Health Organization (WHO) defines this state of gender as:

“Transgender is an umbrella term for people whose gender identity and expression does not conform to the norms and expectations traditionally associated with the sex assigned to them at birth; it includes people who are transsexual, transgender or otherwise considered gender non-conforming”¹.

Government of Pakistan recently passed Transgender Persons (Protection of Rights) Act² in May 2018 to provide for protection of rights, relief and rehabilitation of transgender persons and other related matters. The definition of transgender persons given by this Act is consistent with the WHO definition. As per the Act, a “transgender person” can have any of the following characteristics:

- i. Intersex, 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 identity³ or gender expression⁴ differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.

According to this definition, any person who identifies emotionally or psychologically with the sex other than one’s biological or legal sex at birth, irrespective of any later biological change, would be classified as a transgender person.

Objective of this document: As in the case of many comparable countries, Transgender people in Pakistan face a range of personal, social, cultural, economic and psychological issues, often exposing them to a high risk of isolation and social exclusion. These vulnerabilities make them a key group for the attention of Social Protection policymakers in the country. This document aims to identify some of the causal and reinforcement factors that result in the social vulnerabilities of transgender people in Pakistan and stipulates future policy measures to address their condition.

Transgender Persons Welfare Policy outlines the Government’s understanding of the marginalization of transgender people and its ongoing efforts to reduce their problems and increase welfare. The policy especially aims to provide guiding principles and

¹ See: <http://www.who.int/hiv/topics/transgender/en/>

² Key features of Transgender Persons (Protection of Rights) Act are given in the Annex-A.

³ Defined in the act 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”.

⁴ Defined in the act as “a person’s presentation of his gender identity and the one that is perceived by others”.

priority areas in implementing various future programs for welfare and protection of rights of transgender persons. In this manner, it will complement the Transgender Persons (Protection of Rights) Act 2018. The policy development process leading to this policy, led by Punjab Social Protection Authority (PSPA), was consultative and evidence based. It started with a review of international practices in rights and welfare of transgender persons especially in comparable developing countries. This was followed by a review of the progress made for transgender persons' rights in Pakistan. The next step was to engage with a set of key stakeholders all across Pakistan including community representatives, government functionaries, academics, and civil society representatives. This consultative process culminated with a consultative Seminar in Supreme Court of Pakistan held on 09.08.2018 under the auspices of Law and Justice Commission of Pakistan. The concluding session of the event was chaired by Hon'ble Chief Justice of Pakistan, Mr. Justice Ijaz Nisar, whereas the earlier sessions were presided by former Judge of Supreme Court, Mr Justice (R) Khilji Arif Hussain. After extensive deliberations, a set of priority areas were identified and policy decisions in each of these areas were listed. This draft policy is now being shared with all stakeholders and any further feedback will again be incorporated. This final policy will be notified after undergoing this exercise.

This draft of the policy document discusses key objectives and instruments for the welfare of the transgender persons to be considered by the Government of Pakistan, federating units and NGOs and is organized as follows. The first few sections present theoretical perspectives related to transgender persons including their social place according to religious and cultural tradition in South Asia. Next, there is a discussion of key risks and vulnerabilities that transgender persons face in 21st century Pakistan. This is followed by a section on the policy environment in Pakistan, capturing the recent legal and institutional developments that impact issues related to the welfare of transgender persons. Section nine is a detailed presentation of the Transgender Persons Welfare Policy. It enunciates the objectives and principles that underlie the Policy and describes various instruments to address the problems of transgender persons.

Limitations: This policy concerns itself with the improvement of the lives of the low-income and vulnerable transgender persons, under the existing legal framework and as such has its two major limitations. First, the process for identification and registration of transgender people with the state is already provided under the guidance of the Act and instructions of Hon'ble Supreme Court of Pakistan and therefore this policy does not go in any of those areas of discussion. Secondly, the provisions and process related to the choice and change of gender and its implications for social, cultural, religious and economic aspects of life, such as the issues of life-partners, marriages, children, inheritance etc of transgender persons are also beyond the scope of this policy.

2. Theoretical Perspectives

For the purposes of this policy, it is important to distinguish between sex and gender. Sex is assigned at birth and refers to one's biological status as either male or female. It is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy. Gender is primarily a social construct. It refers to the roles, behaviors, activities, and attributes that a given society considers appropriate for its male and female members.

West and Zimmerman (1987) famously made the argument that gender is constructed by, and for, social interaction. According to Butler (1990), everyone reflects one's internal self through gender and thereby facilitates the social process. From this perspective, gender becomes a performance for which every person alters outward appearances to align with an internal sense of gender identity.

Gender identity is defined 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"⁵. While, gender expression is defined as "a person's presentation of his gender identity and the one that is perceived by others".

The term transsexual denotes individuals who desire to discard their biologic sex and to live (or actually lived) permanently in the social role of the opposite gender, and who want to undergo (or actually went through) sex reassignment.

In the widely used psychiatric classification system DSM-III, transsexualism first appeared as a diagnosis in 1980. However, in the most recent version of this system, DSMIV, the term "transsexualism" was abandoned. Instead, the term gender identity disorder (GID) was used for individuals who show a strong and persistent cross-gender identification and a persistent discomfort with their anatomical sex, or a sense of inappropriateness in the gender role of that sex (Cohen-Kettenis and Gooren, 1999).

Gender dysphoria encompasses transsexualism as well as other gender identity disorders and is often still used as a synonym for GID. Gender dysphoria is the term for distress resulting from conflicting gender identity and sex of assignment.

A new discourse in transgender studies is of Queer Theory. Lorber (1996) asked: "why, if we wish to treat women and men as equals, there needs to be two sex categories at all". This is the essence of Queer theory- a postmodern analysis framing the subversion and potential elimination of gender binary. Under this theory, sexual and gender categories are declared "inherently unstable and fluid" (Stein and Plummer, 1996).

Queer theory and social constructionism have been presented as two alternative theoretical perspectives on gender (Burdge, 2007). Burdge argues that transgender community is an at-risk population and that social workers need to target society's

⁵ Government of Pakistan (2018)

traditional gender dichotomy for change. This echoes McPhail (2004) and Wilchins (2004) who said that gender oppression cannot be eliminated by disregarding the intrinsic oppressiveness of the hierarchical gender dichotomy.

Various conditions that lead to atypical development of physical sex characteristics are collectively referred to as intersex conditions. An intersex is any individual who has an anatomic characteristic of both sexes or whose external genitalia are inappropriate for either the normal male or female.

The terms hermaphrodite and pseudohermaphrodite have been used to describe types of intersex persons. A hermaphrodite is a person who has both testicular and ovarian tissues. A pseudohermaphrodite is a person who has a mixture of male or female anatomy but has only testes or ovaries. Chromosomal abnormalities explain these types of anatomies. Dreger, et al (2005) have argued to discard the usage of hermaphrodite and pseudohermaphrodite and adopt an umbrella term "disorders of sexual differentiation" (DSD) also called as disorders of sexual development by other authors.

In the literature, differences between other transgender persons and intersex persons have been noted (see, for example, Costello, 2016). Costello informs that many intersex people are completely in the closet about their intersex status and do not interact knowingly with other persons of their type. According to Costello, only a few of the intersex people employ the identity framework (they, rather, employ the disorder framework) in contrast to other transgender persons who need to solidify a transgender identity in for their self-actualization.

On a related definitional issue, a eunuch is a male who undergoes genital excision or castration and is accordingly recognized as a transgender person according to the 'Transgender Persons (Protection of Rights) Act 2018'.

It is important to note that the gender concepts could vary region to region. In an influential report, Khan and Khilji (2002) found a sexual identity called *zenana* which was involved in male to male sexual interaction. They write, "At the same time, male to male sexual behaviours in the country do not appear to "fit" into a heterosexual/homosexual framework, of fixed sexual identities leading to fixed and oppositional behaviours based on same-sex and gender versus opposite sex and gender patterns. Rather, what appears to exist to a large extent is that of female gender identification by the penetrated or "passive" partner who have (to a significant extent) a socialised, gendered, sexual identity known as *zenana*".

3. Concept of Transgender in Islam

The spirituality of transgender is considered as authentic as that of men and women. According to Khan (2017), the Prophet Muhammad (peace be upon him) treated transgender with respect, prohibited their ill-treatment, and praised spiritually-inclined transgender persons⁶.

⁶ Khan, Liaquat Ali. 2017. Transgender Dignity in Islam. Huffington Post. Available from:

The Qur'an is clear on genetic determinations by pointing out that Allah is the "One who shapes you in the wombs as He pleases." (Qur'an 3:6). According to the Islamic outlook of beliefs, nothing takes place except with a divine concurrence. It is therefore a strong pillar of contemporary Muslim faith that all human forms, shapes, races, physical traits and individual attributes are elements of a bigger order of creation, which need to be embraced and respected. This implies that every human being — male, female, or transgender—has the equal place in Islam and there is no ground for discrimination against anyone on the basis of their gender characteristics.

The Qur'an does not mention transgender persons explicitly. At one place, addressing the believing women, Allah allows women to reveal their adornment to, among others, "such men as attend them, not having sexual desire".⁷ Some exegetes have included those intersex persons who have no desire for women in this category and have argued that they can work as household servants.⁸

In Islamic literature the term *mukhannath* has been used for mostly for effeminate people (as well as for hermaphrodite) and *khuntha* for hermaphrodite (Rowson, 1991).

Recognizing them as members with equal rights in the household, Islamic jurisprudence not only provides for the share of transgender people in inheritance but stipulates equity and fairness. Tafsir Saadi by As-Sa'adi (2003) informs that a *mukhannath* with male characteristics pre-dominating will get a male's share, a *mukhannath* with female characteristics pre-dominating will get a female's share, while for a *mukhannath* with ambiguous characteristics (called a *mukhannath-mushkil*), a middle ground will be found.

Marmon (1995) reveals the presence of a sacred society of eunuchs, established at the tomb of the Prophet Muhammad (PBUH) at some time in the mid-twelfth century. Similar eunuch societies appeared at tombs elsewhere (including at the Ka'ba in Mecca) and have endured as active organizations well into the modern times (Marmon, 1995).

4. History of Transgender Persons in South Asia

The social position of transgender people has seen its ups and downs in the history of Indian Sub-continent. In Mughal era, castrated men, known as *Khawja saras* were employed as security officials in-charge of female quarters at the palace and elsewhere and were given posts of power and trust. Even before that, in the fourteenth century, Malik Kafur, a eunuch was a trusted courtier and an army general of the Delhi Sultanate ruler, Alauddin Khalji. However, under the British rule, circumstances for the transgender people changed. The British passed the 1871 Criminal Tribes Act and

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

⁷ The Quran 24:31. Translation taken from Arberry (1955).

⁸ For example, see Panipati (2002).

included transgender people (hijras) as a criminal tribe. As a result, transgender people moved to the fringes of social order and started to face gradual isolation and economic exclusion. Instances of external shaming led to humiliation and social stigma. Increasingly, they had to resort to occupations as dancing and theatrical performances at various occasions, such as the child birth (mostly boys) for collecting *wadhais* (tips), acting as entertainers, panhandlers or hustlers etc.⁹

After the independence of Pakistan in 1947, although the Criminal Tribes Act was repealed, the state or society undertook little affirmative action to reverse the loss of identity caused to transgender people in the past. As a result, the stigma of delinquency, slack scruples and menial status continued to haunt them over time and still goes on largely unrestrained.

Different terms exist in South Asia for eunuchs, intersex and transgender persons. However, the term *Khwaja Sara* is preferred by the transgender community as many of the other terms are derogatory.

5. Population of Transgender Persons

Because of the reasons of neglect, exclusion and stigma, statistically credible data collection in respect of this group has always been an arduous task. On the one hand, there have seldom been any serious efforts to gather information pertaining to this group and on the other, an anxious reluctance on the part of the community to reveal themselves to statistical authorities. It is no wonder that the population of transgender people as per the Census 2017 is as under-reported as exhibited in the table below¹⁰.

| Residence Status | Administrative Unit | | | | | | |
|------------------|---------------------|-----|------|--------|------|-------------|-----------|
| | Pakistan | KPK | FATA | Punjab | Sind | Balochistan | Islamabad |
| Rural | 2767 | 223 | 27 | 2124 | 301 | 40 | 52 |
| Urban | 7651 | 690 | 0 | 4585 | 2226 | 69 | 81 |
| Total | 10418 | 913 | 27 | 6709 | 2527 | 109 | 133 |

The reasons for this apparent under-reporting can range for the construct of questionnaire to the socio-psychological constructs. UNFPA's monitoring report on the Census mentions that the "Enumerators seldom asked questions on disability and transgender. In many instances, the enumerators inferred the response on disability and transgender because they felt it was culturally sensitive (or offensive) to ask the head of household such questions".¹¹ Moreover, the referred to transgender category here is apparently intersex as the questions of this sort were asked in the census: "I am sure you

⁹ Khan, Liaquat Ali. 2017. Transgender Dignity in Islam. Huffington Post. Available from: https://www.huffingtonpost.com/liaquat-ali-khan/transgender-dignity-in-is_b_10089712.html

¹⁰ Taken from http://www.statistics.gov.pk/assets/publications/Population_Results.pdf.

¹¹ Available at:

<http://www.statistics.gov.pk/assets/publications/Pakistan%20Paopulation%20and%20Housing%20Census-2017%20National%20Report.pdf>

don't have a she-male in your house?"¹² Understandably, where questions were not a problem, the psychological awkwardness associated with the admission of being a transgender inhibited the documentation of actual numbers. As a result, only 10418 transgender people have been reported nation-wide in the latest census figures. Understandably, when such statistics are not adequately captured in the official estimates of Pakistan, any policy being contemplated for the welfare of these people need to triangulate other possible sources of information or at least estimates available on the number and circumstances of this community.

According to recent research studies conducted on transgenderism, approximately one out of 50 children are identified with a transgender tendency/ potential.¹³ In other words, about 2 percent population of Pakistan is influenced by transgenderism. Region-wise population across Pakistan could not be found but as per one news article,¹⁴ there were around 45,000 transgender people in Khyber Pakhtunkhwa only in 2016. Another news article in 2009, quoted transgender community leaders' estimate of 300,000 transgender persons in Pakistan.¹⁵ Although these number cannot be relied upon for an objective policy process, they do reflect the glimpses of ongoing public discourse and educated estimates in this regard.

One of the reasons why such estimates cannot be dismissed as exaggerated is the scale of the prevalence of transgenderism in some other countries. For instance, while the federal data sources providing population estimates in the United States do not include direct questions about sexual orientation or gender identity, Gates (2011), by averaging results from the surveys in Massachusetts and California, derives an estimate for the transgender population in USA as 0.3 percent. If the same prevalence is used for Pakistan, the estimated population of transgender persons will come to around 0.6 million people¹⁶. Arguably, United States' numbers, could be higher than Pakistan's given the contrasting nature of the two societies vis-à-vis freedom of gender expression. Nonetheless, US numbers still help benchmark a ballpark threshold, if not to arrive at a realistic estimate of transgender persons in Pakistan, at least to be certain that their actual number is significantly higher than the one reported in 2017 national census.

6. Key Challenges that Require a Transgender Persons Policy

A review of the existing literature and recent empirical interactions with selected representatives of transgender community reveal following issues as highlights of their circumstances in Pakistan:

- Most people in Pakistan do not consider transgender persons as an integral or

¹² ibid

¹³ <http://www.newspakistan.tv/transgender-in-pakistan-by-mahwish-akhtar-jinnah-university-for-women/>

¹⁴ <http://www.dawn.com/news/1264944/newspaper/newspaper/newspaper/column>

¹⁵ <https://in.reuters.com/article/us-pakistan-transvestites/pakistans-transvestites-to-get-distinct-gender-idINTRE5BM2BX20091223>

¹⁶ Pakistan's population is 207.7 million as per Census 2007.

acceptable part of their community. Massive rejections are faced by transgender persons in almost all the parts of Pakistan. They are usually not encouraged to live amongst regular neighborhoods. As a result, they are often constrained to establish their own settlements outside of regular communities.

- Almost 30% of transgender people have attended schools up to primary level, 23% to Secondary and 7% percent to Higher Secondary or College level. The remaining 40% never went to school.¹⁷
- Even those who persevere long enough to attain the College-level education have to struggle to find decent paid work. Consequently, many of these individuals still do not have other options but to make their living by singing and dancing alongside their less educated gender-mates.
- Many members of the transgender community, commonly viewed as objects for the pleasure of others, are forced by the circumstances to make their living by prostitution.
- Abusive treatment by law enforcement personnel is a common complaint by the members of transgender community.
- Public humiliation, derision, ridicule, marginalization and exclusion. This behaviour is not only limited to the street public but is also experienced in government offices, hospitals, schools etc.
- Trans Action Alliance/Blue Veins have documented 46 killings of transgender persons and 300 violent attacks on them across KP from January 2015 to July 2016. In Punjab, the Khwaja Sira Society documented 70 instances of domestic abuse in 2015.
- Vision's mapping study found that an overwhelming majority of Transgender people; i.e. 82% had suffered sexual abuse in their childhood.
- Currently, there is no government aid or support system to help these individuals live a normal life. In fact, government institutions, police and other governing bodies are known to harass these individuals.
- The lack of social or state support at the time of need is alarming. In case of any criminal victimization or sexual harassment, these individuals get little help/support from either the broader community or government institutions.
- A derogatory word *khusra* is in active currency to denigrate the personality of transgender persons. Friends might tease a feminine-looking friend as a *khusra*. Even an incompetent public figure can be called a *khusra*. In both India and Pakistan, the word *khusra* is associated with impotence, incompetence and powerlessness.
- In Pakistan, the people have forgotten the spiritual role that the transgender persons played in the native history. Transgender persons are ridiculed and insulted. Popular TV shows can unwittingly or willfully make cruel jokes against transgender community.

¹⁷ AAWAZ Programme. 2016. The Transgender Community in Pakistan: Issues in Access to Public Services. Available from <https://aawaz.org.pk/cms/lib/downloadfiles/1482822154Final%20Transgender%20Report.pdf>.

7. Government's Efforts for Welfare of Transgender Persons

Government efforts for the welfare of transgender persons have been, until recently, limited to their identification and registration. In its 2009 ruling, Supreme Court passed the order of including the category of 'third gender' in the national identity card form. Transgender persons in Pakistan were awarded the right to register as a third gender on their Computerized National Identity Cards (CNICs) in 2012 and, in 2013 elections, a limited number of transgender persons in Pakistan casted their vote using the new CNIC.

In June 2018, following a visit of Fountain House Lahore, Hon'ble Chief Justice of Pakistan, Mr. Justice Saqib Nisar took suo moto notice of the plight of the transgender community and directed the government to address the lingering issue of registration of the transgender persons. It was noted that while Akhuwat had taken lead in registering transgender people with NADRA, followed by provision of monthly stipends and interest-free loans, no similar welfare initiatives were underway either by the provincial or federal governments. Under the directions of the Hon'ble Supreme Court, a Provincial Monitoring Committee was constituted to provide CNICs to transgender people. District Officers of Social Welfare Department Punjab ran a social mobilization drive to ensure maximum reach-out to the transgender community. As of the writing of this document, these officers are liaising with Assistant Directors of National Database and Registration Authority (NADRA) at the local level for prompt registration of transgender persons. Besides individual registrations, '*Gurus*' and their '*Chailas*' are also being registered against each other for capturing information on their social structures. As of 25th August 2018, the number of transgender persons registered with Social Welfare Department Punjab have exceeded 3200. Out of these, NADRA has issued CNIC to a majority of people, whereas the rest of the cases are under process at different stages and are expected to be completed in near future.

Government of Pakistan has recently passed Transgender Persons (Protection of Rights) Act in May 2018 to provide for protection, relief and rehabilitation of rights of the transgender persons and their welfare and other related matters. Besides giving the transgender persons the right to be recognized as per one's gender identity or gender expression, it also specifies inheritance shares, prohibits discrimination and harassment and requires the government to establish protection centers, provide medical facilities, institute mechanisms for awareness; and support livelihood.

8. Policy Measures for Assisting and Protecting Transgender People

Going forward, it is important to devise a carefully thought-out mechanism to address the various vulnerabilities of transgender community mentioned in the previous sections and suggest policy measures that can address these issues. Accordingly, a future roadmap document for protecting and assisting transgender people is as follows:

8.1. Vision, Mission and Strategic Objectives

Vision

To create a society where persons of every gender have equal social status, opportunities for socio-economic inclusion and mutual respect for one another.

Mission

To ensure that all transgender persons have recognition in accordance with their gender identity and expression, their rights protected by the state, a secure and respectable livelihood, and equal access to public services and labor market.

Strategic Objectives

The transgender persons policy aims to ameliorate the suffering of transgender persons in multiple dimensions of life. Its main objectives are as follows:

- 1) Equity: To protect transgender persons against destitution by ensuring a minimum standard of living and access to basic services;
- 2) Resilience: To insure transgender persons against the negative consequences of shocks and risks along the lifecycle, such as the health shocks;
- 3) Opportunity: To promote human capital accumulation and access to productive assets and income generating activities alongside other two genders;
- 4) Gender Equality: To raise awareness in order to empower transgender persons and provide them opportunities to exercise gender equality; and
- 5) Social Inclusion: To mainstream transgender persons, who are typically excluded from public services and programs, through enforcement of rights, providing means of livelihood and inculcating mutual respect among all genders.

8.2. Principles of SP Program Design and Implementation

In prioritizing the areas of actions and designing and implementing SP programs, the following principles will form the ground rules for action. Research on gender and transgender issues by local and international institutions will be used while following these principles.

A Systems Approach: Rather than developing individual programs for the benefit of transgender people by various departments and agencies, a comprehensive system of support will be developed. A systems approach promotes a balanced development and utilization of diverse policy instruments to achieve the intertwined objectives discussed above. It will involve improving integration and harmonization of fragmented programs and implementation efficiency. The systems approach will require an extensive use of technology to establish cohesive administrative systems including a common payment

platform for providing cash assistance to transgender people. Similarly, it will ensure the development of a comprehensive Management Information System (MIS) so that multiple programs communicate towards one system. Such an approach will also allow more dynamic updating of records and thus strengthen systems of monitoring and evaluation regarding various interventions. In addition, it emphasizes close coordination of the federal government with the provincial and local governments (e.g. sharing of beneficiary registries) so that synergies could be created without duplication.

Advocacy: Often transgender persons are unable to make their voices heard. One principle of transgender initiatives will be to ensure that transgender persons are able to express their opinions and have their views considered in the development of policies and programs for their welfare. To create an enabling environment, government will support out-of-box initiatives such as the street theatres experimented by VISION organization in order to raise awareness of issues related to transgender persons and proposed solutions. Partnerships with Civil Society Organizations and NGOs need to be encouraged to achieve this end. Similarly, drives and campaigns such as for the registration, recognition, equality, full participation and social inclusion of transgender people are required to be run on a regular basis.

Community's Participation: There is a need to ensure that broader communities are also involved in efforts related to the welfare of transgender people. Alongside running awareness, mobilization, and information campaigns for transgender people, it needs to be ensured that their families, parents, neighbors and other social networks are also on board regarding the various programs being run in this regard. This will ensure an inclusive policymaking and delivery process for the welfare of transgender people and will make the welfare programs responsive to the needs of the stakeholders. Transgender people and their families will be more willing to take up the services and benefits offered to them that are made with their consultation. Non-governmental organizations and civil society groups can play a major role in engaging transgender communities with this partnership effort. The Government will leverage existing voluntary-sector networks, wherever possible, to reduce costs and to increase effectiveness of its advocacy, awareness and social mobilization initiatives. Grievance and redress systems will also be built in with key initiatives and programs to let this partnership permeate every stage of program cycle.

Benefit Adequacy: It is expected that the initiatives for transgender persons will contribute to poverty reduction or prevention in the transgender community, particularly prioritizing the reduction of extreme and chronic poverty. To achieve that end, ensuring the adequacy of benefits within the budget constraint is also important. However, the coverage and benefits of a program under fiscal affordability pose a significant trade-off; for a fixed budget, a greater benefit amount means smaller coverage and vice versa. Therefore, careful assessments on the program design and the impacts of changing the design features on the coverage, poverty, and fiscal space, among others, will be conducted on a regular basis. The inherent tension between adequacy and affordability can be in part addressed through a provision of non-monetary benefits. For

instance, transformative legal measures (e.g. legislation for protection of rights of transgender persons) or labour regulations for adequate benefits and worker protection (e.g. workplace health and safety measures) can be considered.

Community's Reciprocity: While providing social assistance to transgender people, the principle of reciprocity needs to be emphasized. It means that when the government delivers necessary services and benefits under social protection programs to the transgender persons, they also abide by such rules and conditionalities which are aimed at their personal and human development potential. This mutual respect for the terms of co-responsibility will lead to the optimal behavioral changes.

Promoting Self-sufficiency: Successful social policies and programs promote self-sufficiency among beneficiaries, rather than a long-term reliance on the programs. This contributes to sustainability of such initiatives and programs as new beneficiaries can be added when former ones exit. Where feasible, the eligibility rules would be designed for graduation and exit from each program. More importantly, measures to help beneficiaries graduate out of poverty and marginalization, and to escape from intergenerational transmissions of poverty will be incorporated in the overall welfare regime for transgender people.

Political Agency: For formulation of policies beneficial to transgender persons it is necessary that transgender persons have political freedom and could freely participate in political activities including contesting elections and voting as per their will. Such programs will be initiated that promote political agency of the transgender persons.

8.3. Formulation of the Transgender Persons Policy

The process of formulation of transgender policy began with the Honorable Chief Justice of Pakistan Mr Saqib Nisar's hearing of a Human Right Case (Case No. 32005-P/2018) related to a matter regarding issuance of CNIC in favour of transgender persons. It was during the proceedings of this case that he issued directions to formulate a comprehensive policy for the welfare, rehabilitation and mainstreaming of transgender community in the society without any exclusion or stigma.

Complying with Chief Justice's directions, PSPA started working on the Transgender Persons Welfare Policy. Besides literature review, multiple meetings with transgender community, government officials and representatives of the non-government were conducted to get first-hand knowledge of the situation of the transgender persons. The final step in this process was a seminar on rights and welfare of transgender people on 9th August 2018 in Supreme Court of Pakistan under the aegis of Law and Justice Commission of Pakistan in collaboration with PSPA. The proceedings of the seminar were chaired by Honorable Justice (R) Khilji Arif Hussain whereas Honorable Chief Justice of Pakistan graced the occasion by chairing concluding session of the seminar. Representatives from judiciary, relevant government departments, the civil society &

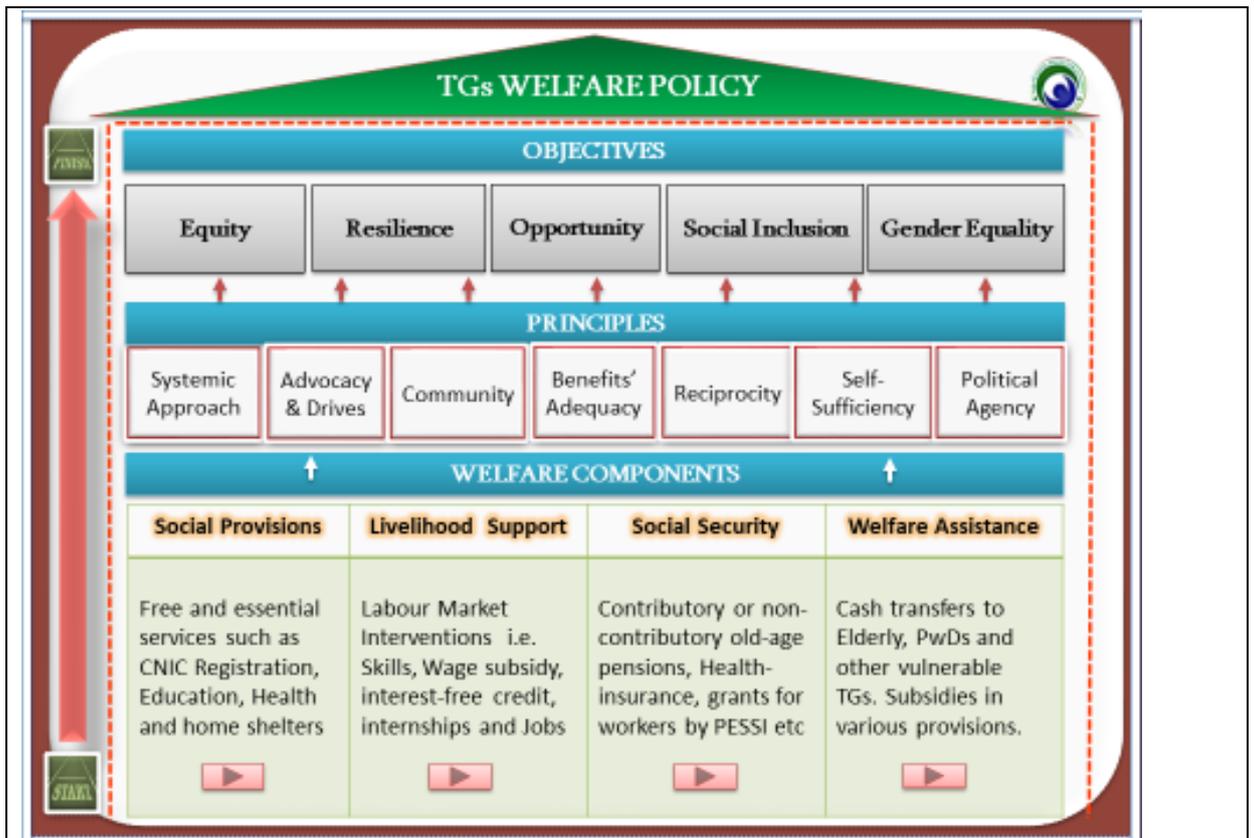
transgender community attended the seminar to share with each other the challenges, opportunities, current initiatives and reform options regarding transgender persons.

In the seminar, Chief Justice of Pakistan stressed the need to end social exclusion of the transgender community. He stated that the right to live a dignified life and be treated equally is fundamental to natural justice and provided in the Constitution of Islamic Republic of Pakistan. He urged the federal and provincial governments to formulate a policy for the welfare of these people. He appreciated the efforts for registration of transgender persons in the Punjab and instructed the rest of the provinces to register these persons following the model adopted in the Punjab.

In concluding session, Dr. Sohail Anwar, Chief Executive Officer, Punjab Social Protection Authority, shared the recommendations formulated during the seminar and explained the outline of the policy for the welfare and protection of rights of the transgender community. Key suggestions presented in the seminar for alleviating the suffering of the transgender community were related to advocacy for resilience, equity and social inclusion. Specific welfare proposals included the provision of health services and health cards, better treatment by the police, accelerated and non-formal education for transgender persons, skills provisions and loans, assistance for persons with disabilities and senior citizens, provision of shelters and housing, job quota, awareness-raising, and need for provincial legislation.

The slides from the concluding presentation are available in the Exhibit No. 1 below. The Chief Justice of Pakistan appreciated the policy framework and asked the relevant authorities to publish the recommendations for feedback and comments.

Exhibit No. 1 Outline of TGs Welfare Policy



| LIVELIHOOD SUPPORT | |
|---|---|
| AGENCIES | ROLES AND SCOPE OF ACTIVITY |
| <p>NAVTEC</p> <p>PNYP</p> <p>TEVTA</p> <p>PVTC</p> <p>PSIC</p> <p>Labour Dept.</p> <p>Social Welfare.</p> <p>Election Comm.</p> <p>BISP</p> | <p>SKILLS & WORK :</p> <ul style="list-style-type: none"> ➤ Free skill development courses ➤ Scholarships and Stipends ➤ Support in Job search ➤ Community Development Programs <p>INTREST-FREE LOANS (AKHUWAT & PSPA):</p> <ul style="list-style-type: none"> ➤ Self-Employment Scheme ➤ Entrepreneurship Support <p>WAGESUBSIDIES (LABOUR / SWD DEPARTMENT):</p> <ul style="list-style-type: none"> ➤ Wage Subsidies/Employment Incentives <p>JOBS (EDUCATION DEPARTMENT):</p> <p>Hiring of Transgender Teachers for Transgender Schools</p> <p>INTEREST FREE LOANS (AKHUWAT, PSPA)</p> <ul style="list-style-type: none"> ➤ Interest free loans & Entrepreneurs Support |

SOCIAL SECURITY



| AGENCIES | ROLES AND SCOPE OF ACTIVITY |
|--|--|
| <p>Labour Depts..</p> <p>EOBI</p> <p>Finance Depts..</p> <p>PM National Health Program</p> <p>Workers Welfare Boards</p> <p>Social Welfare Depts..</p> | <p>Contributory Pensions (Labour Depts, EOBI, PESSI):</p> <ul style="list-style-type: none"> ➤ Contribution of Employer at a higher rate ➤ Fewer Years for Eligibility ➤ Invalidity Pensions <p>Non-Contributory Pensions (Akhawat, PSPA, SWDs):</p> <ul style="list-style-type: none"> ➤ Premium in the form of time and behaviour <p>Health Insurance (PM National Health Programme, EOBI):</p> <ul style="list-style-type: none"> ➤ Health Insurance through Sehat Cards <p>Hardship Grants for Workers (Workers Welfare Board):</p> <ul style="list-style-type: none"> ➤ Death /Funeral Grants, Disability Grants <p>Employment Insurance (SWDs, EOBI):</p> <ul style="list-style-type: none"> ➤ Unemployment Allowance for documented workers |



SOCIAL PROVISIONS



| AGENCIES | ROLES AND SCOPE OF ACTIVITY |
|--|---|
| <p>NADRA</p> <p>Education Dept.</p> <p>PM Youth Program</p> <p>Health Dept.</p> <p>Local Govt. Dept</p> <p>BISP</p> <p>Social Welfare Dept</p> | <p>NADRA: Free Registration and Issuance of CNIC.</p> <p>Police: Behavioral change, Safety and Welfare (e.g. Driving Classes)</p> <p>Child Protection Bureau: Extending services to transgender children</p> <p>Local Govt. Department: Birth Certificates (appropriate documentation)</p> <p>SED: Ensuring stigma-free Education Specialized vs Mainstreaming</p> <p>HED: Reserved Seats in Professional Colleges and scholarships</p> <p>PMYP: Fee Reimbursement for higher education</p> <p>Health Department: Separate Wards where possible. Health Screening.</p> <ul style="list-style-type: none"> ➤ Immunization of children and Awareness for controlling AIDS/HIV <p>Social Welfare Department:</p> <ul style="list-style-type: none"> ➤ Establishing community centers, Shelters and Care Centres ➤ Rehabilitation services for drug abusers and Panhandlers |



| WELFARE ASSISTANCE | | | | | | | | | |
|---|---|----------------------|--------------|-------------------------|--------------------|---------------------|------------------------|-----------------------|---------------------------|
| AGENCIES | ROLES AND SCOPE OF ACTIVITY | | | | | | | | |
| AKHUWAT BISP PSPA Zakat & Usher Depts. Social Welfare Depts. Transport Dept. Agriculture Dept. Housing Dept. | <p>UCTs (Unconditional Cash Transfers)</p> <ul style="list-style-type: none"> ➤ Akhuwat: Has started to give Rs. 1250 PM & Food Basket ➤ BISP: Eligibility agreed for Transgender Persons of 18 yrs + ➤ BISP: Data of 1359 transgender in 14 districts of Pakistan. ➤ PSPA: Khidmat Card for TGs with disability and over 50 ➤ Zakat: Guzara Allowance Priority ➤ SWDs: Various Baitulmal-funded and other initiatives. <p>CCTs (Conditional Cash Transfers)</p> <ul style="list-style-type: none"> ➤ Inclusion of Transgender Children in WeT ➤ CCT for immunization of Transgender children <p>SUBSIDIES</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Transport Department</td> <td>Travel Cards</td> </tr> <tr> <td>Agriculture Department:</td> <td>Agriculture inputs</td> </tr> <tr> <td>Housing Department:</td> <td>Low cost housing units</td> </tr> <tr> <td>Livestock Department:</td> <td>Subsidized Asset Transfer</td> </tr> </table> | Transport Department | Travel Cards | Agriculture Department: | Agriculture inputs | Housing Department: | Low cost housing units | Livestock Department: | Subsidized Asset Transfer |
| Transport Department | Travel Cards | | | | | | | | |
| Agriculture Department: | Agriculture inputs | | | | | | | | |
| Housing Department: | Low cost housing units | | | | | | | | |
| Livestock Department: | Subsidized Asset Transfer | | | | | | | | |

8.4. Components of Transgender Persons Welfare Policy

This section describes specific welfare instruments and programs that the Government prioritizes. Transgender Persons Welfare Policy will contribute to the overall social welfare of the transgender persons including their identification, health, education skills provisions, employment, old-age pensions etc. For this purpose, various policy instruments will be used to achieve the five objectives described above. Table-1 presents a taxonomy of the programs and instruments that are part of this policy. The table also indicates potential implementers of these programs.

Table 1: Social Welfare Instruments and their Application to Transgender Persons

| Social Welfare Program Classification | Instruments | Prospective Agencies for Implementation |
|--|---|--|
| Social Provisions | Free and essential services such as CNIC Registration, Education, Health and home shelters and protection of rights | NADRA, Education Departments, PM Youth Program, Health Departments, Local Government Departments, BISP, Social Welfare Departments |

| | | |
|---------------------------|--|---|
| Livelihood Support | Labour market interventions i.e. Skills, interest-free credit, internships and jobs | NAVTEC, PMYP, TEVTA PVTC, PSIC, Labour Departments, Social Welfare Departments, Election Commission, BISP |
| Social Security | Contributory or non-contributory old-age pensions, Health- insurance, grants for workers by PESSI etc. | Labour Departments, EOBI, Finance Departments, PM National Health Program, Workers Welfare Board, Social Welfare Departments |
| Welfare Assistance | Cash transfers to Elderly, People with disabilities and other vulnerable TGs. | BISP, Akhuwat, PSPA, Zakat & Usher Departments, Social Welfare Departments, Transport Departments, Agriculture Departments, Housing Departments |

8.4.1. Social Provisions

Under Social Provisions, measures will be undertaken to ensure the rights of transgender persons are not violated, they have access to key public services such as education, health and housing etc. and society is transformed through awareness-raising for acceptance rather than exclusion of transgender persons. Details of key interventions under this thematic area are provided below.

8.4.1.1. Rights of Transgender Persons

The Pakistan Constitution does not explicitly make mention of sexual orientation or gender identity. In 2009, Supreme Court of Pakistan declared that the transgender community is equally entitled to rights guaranteed in the Constitution to all citizens, including the right of inheritance after the death of parents, job opportunities, free education and health care. Recently passed Transgender Persons (Protection of Rights) Act 2018 has also declared rights guaranteed in the constitution such as fundamental rights to be applicable to transgender persons as well (see Annex-A for a charter of rights of transgender persons as per Transgender Persons (Protection of Rights) Act).

Despite these rulings, a lot of room is left to create equal opportunities for the transgender persons. The government shall make utmost effort to ensure these rights are provided. A special nation level committee will be formed to oversee the enforcement of rights of transgender persons. Transgender Persons (Protection of Rights) Act 2018 will be amended to include an implementing agency for law enforcement regarding transgender persons.

8.4.1.2. Identification

The current definition of transgender in the act considers anyone whose gender identity or gender expression do not conform to that associated with the sex assigned at the time of their birth. As this definition does not link being transgender to biological characteristics, this may have its peculiar implications in our societal context.

In India, the definition adopted by the Transgender Persons (Protection of Rights) Bill, 2016 is as follows:

“Transgender person means a person who is:
(A) neither wholly female nor wholly male; or
(B) a combination of female or male; or
(C) neither female nor male;
and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.”¹⁸

Accordingly, in the context of our society, while for the purposes of gender identity or expression, anyone can exercise the choice provided to them by the Act, for the matters where some financial benefit is involved and for marriages, there might arise a need for further filters to establish transgender status of a person. Additionally, mingling with females in female-only environment (educational institutions, health facilities, public facilities, etc.) may also become subject to some scrutiny. However, the final opinion on these matters is left to a separate legal assessment and advice.

8.4.1.3. Registration

Many problems, such as difficulties in reaching out to the hidden transgender communities and mobilizing them to NADRA established registration centres, still slow-down the registration of transgender persons.

Under this policy, transgender persons will be registered at a faster pace. The resources of relevant bodies (NADRA, SWDs and provincial monitoring committees) will be strengthened and their procedures simplified for this purpose. NADRA will continue to provide free registration and issuance of CNIC to all transgender applicants.

8.4.1.4. Social and Public Services

One of the main reasons behind the plight of transgender persons is that they are excluded from many public services. In order to ensure a decent standard of living, access

¹⁸ http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/210_2016_LS_Eng.pdf

of transgender people to social services needs to be improved. This policy aims to ensure that the needs of transgender persons pertaining to basic services of life are addressed. For this purpose, following actions will be undertaken:

- Housing:

Social exclusion of transgender persons means they have to take refuge in settlements that are secluded from common public. Due to lack of resources, such residences are in often in shabby condition unfit for a dignified life. In order to this sorry situation, following measures will be undertaken:

- Transgender shelters will gradually be built in every district where homeless transgender persons are able to live with dignity.
- Low-cost housing units will also be built over the coming years by Housing Departments for transgender persons so that they do not have to live in congested, unclean places where they normally have to live.

- Education

Abdullah et al (2012) have stated that a lack of occupational and educational opportunities has pushed Khwaja Sira in Pakistan towards entering the risky or contentious businesses. Thus, it becomes imperative to ensure that transgender persons obtain adequate general and technical education. Following measures will be undertaken in this regard:

- Transgender education schools and vocational institutes will be established for providing stigma-free education. Steps will be undertaken to enhance mainstreaming of transgender children in the regular stream of schools as well. Such mainstreaming will pave the way for inclusion of transgender persons in the general society.
- Transgender teachers would be trained for teaching to their community. This will result in employment opportunities for educated transgender persons as well as better student-teacher rapport. Regular teachers will also get training to teach transgender persons.
- To break the shackles of resource constraints for speedy improvement in the lives of transgender persons, accelerated non-formal basic education program will be launched for providing education to transgender persons in informal settings. Accelerated education programs in the formal sector (both by government and private organizations) will also be started.
- Special scholarships will be provided for transgender persons through Education Endowment Funds.
- Under Prime Minister Youth Program or such provincial programs, fee reimbursement for higher education can be instituted so that needy transgender persons can also attain higher education.
- Seats for transgender students will be reserved in government higher and professional education institutes to improve opportunities for them.

- Health Services

Transgender persons are often excluded from public health services as well. Often, they cannot afford specialized treatment and counselling that they require. Consequently, they fall prey to many diseases and mental problems. Newfield et al. (2006) found that, in case of female-to-male transgender persons, mental-health related quality of life was lower than general US population. In Pakistani society, this problem is likely to be more acute. Therefore, it is necessary to provide preventive, diagnostic and curative health facilities to the transgender population. Following interventions will be made under this policy:

- Regular or customized health screening, free medical treatment and free medicine will be made available for transgender persons in government health facilities.
- All lawful surgeries and treatments in the areas of hormone therapy, sex reassignment etc. will be made available, with a provision of financial assistance to needy persons.
- Speech and language therapists will be appointed / or made available, wherever possible, on visitation basis in transgender schools who help transgender people to speak in a fashion that is more aligned with the general society.
- Psychologic help will be provided for building confidence of these people. Such help will also help transgender persons deal with depression that they often feel as a result of their incongruence with societal expectations.
- Special efforts, including awareness campaigns, will be done for HIV/AIDS prevention and care for transgender people by health departments.
- Depending on local context, separate wards for transgender people at District Head Quarter Hospitals will be made. Separation within male and female wards will also be allowed.
- BISP will promote health awareness through its beneficiary groups.

- Emergency/Support Centres

Given repeated instances of violence against transgender persons (a case in point is recent killings of transgender persons in Khyber Pakhtunkhwa), there is a dire need to provide emergency support to transgender members of our society. Toward this end, the following actions will be taken:

- Emergency centres will be established for providing emergency relief and services e.g. in case of violence against transgender persons.
- Social Welfare Departments will establish community centers and shelters for transgender persons.
- Social Welfare Departments will also provide counselling services to the families of transgender persons.

- Social Welfare Departments will also provide specialized social care services for victims of violence and rehabilitation services for drug abusers.
- General Public Services

Other general public services that will be provided under this policy are:

- Transgender persons will have full access to services such as character certificate, telecom services, banking services, birth/death certificate, domicile certificate, property related services (including *fard-e-malkiyat*), vehicle registration, driving license, passport, legal services (including stamp paper, etc.) assets purchase, and taxation etc.
- Where immediate next of kin are not available, *Shehr-e-Khamoshan* Authority/municipal committees (depending on provincial context) will be responsible for the funeral of transgender persons.
- Separate lavatory facilities for transgender persons will be made available wherever possible.

8.4.1.5. Prohibition of Wanton Abandonment of Transgender Children

There is a need to generate a public discourse whether abandonment of a minor transgender child should be a criminal offence or parents should be allowed to handover their transgender children to registered Gurus, Child Protection Bureaus, and organizations working for transgender children. In case the latter is allowed, parents will need to submit a copy of birth certificate while submitting their child to such Gurus and organizations. Registered Gurus and organizations will maintain record of children admitted and will show this record with the government on demand. Any children found without their parents may not be admitted by the Gurus. Rather, they can be handed over to the government bodies/registered NGOs.

Child Protection Bureaus will extend their regular services to transgender children as well.

8.4.1.6. Charter of Responsibilities for Transgender Community

A charter of responsibilities will bind the registered gurus and organizations providing shelter to the transgender children and taking care of these children for maintaining minimum standard of living. The government will also institute mechanisms for regular monitoring of living arrangements of transgender persons.

8.4.1.7. Elimination of Social Evils

Special joint teams of Social Welfare Departments (SWD) and Police will be formed to

deal with issues such as beggary and other contentious activities by the transgender persons. These teams will be trained to deal all such cases with professional courtesy and respect.

8.4.1.8. Awareness campaigns

Awareness campaigns need to be run to encourage tolerance and diversity. Shaming and humiliating of transgender people ought to be checked not only at the societal level but also through legal means. All individuals are entitled to self-respect and dignity based on their individuality and have the inalienable right not to be judged by the prejudices of others about their character and sexuality. Awareness campaign for changing mindsets will be run for this purpose. Following actions will also be undertaken:

- Lessons will be added in the curriculum from the early stages to inculcate respect for all genders
- Training material in police academies, judicial academy, etc. will also have sensitization material regarding transgender persons.
- Training will be provided to various types of people including law enforcement personnel, teachers and health staff to improve treatment of transgender people.
- As part of a responsible media policy, print and electronic media will be required to refrain from ridiculing transgender persons.
- Families of transgender persons will be sensitized about the rights of transgender persons and their responsibilities.
- Awareness meetings will be conducted with transgender community and Gurus about their rights and responsibilities. Awareness material (including audio-visual materials) will also be distributed amongst transgender community and Gurus.

8.4.1.9. Correct Population Estimates

A methodology will be devised to collect accurate information on transgender persons in the next census. Using same methodology, sample surveys will be undertaken to obtain reasonably good estimates of transgender population in Pakistan. This information will help decide if some seats can be reserved for transgender persons in the parliament.

Sexual orientation and gender identity questions will be added in the national data sources so as to provide provincial and regional estimates of transgender persons.

8.4.1.10. Establishment of Special Cell on Transgender in SWDs

A special cell for the welfare of transgender persons will be established under provincial Social Welfare Departments. This cell will be responsible for overall welfare of the transgender community including their education, training, employment, business,

health, shelter, and legal help etc. Other departments and government functionaries such as Deputy Commissioners of respective districts will support SWDs, where required.

8.4.2. Social Security

In the conceptual framework of social protection presented by Sabates-Wheeler and Devereux (2008) Social Security is set of measures that fall in the category of preventive measures of social protection. Preventive measures are those measures that aim to prevent standard of living falling an acceptable level. As such, social security protects vulnerable workers and self-employment people who face present and future risks related to their livelihoods. Interventions that will be made under social security are outlined below.

8.4.2.1. Pensions

Programs for contributory and non-contributory (where premium could be in the form of time and behavior) pension for transgender persons will be initiated. Contribution of the employer will be set at a higher rate with fewer years for eligibility than in regular cases. Invalidity Pensions will also be provided to those transgender persons that become unable to work due to illness, injury, etc.

8.4.2.2. Unemployment Insurance

Unemployment allowance is a standard social security measure to help those workers who have undertaken paid work in the past and are actively looking for work. This allows consumption smoothing and obviates the need for negative risk coping (e.g. selling assets). Depending on resource availability and implementation feasibility, such programs will be gradually introduced all across Pakistan for documented transgender workers.

8.4.2.3. Health Insurance

Health insurance (*Sehat*) cards under Prime Minister National Health Program, provincial Health Insurance Programs and any similar initiatives in public and private sector will be provided for the treatment of transgender persons in private / enlisted clinics. This will enable them to meet their health expenses easily.

8.4.2.4. Hardship Grants for Workers

To meet unforeseen expenses, for example, in case of death of a relative, transgender workers will need occasional assistance. To fulfill these needs, provincial Workers Welfare Boards will provide death /funeral grants and disability grants. Similarly, benefits available to other workers from provincial employees social security

institutions (such as illness grant, funeral grant, and pension and free health facilities in case of disability of workers, etc.) will be extended to transgender workers as well.

8.4.3. Livelihood Support

Promotive measures of social protection aim to augment incomes and capabilities of the vulnerable groups through programs for enhancing livelihood of these groups. The prime objective of these programs is to smooth consumption on one hand and to increase incomes by giving access to economic opportunities with better returns. Transgender Persons (Protection of Rights) Act, 2018 specifically requires the government to support and promote livelihood for transgender persons. Vocational training, asset transfer and microfinance are examples of such livelihood support measures that this policy aims to undertake. These initiatives are described below.

8.4.3.1. Skill Building through a Conditional Cash Transfer

In 2012, the Vocational Training Institute (VTI), Chunian (home to a large population of transgender persons), run by the Punjab Vocational Training Council (PVTC), announced a training course on industrial garments stitching, exclusively for transgender persons.¹⁹ National Vocational & Technical Training Commission's website mentions various other such programs for transgender people.²⁰ First-ever training institute for transgender people was opened in Rawalpindi in 2013.²¹ These instances show that there have been sporadic efforts to equip transgender persons with the skills.

Transgender Persons (Protection of Rights) Act, 2018 makes it an obligation of the government to “formulate special vocational training programs to facilitate, promote and support livelihood for transgender persons”. Under this policy, free skill development courses will be offered to transgender persons by all provincial governments. Training (including training on soft skills) for all suitable professions including driving, cooking, makeup and grooming, domestic help etc. will be provided.

For giving incentive to transgender persons for enrolment in skill development programs, conditional cash transfer (CCT) programs can be started in every province. CCTs are programs that transfer cash, generally to poor households, on the condition that those households modify their behavior/actions e.g. by making sending their girls to schools or by getting their pregnant females regularly visit health facilities, etc. These programs have been found to have significant impact on the targeted variables, for example, Gertler (2004), shows that PROGRESA (now Prospera)-a CCT in Mexico –led to significant

¹⁹ <http://tvetreform.org.pk/gender-is-no-barrier-in-skills-development/>

²⁰ See <http://www.navttc.org/SuccessStories.aspx>

²¹ <https://www.thenews.com.pk/archive/print/420707-first-ever-vocational-training-centre-for-eunuchs-opened>

improvement in the health of children. Usage of such programs for skill development of transgender persons can also bear fruits.

8.4.3.2. Jobs/Entrepreneurship Support

Federal and provincial governments need to consider the fixation of a reasonable quota for transgender persons for government jobs, especially from BS 1-5. The government will also find ways to support job search by transgender persons. For instance, Education departments can hire transgender teachers for the teaching and emotional support of transgender students.

To make transgender people self-reliant, entrepreneurship will be promoted in the transgender persons. For this purpose, schemes for the provision of free or subsidized productive assets are needed to be introduced. Under asset transfer schemes, an asset or an asset grant, which is substantial in local economic terms, is provided to poor households. Combined with the skill provision, the transfer of an asset means that the poor have both the material (poultry, livestock, sewing machines, etc.) and non-material (technical skills and market linkages) resources to make use of economic opportunities. This 'graduation' approach was pioneered by the BRAC, Bangladesh (Hulme and Moore, 2008). Such graduation programs have been shown to result in higher incomes and lasting improvements in the well-being of the recipients (Banerjee et al, 2015).

Subsidized agricultural inputs and similar products can also be given as assets. Agriculture Departments will design such schemes for transgender persons or add them as eligible people in such existing schemes for the assistance of poor farmers.

Microfinance is another social protection instrument that can be used for making transgender people self-reliant. As Parker (2000) notes, 'even in its most basic form, access to microfinance services gives households a way to both prepare for and cope with crisis'. There have been many empirical studies proving effectiveness of the microcredit initiatives. In a rigorous study by Angelucci et al (2015), it is shown that micro loans have been used for investment and risk management and have led to increases in business size, trust, and female decision making, and decreases in depression and reliance on or need for aid. Positive, though not very large, effects were found on income, consumption, and wealth as well. In line with the international experience, interest-free micro and small loans shall be provided to transgender people through government as well as voluntary sector organizations such as Akhuwat.

8.4.4. Welfare Assistance

Welfare or social assistance includes measures that provide relief from deprivation and, thus, can be seen as part of social safety nets. Generally, these measures are narrowly targeted on the poor population. These programs mostly take form of cash transfers to

the poor and persons with disabilities and old-age people. This equates closely to mainstream 'social welfare'. Educational and health fees waivers and subsidies can also be part of welfare assistance. The measures adopted by this policy are described as under.

8.4.4.1. Unconditional Cash Transfer for Old-age Persons

Supreme Court of Pakistan in its 2009 judgment articulated eunuchs' condition as a disability and "gender disorder."²² As such, on the lines of cash assistance to persons with disabilities provided by PSPA, an unconditional cash transfer will be started for transgender persons. Low-income older transgender people (50+ years of age) may be prioritized for assistance as they hardly have any means of earning. A cash grant starting at Rs. 2,000-3,000 per month can be provided to such people through ATM Card/branchless banking mechanism. A transgender holding CNIC with sex column "Transgender/Third Gender/Other", or certified transgender by medical board constituted for the purpose will be eligible. BISP is already contemplating to make transgender group eligible for their unconditional cash transfer. Same example can be followed by organizations such as PSPA Punjab and similar organizations in other provinces. Private organizations such as Akhuwat will be encouraged to form partnership with the government in this regard.

8.4.4.2. Unconditional Cash Transfer for PWDs

Using the model of Khidmat Card Program of PSPA for the people with disabilities in Punjab, federal / provincial programs will be launched for providing cash assistance to those transgender persons that have various disabilities.

8.4.4.3. Conditional Cash Transfers for Education and Health

Transgender children will be included in *Waseela-e-Taleem* Program run by BISP. A conditional cash transfer program will be run for immunization of transgender children. Similarly, provincial governments' school enrollment and retention programs such as *Zevar-e-Taleem* Program-a Conditional Cash Transfers for girls of 16 low literacy districts in Punjab-can be extended to transgender children.

8.4.4.4. Assistance from Other Bodies

Conditional and unconditional cash transfers would also be provided by other government (BISP and Zakat, Ushr and Bait-ul-Maal Departments) and non-governmental organizations (such as Akhuwat, which is already distributing Rs. 1250 per month among transgender persons registered with it).

²² See <https://www.icj.org/wp-content/uploads/2012/07/Khaki-v.-Rawalpindi-Supreme-Court-of-Pakistan.pdf>.

Zakat departments will also include needy transgender persons in its Guzara Allowance Program. Transport Departments can issue travel cards for reducing travel costs for the transgender persons.

Annex-A Key Features of Transgender Persons (Protection of Rights) Act 2018

Identity and Registration of Transgender Persons

The act defines “transgender person” as a person who is:

- 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 identity²³ or gender expression²⁴ differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.

A transgender person shall have a right i) to be recognized as per his or her self-perceived gender identity and ii) to get himself or herself registered as per self-perceived gender identity with NADRA (if aged above 18 years) and other government departments. Those already registered with such departments are allowed to change the name and gender according to his or her self-perceived identity on the CNIC, Child Registration Certificate (CRC), driving license and passport.

Prohibition against Discrimination and Harassment

Discrimination against a transgender person is prohibited. Such discrimination includes unequal treatment with regard to educational institutions; employment, trade or occupation; healthcare services; general public services, mobility and transportation; rights related to movable and immovable property including inheritance, the opportunity to stand for or hold public or private office; and any establishment in whose care or employment a transgender person may be.

The act defines harassment as “sexual, physical, mental and psychological harassment which means any aggressive pressure or intimidation intended to coerce, unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with living, mobility or work performance or creating an intimidating, hostile or offensive work or living environment including the attempt to punish the complainant²⁵ for refusal to comply with such requests or to bring forth the complaint”.

Such harassment, both within and outside the home, based on sex, gender identity and gender expression of transgender persons is prohibited.

Obligations of the Government

The Government shall take following steps to secure full and effective participation of transgender persons in the society:

²³ Defined in the act 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”.

²⁴ Defined in the act as “a person’s presentation of his gender identity and the one that is perceived by others”.

²⁵ A transgender person.

- a. establish protection centers and safe houses to ensure the rescue, protection and rehabilitation of transgender persons in addition to providing medical facilities, psychological care, counseling and adult education to the transgender persons;
- b. establish separate prisons, jails, confinement cells, etc. for the transgender persons involved in any kind of offence or offences;
- c. institute mechanisms for the periodic sensitization and awareness of the public servants, in particular, but not limited to, law enforcement agencies and medical institutions, relating to the issues involving the transgender persons and the requirement of protection and relief of such persons;
- d. formulate special vocational training programmes to facilitate, promote and support livelihood for transgender persons;
- e. encourage transgender persons to start small business by providing incentives, easy loan schemes and grants; and
- f. take any other necessary measures to accomplish the objective of this Act.

Protection of Rights of Transgender Persons

i. Right to inherit

There shall be no discrimination against transgender persons in acquiring the rightful share of property as prescribed under the law of inheritance. The share of transgender persons shall be determined as per the gender declared on CNIC: transgender male will get the share of a male; transgender female will get the share of a female. For those with characteristics of both male and female or ambiguous characteristics, such as their state is difficult to determine upon birth, following shall apply:

- (a) upon reaching the age of 18 years:
 - if the person's self-perceived gender identity is transgender male, he will get a male's share;
 - if the person's self-perceived gender identity is transgender female, she will get a female's share;
 - if the person's self-perceived gender identity is neither transgender male nor transgender female, an average of two separate distributions for a male and a female will apply for determination of the share; and
- (b) below the age of 18 years, the gender as determined by medical officer on the basis of predominant male or female features.

i. Right to education

No educational institute can discriminate against a person on the ground of that person's sex, gender identity and gender expression as regards admission, education, training, sports, student facilities etc.

Article 25A of the Constitution of the Islamic Republic of Pakistan, for provision of provide free and compulsory education, applies to transgender persons as well. The Government shall take necessary steps in this regard.

ii. Right to employment

No establishment can discriminate against a person on the ground of that person's sex, gender

identity and gender expression in any matter relating to employment including, but not limited to, recruitment, remuneration, promotion, appointment, training, transfer and other related issues.

Article 18 of the Constitution of the Islamic Republic of Pakistan guaranteeing the right to enter into any lawful profession and to conduct any lawful business applies to the transgender persons as well. The Government shall ensure that these rights are available to everyone.

iii. Right to vote and hold public office

Any adult transgender person has the right to cast a vote during national and sub-national elections according to the gender declared on his/her CNIC. Similarly, there shall be no discrimination on the basis of sex, gender identity and gender expression for transgender persons to contest election to hold public office.

iv. Right to health

The Government will review medical curriculum and improve research for doctors and nursing staff to address specific health issues of transgender persons. It will facilitate access by providing an enabling and safe environment for transgender persons in health facilities. Similarly, access of transgender persons to all necessary medical and psychological gender corrective treatment will be ensured.

v. Right to assembly

The Government will ensure the freedom of assembly for transgender persons in accordance with Article 16 of the Constitution of the Islamic Republic of Pakistan (except in case of reasonable restrictions imposed by law in the interest of public order). Appropriate safety measures in this regard will be undertaken.

vi. Right of access to public places

In view of Article 26 of the Constitution of the Islamic Republic of Pakistan, no transgender person shall be denied access to public places (including mosques) solely on the basis of his/her sex, gender identity or gender expression. Limiting the access of transgender people to general public facilities and public places will be unlawful.

vii. Right to property

No transgender person shall be denied, on the basis of his/her sex, gender identity or gender expression, right to purchase, sell, rent or lease property, household or tenancy.

Guarantee of fundamental rights

Fundamental rights mentioned in Part II of Chapter 1 of the Constitution of the Islamic Republic of Pakistan will apply for every transgender person. The government has to ensure that these rights protected and there is no discrimination for any person on the basis of sex, gender identity or gender expression.

Offences and Penalties

Whoever compels or uses any transgender person for begging will be punishable with

imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

Enforcement Mechanism

In addition to the remedies available under the Constitution or The Pakistan Penal Code 1860, the Code of Criminal Procedure, 1898 or the Code of Civil Procedure 1908, a transgender person shall have a right to move a complaint to the Federal Ombudsman, National Commission for Status of Women and National Commission of Human Rights (NCHR) if any of the his or rights are denied.

Annex-B Institutional Arrangement for a Public Private Partnership for Unconditional Cash Transfer to Transgender Persons by PSPA

| CSOs / NGOs | Social Protection Authorities/Social Welfare Departments | Public Sector Banks |
|--|---|---|
| Social Awareness/Mobilization and Identification of beneficiaries | Establishment of Social Assistance Centres | Issuance of ATM / Debit Cards |
| Communication Campaign | Communication Campaign | May sponsor such awareness campaigns |
| Provision of data of beneficiaries (if available) to government department responsible for making welfare payments | Data processing | - |
| Provision of funds to PSPA | Transfer of funds to BOP | Disbursement/ transfer of benefit amount to the accounts of beneficiaries |
| Certification of transgender persons by medical doctors | - | Hiring of the Telcos |
| Mobilization of beneficiaries to KC issuance centres | - | - |
| Development of MIS | Development of MIS | |
| Developing of Grievance Redressal Mechanism (GRM) | - | Developing of Grievance Redressal Mechanism (GRM) |

Annex-C Transgender Persons – Selected International Practices

Stylized practices from some countries (from Bangladesh, Lebanon, Syria, Egypt, Nepal and Iran) are presented below.

Gender's identity

- Bangladeshi government granted transgender persons legal status in November 2013 as members of a “third gender”. This meant that they became entitled to identify their gender as ‘hijra’ in national documents such as passports and ID cards, rather than ‘male’ or ‘female’. On 16 January 2014, the government issued a Gazette notification to this effect. But according to a Global Human Rights Defense report of 17 June 2015, enabling legislation establishing transgender rights as a third gender had not been introduced in Parliament²⁶.
- In Lebanon in January 2016, the Court of Appeals of Beirut confirmed the right of a transgender man to change his official papers, granting him access to necessary treatment and privacy. Transgender people are required to undergo sex reassignment surgery in order to change their legal gender. Sex reassignment surgery is allowed in Lebanon²⁷.
- The Supreme Court of Nepal dictated in 2007 that the category "other" or anya, representing "third gender" be added to all official documents. Having official documentation that reflects the person's self-identification and gender presentation allows for "third gender" identifying individuals to open bank accounts, own property, register for universities and allowing citizens to register to vote as "third gender. Central Bureau of Statistics officially entered the recognition of third gender as male or female in 2011 Nepal censuses²⁸. The government started issuing passports in 2015 that recognized three genders²⁹.
- Iranian law allows for the legal recognition of trans individuals' gender identity; however, such recognition is only granted to individuals officially diagnosed with GID and upon their successful completion of a long process of legal and medical gender transition.³⁰

Voter registration

- The Independent (Bangladesh) reported on 24 July 2016 that the Election Commission had not yet enrolled transgender voters as a third gender, and a third gender category had not yet been included on the NID (National Identity) card³¹.

²⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660538/Bangladesh_-_SOGI_-_CPIN_-_v3.0__Nov_2017_.pdf

²⁷ https://en.wikipedia.org/wiki/LGBT_rights_in_Lebanon

²⁸ https://en.wikipedia.org/wiki/LGBT_rights_in_Nepal

²⁹ <https://www.hrw.org/news/2017/08/11/how-did-nepal-become-global-lgbt-rights-beacon>

³⁰ <https://www.outrightinternational.org/sites/default/files/TransReportEXSum.pdf>

³¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660538/Bangladesh_-_SOGI_-_CPIN_-_v3.0__Nov_2017_.pdf

- Gay rights come to the fore as Lebanon prepares to vote³².

Property rights

A seminar organized by the National Human Rights Commission (NHRC) and Bandhu Social Welfare Society on 29 April 2015, the Chairman of the Parliamentary Standing Committee on the Law Ministry noted, 'Nowhere in the Constitution is it stated that people of the transgender community are barred from getting family property. Nor is banned in any religion practiced in our country³³.

Constitutional rights

In the new constitution of Nepal, passed in September 2015, article 12 allows citizens of Nepal to "obtain a certificate of citizenship of Nepal with gender identity".³⁴ Article 18, ("Right to Equality"), states, "No discrimination shall be made in the application of general laws on grounds of... sex, [and] physical condition".³⁵ Article 42 ("Right to Social Justice") provides gender and sexual minorities with the right "to participate in the State bodies on the basis of inclusive principle".³⁶

The Bangladeshi constitution has several provisions that could apply to transgender citizens. Part II Article 19 promises equal opportunity for all citizens. Part III Article 27 promises equality before the law for all citizens".³⁷

Living standard

- Bangladeshi government launched the programs to develop the living standard of transgender community like Rehabilitation program, Scholarship for the transgender children, Training the 18 above people to improve their skill and efficiency for a better living, Developing their financial condition and ensuring social security, Provided old-age allowance for the 50 and above³⁸. Bank loans for setting up their own business³⁹.
- Until 2001, the Egyptian government refused to recognize that homosexuality was the sexual identity for some of its residents and after 2001, it only did so only to brush off criticism from human rights organizations and foreign politicians⁴⁰.
- Verdict stated Supreme court of Nepal in 2012 is "Individuals can decide as to choosing their ways of living either separately or in partnership together with homosexuals or heterosexuals – with or without solemnizing marriage. Although in the prevailing laws and tradition "marriage" denotes legal bond between

³² <https://edition.cnn.com/2018/05/04/middleeast/lebanon-elections-lgbt-rights-intl/index.html>

³³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660538/Bangladesh_-_SOGI_-_CPIN_-_v3.0__Nov_2017_.pdf

³⁴ Constitution of Nepal. Accessed from <http://www.wipo.int/edocs/lexdocs/laws/en/np/np029en.pdf>.

³⁵ *ibid*

³⁶ *ibid*

³⁷ https://en.wikipedia.org/wiki/LGBT_rights_in_Bangladesh

³⁸ <http://www.msw.gov.bd/site/page/a3498c96-c94a-4fba-9518-13497bdfb46f/Transgender-People>

³⁹ https://www.csbronline.org/wp-content/uploads/2016/08/ShaleAhmed_HjraRights_CSBR-ILGAAsia2015.pdf

⁴⁰ https://en.wikipedia.org/wiki/LGBT_rights_in_Egypt#Support_for_LGBT_rights

heterosexuals (male and female), the legal provisions on the homosexual relations are either inadequate or mute [sic] by now”⁴¹

Prohibition against discrimination

- Discrimination against transgender persons is common in other developing countries as well. For example, Human Rights Watch states that discrimination against transgender people is pervasive in Bangladesh ⁴². At many places, transgender community is not protected against discrimination.
- In Egypt, though the constitution does not mention transgender persons or use general gender terms, the Article 9 of the constitution, which provides that the state “shall ensure equal opportunities for all citizens without discrimination”⁴³ could be taken as applicable to all genders.
- In Lebanon, a number of individuals with non-normative sexual orientations and gender identities have reported being expelled from work without compensation after being outed. Highest rates of arbitrary expulsion were among individuals identified as gay men or man having sex with man (MSM). It was reported that they could not seek legal protection not to be outed to their families, as this might involve higher risks⁴⁴.
- Similarly, in Syria, transgender persons have no protection against discrimination including employment discrimination and housing discrimination⁴⁵.

Homosexuality and Same-sex marriage

- Same sex sexual activities are illegal in Syria. = Penalty: Prison sentence up to 3 years⁴⁶. Article 520 of the penal code of 1949, prohibits having homosexual relations, i.e. "carnal relations against the order of nature", and provides for up to 3 three-years imprisonment,[3] although the law is not strictly enforced⁴⁷.
- Bangladeshi government does not recognize same-sex marriage nor civil unions⁴⁸.
- In Egypt, same sex marriage is illegal but it is not criminalized and also adoption is illegal. Gay marriage is also not criminalized⁴⁹.
- The Supreme Court of Nepal issued a “landmark” ruling ordering the government to end discrimination based on sexual orientation, “to extend equal rights to gender minorities,” and to formulate “a same-sex partnership and marriage act based on legislation in other countries. In December 2007, the Court had issued a decision that recognized homosexuals as citizens, stating: “lesbian, gay, bisexual, transsexual and intersex are natural persons irrespective of their masculine and

⁴¹ https://en.wikipedia.org/wiki/LGBT_rights_in_Nepal

⁴² https://en.wikipedia.org/wiki/LGBT_rights_in_Bangladesh

⁴³ Constitution of Egypt. 2014. Accessed from <http://www.wipo.int/edocs/lexdocs/laws/en/eg/eg060en.pdf>

⁴⁴ http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBN/INT_CCPR_ICO_LBN_27152_E.pdf

⁴⁵ <https://www.equaldex.com/region/syria>

⁴⁶ https://en.wikipedia.org/wiki/LGBT_rights_in_Syria

⁴⁷ https://ipfs.io/ipfs/QmXoyvizjW3WknFijnKLwHCnL72vedxjQkDDP1mXWo6uco/wiki/LGBT_rights_in_Syria.html

⁴⁸ https://en.wikipedia.org/wiki/LGBT_rights_in_Bangladesh

⁴⁹ <https://www.equaldex.com/region/egypt>

feminine gender and they have the right to exercise their rights and live an independent life in society,” and calling upon the government to formulate new laws and amend existing ones to safeguard those rights⁵⁰

Violence/Discrimination based on Sexual Orientation and Gender Identity

- Consensual same-sex sexual activity is illegal under the law in Bangladesh. "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description that is, hard labor or simple for a term which may extend to ten years, and shall also be liable to fine (Bangladeshi Penal Code: section 377)". Commercial surrogacy for gay male couples is declared Illegal for all couples regardless of sexual orientation⁵¹.
- In Egypt, Commercial surrogacy is Illegal for all couples regardless of sexual orientation⁵².
- Homosexuality is not explicitly outlawed in Lebanon. Rather, article 534 of the Lebanese Penal Code states that “any sexual intercourse contrary to the order of nature is punishable by up to one year in prison.” This provision has been used mainly to prosecute people suspected of homosexuality even though the law does not specify what might constitute “contrary to the order of nature,” leaving a large margin of interpretation to individual judges⁵³.
- In Nepal, A further judgment was issued on 18 November 2008 where the Supreme Court reiterated that all transgender persons are defined as “natural persons” and that their physical growth as well as their sexual orientation and gender identity (SOGI) and expression are all part of a natural process. Thus, equal rights, identity and expression must be ensured regardless of sex at birth⁵⁴.

HIV and AIDS Social Stigma/Illness

- In Bangladesh, social stigma against HIV and AIDS and against higher-risk populations could be a barrier for accessing health services, especially for the transgender community and men who have sex with men⁵⁵.
- In 2005, Egyptian government started to allow for confidential HIV testing, although most people fear that being tested positive will result in being labelled as a homosexual and thus a de facto criminal. Some Egyptians have access to home

⁵⁰ <http://www.loc.gov/law/foreign-news/article/nepal-supreme-court-orders-drafting-of-same-sex-partnershipmarriage-law/>

⁵¹ https://en.wikipedia.org/wiki/LGBT_rights_in_Bangladesh

⁵² https://en.wikipedia.org/wiki/LGBT_rights_in_Egypt#Support_for_LGBT_rights

⁵³ <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations>

⁵⁴ http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-nepal-country-report.pdf

⁵⁵ https://en.wikipedia.org/wiki/LGBT_rights_in_Bangladesh

test kits brought back from the United States, but most Egyptians lack accurate information about the pandemic and quality care if they do become infected⁵⁶.

- In Lebanon, HIV/AIDS is stigmatized due to sensitivities about extramarital relations. Few who contracted the disease did so in the course of homosexual relations, which are also taboo. The main challenge facing AIDS patients, in addition to stigma and discrimination, was that many were unable to pay for regular follow-up tests that the Ministry of Public Health does not cover. The law requires the government to offer treatment to all residents who are AIDS patients rather than deporting foreigners who carry the disease⁵⁷.
- In Nepal, Country code no. 10(B) of chapter 19 provides that in the event a person commits torture/ill person from his/her residence by rejecting or doing any inhuman or degrading treatment to him/her on the ground that he/she suffered from any disease, the person shall be liable to punishment from 3 months to 2 years or fine NRS 5000 to 25000 or both⁵⁸.

Discrimination in Employment

The Bangladeshi labor law prohibits wage discrimination on the basis of sex or disability, but it does not prohibit other discrimination based on sex, disability, social status, caste, sexual orientation, or similar factors⁵⁹. The Bangladeshi cabinet has decided to recruit transgender populace in Traffic Police from the next fiscal year. A meeting of the Cabinet Committee on Social Safety Net, chaired by Finance Minister, reached this decision on 19 May 2015⁶⁰.

In Nepal, recommendations to the Ministry of Labor have been made to support transgender persons in employment including provision of psychosocial support for increasing participation and productivity, legal support to victims of employment-related discrimination, penalization of firms that discriminate against transgender people, and support and encouragement of transgender entrepreneurs and business owners.⁶¹

Human rights

Bangladesh-Article 3 of the Universal Declaration of Human Rights states that “everyone has the right to life, liberty and security of person” (Article 3). All the signatories to the declaration are therefore obliged to ensure these rights for everyone, irrespective of their gender⁶².

⁵⁶ https://en.wikipedia.org/wiki/LGBT_rights_in_Egypt#Support_for_LGBT_rights

⁵⁷ <https://www.state.gov/j/drl/rls/hrrpt/2016/nea/265508.htm>

⁵⁸ <https://issuu.com/undpasiapacific/docs/rbap-hhd-2013-nepal-legal-reference>

⁵⁹ https://en.wikipedia.org/wiki/LGBT_rights_in_Bangladesh

⁶⁰ https://www.csbronline.org/wp-content/uploads/2016/08/ShaleAhmed_HjraRights_CSBR-ILGAAsia2015.pdf

⁶¹ http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-nepal-country-report.pdf

⁶² <http://www.dhakalawreview.org/blog/2014/08/protecting-the-transgender-people-in-bangladesh-182>

In Bangladesh, Section 377 of the Penal Code is used in conjunction with sections 54 and 55 of the Code of Criminal Procedure (CCP), which allow law enforcement agencies to arrest without a warrant, to harass the transgender community⁶³.

Accommodation

During the Home Office FFM to Bangladesh in May 2017, a representative from Boys of Bangladesh considered that few gay couples choose to live together as this would mean coming out to their family. It was the view of the NHRC official that a gay man or lesbian could rent a property with a member of the same sex, if they did not identify themselves as being gay. The official believed it would be harder for a heterosexual unmarried couple to rent a property than 2 members of the same sex⁶⁴.

Right to change the legal gender

- In Bangladesh, changing gender is legal but surgery not required⁶⁵.
- In Egypt, Right to change legal gender is legal but surgery not required⁶⁶.
- In Syria, Transsexuals allowed to change legal gender. Sex reassignment surgery is allowed for people whose gender is unclear or whose physical features do not match their physiological, biological and genetic characteristics, first case was reported in 2004⁶⁷.
- The Islamic Republic of Iran conceptualizes trans people through the clinical framework of gender identity disorder (GID) and, in response, provides limited subsidized support to specific forms of transition related healthcare—including gender confirmation surgery (GCS), hormone replacement therapy (HRT), and various forms of psychosocial counseling⁶⁸.

Education

- Bangladesh sparked the headlines in 2013 of all national and international newspapers for officially adopting the 'Third Gender' in its constitution and to make this new bill a success, we must also equally act to create access to education for the third gender. Everyone has the right to education"(Article 26(1))⁶⁹.
- In Lebanon, The lack of anti-bullying mechanisms at educational institutes lead to high rates of dropouts as this might be assessed as the only security exit⁷⁰.
- In Nepal, all schools and other education providers to adopt anti-bullying policies to protect transgender students, and ensure teachers receive training on how to respond to homophobic and transphobic bullying: Integrate education on sexual

⁶³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660538/Bangladesh_-_SOGI_-_CPIN_-_v3.0__Nov_2017_.pdf

⁶⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660538/Bangladesh_-_SOGI_-_CPIN_-_v3.0__Nov_2017_.pdf

⁶⁵ <https://www.equaldex.com/region/bangladesh>

⁶⁶ <https://www.equaldex.com/region/egypt>

⁶⁷ https://en.wikipedia.org/wiki/LGBT_rights_in_Syria

⁶⁸ <https://www.outrightinternational.org/sites/default/files/TransReportEXSum.pdf>

⁶⁹ <https://observerbd.com/details.php?id=66143>

⁷⁰ http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBN/INT_CCPR_ICO_LBN_27152_E.pdf

orientation, gender identity, gender expression and intersex status into school curricula in age-appropriate ways: Provide non-discriminatory sex education to address taboos surrounding adolescent sexuality, sexual orientation, gender identity and gender expression and provide adolescents with access to accurate information about the diversity of sexualities, gender identities and sex variations: Recognize the right of students to freedom of gender expression in the school environment. Students should be allowed to wear uniforms and express an appearance that corresponds to the gender with which they identify: Provide all students, including transgender and intersex students, with access to safe toilets and bathroom facilities: Provide educational resources for parents of transgender children⁷¹

Media campaigns

A Lebanese non-profit organization, marked the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT) by launching a media campaign in May 2015. The campaign consisted of an awareness ad featuring several prominent Lebanese artists and celebrities calling on the Lebanese Government to provide equal rights to all citizens and residents regardless of sexual orientation, nationality etc⁷².

Iranian State Support for Trans People

Under existing regulations, there are several key government agencies tasked with addressing various aspects of the trans community's needs.

- i. **Medical care:** According to the government's guidelines on "Supporting Patients with Gender Identity Disorder," the official diagnosis of GID is the responsibility of the Legal Medicine Office. Providing medical care to trans individuals is primarily the responsibility of the Ministry of Health.
- ii. **psychosocial support:** The provision of social and psychosocial support for trans patients is assigned to the State Welfare Office.
- iii. **Reissue National ID cards:** Ministry of Labor, which coordinates national political and legal advocacy efforts in support of the trans community; the Law Enforcement Agency, which refers trans individuals that are reported to them to the SWO; the NOCR, which reissues national ID cards after judicial and medical approval; and the Military Draft Board, which assesses whether trans individuals should be exempted from compulsory military service.
- iv. **financial assistance:** Iran's state-run Imam Khomeini Relief Foundation,⁴⁴ which is in charge of providing services to low-income and vulnerable populations, provides financial assistance to qualified trans individuals, and (on a limited basis) offers disability benefits to trans individuals who are not able to work.
- v. **Social services provision:** The SWO leads national efforts to support trans community members through initiatives such as "the admission of individuals

⁷¹ https://en.wikipedia.org/wiki/LGBT_rights_in_Nepal

⁷² https://en.wikipedia.org/wiki/LGBT_rights_in_Lebanon

with gender identity disorder to Crisis Intervention Centers of social services, “psychosocial counseling, legal aid, and medical transition related care.”⁷³

⁷³ <https://www.outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

Annex-D Salient Features of the Transgender Persons (Protection of Rights) Bill, 2016 India⁷⁴

TRANSGENDER PERSON DEFINITION

2.(i) "Transgender person" means a person who is—

- (A) neither wholly female nor wholly male; or
- (B) a combination of female or male; or
- (C) neither female nor male; and

whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.

Prohibition of Certain Acts

Under Article 3 discrimination against a transgender person is prohibited. Such discrimination includes unequal treatment with regard to educational institutions; employment, trade or occupation; healthcare services; general public services, mobility and transportation; rights related to movable and immovable property including inheritance, the opportunity to stand for or hold public or private office; and any establishment in whose care or employment a transgender person may be.

Recognition of Identity of Transgender Persons

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.

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.

6. (1) On the receipt of an application under section 5, the District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons.

(2) The District Screening Committee referred to in sub-section (1) shall comprise—

- (a) the Chief Medical Officer;
- (b) District Social Welfare Officer;
- (c) a Psychologist or Psychiatrist;

⁷⁴ <http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf>
Bill No. 210 of 2016

- (d) a representative of transgender community; and
- (e) an officer of the appropriate Government to be nominated by that Government.

7. (1) The District Magistrate shall issue to the applicant under section 5 a certificate of identity as transgender person on the basis of the recommendations made by the District Screening Committee 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.

8. (1) After the issue of a certificate under sub-section (1) of section 7, if there is any change in the gender of a transgender person, he shall make an application to the District Magistrate for revised certificate.

(2) The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, issue a certificate

(3) The person who has been issued revised certificate 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 subsection (1) shall not affect the rights and entitlements of such person under this Act.

Welfare Measures by Government

- Inclusion in society: Government shall take steps to secure full and effective the participation of transgender persons and their inclusion in society.
- Protect rights and facilitate: Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government.
- Formulate transgender-sensitive schemes: Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatizing and non-discriminatory.
- Rehabilitation: Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such person.
- Cultural and recreational activities: Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

Obligation of Establishments and Other Person

- Right to employment: No establishment shall discriminate against any transgender person in any matter discrimination relating to employment including, but not limited to, recruitment, promotion and other related in issues.
- Every establishment consisting of one hundred or more persons shall designate a redressal person to be a complaint officer to deal with the complaints relating to violation of the mechanism.
- **Right to residence and to live with family**

No transgender person shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such person.

Every transgender person shall have—

- (a) a right to reside in the house-hold where parent or immediate family members reside;
- (b) a right not to be excluded from such house-hold or any part thereof;
- (c) a right to enjoy and use the facilities of such house-hold in a non-discriminatory manner.

- **Provision of rehabilitation centre**

Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.

Education, Social Security and Health of Transgender Person

- Right to inclusive education: All educational institutions funded or recognized by the appropriate Government Educational shall provide inclusive education and opportunities for sports, recreation and leisure activities institutions to provide without discrimination on an equal basis with others.
- Right to welfare schemes and self-employment: Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.
- Right to healthcare facilities: Government shall take the following measures in relation to the transgender persons, namely:
 - (a) a separate human immune deficiency virus Sero-surveillance Centres;
 - (b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;
 - (c) pre and post sex reassignment surgery and hormonal therapy counselling;
 - (d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to the transgender persons in the hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

National Council for Transgender Persons

- Right to constitute National council: Government shall by notification constitute a National Council for Transgender to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.
- Five representatives of transgender community

Functions of the council

The National Council shall perform the following functions, namely: —

- to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;
- to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons.
- to review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organizations which are dealing with matters relating to transgender persons;
- to perform such other functions as may be prescribed by the Central Government.

Offences and Penalties

Whoever, —

(a) compels or entices a transgender person to indulge in the act of begging or other similar forms 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 house-hold, village or other place of residence;

(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.

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