



# Transgender Persons (Protection of Rights) Bill, 2017

Salient Features, Gaps &  
Recommendations



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# About Forum for Dignity Initiatives FDI

Forum for Dignity Initiatives-FDI Pakistan is a nonprofit, nonpolitical, non-partisan, non-governmental, nonreligious registered civil society organization promoting the rights of identified marginalized groups. Forum for Dignity Initiatives is a research and advocacy forum working for sexual and gender minorities in Pakistan. FDI is a rights-based organization that plays the role of an enabler—It strives for an equitable society for transgender people, other marginalized groups, girls and young women.

FDI believes in activism that promotes empowerment and understanding through community motivated initiatives to improve the human rights situation of these groups. FDI initiatives include conducting research, advocating for legal rights, raising awareness and building capacity of identified marginalized communities and also civil society organizations and key stakeholders. FDI collaborates with multiple stakeholders including the government, civil society networks and like-minded groups. FDI discourages discrimination through the cis-heteronormative society by facilitating dialogues, debates, and experience sharing and information dissemination. FDI holds core values based on people centered, evidence generation, knowledge sharing, transparency, accountability, cooperation, partnership and sustainability.

FDI organized a multi-stakeholders consultation to review this recently presented bill on the protection of transgender persons in Pakistan. Consultation provided an opportunity to key stakeholders including; parliamentarians, representatives from ministry of human rights, civil society representatives, legal experts, academia, religious scholars, media and transgender community representatives to sit together, carefully review this bill and share their reservations followed by a set of recommendations to improve the gaps in current status of this bill before it becomes a law.

Our sincere thanks to all our distinguish participants for their valuable input and feedback. Our special thanks to Chairman National Commission on Human Rights Justice (R) Ali Nawaz Chohan for assuring his support to improve the human rights situation for transgender persons in Pakistan.

## About Legal Expert

Khadija Ali is a lawyer and a social activist. During her legal education, Khadija was particularly interested in exploring vacuums in the legal system of her country. Khadija's forte has been legal advocacy for progressive laws. She has been involved in research, drafting, lobbying and advocacy for progressive and gender friendly legislation in her country.

The last democratic government passed six pro-women laws and the entire lobbying and advocacy exercise provided Khadija with an opportunity to understand the dynamics and intricacies of working on changing laws and policies. Her work on implementation of anti-sexual harassment legislation, for which she took pro bono cases, provided her with an understanding of how to treat culturally sensitive issues and the socio-legal considerations important in understanding the efficacy of a law. Khadija's area of expertise also include democracy, devolution, governance, conflict analysis and peace. She is also the 2014/2015 prestigious Chevening Scholar from Pakistan to the University of Warwick, UK where she successfully completed her LL.M in International Development Law.

***Disclaimer***-Views expressed in the document strictly reflect the constitutional and legal opinion of the hired expert and in no way reflects the perspectives and/or beliefs of the organization in question. Hence, views expressed in the document are subject and open to discussion. For any clarity or elaboration please contact FDI.

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# Introduction of Transgender persons (Protection of Rights) Bill, 2017

- The Bill is a private member's Bill introduced in the Senate by Senator Babar Awan.
- The Bill seeks to ensure the fundamental rights of transgender persons in Pakistan
- The Bill is a special legislation which seeks to fulfil the following objectives;
  - i. prohibit discrimination against transgender person;
  - ii. confer right upon transgender person recognized as such, and a right to self-perceived gender identity;
  - iii. issue of certificate of identity to transgender persons;
  - iv. provide that no establishment shall discriminate against transgender person in matters relating to employment, recruitment, promotion and other related issues; and
  - v. Provide for grievance redressed mechanism in each establishment.

## Salient Features

- Jurisdiction (Chapter 1): The Bill extends to the whole of Pakistan
- Prohibition (Chapter 2): The Bill prohibits discrimination against transgender persons in education, occupation, employment, and health care, access to public amenities, movement, residence, public office and custody.
- Recognition of Identity (Chapter 3): The Bill provisions transgender persons to apply to the District Magistrate for certificate of identity. The Application will be referred to District Screening Committees who will recommend the District Magistrate regarding issuance of certificate. An application for revised certificate can be made if there is a change in gender of the transgender persons
- Welfare measures (Chapter 4): The Government is mandated to promote the rights of transgender persons and mainstream them while also protecting their rights
- Obligation of establishments and other persons (Chapter 5): The Bill iterates non-discrimination in employment for transgender persons, compliance with the provisions of the Bill in every establishment, a complaint officer to act as a grievance redressal mechanism and right of residence unless contrary to an order of court where the transgender will be sent to a rehabilitation centre
- Education, social security and health (Chapter 6): Provision of inclusive education for transgender persons, vocational training and self-employment opportunities,



health care facilities including review of medical curriculum to include medical literature regarding transgender.

- Offences and penalties (Chapter 7): The Bill stipulates the following offences;
  - i. Forced or bonded labour of transgender persons
  - ii. Denying access to public place
  - iii. Forcing a transgender person to leave place of residence
  - iv. Endangering the life, safety, health, well-being of a transgender person.
  - v. Imprisonment for a term not less than six months or fine or both
  - vi. Offences and penalties (Chapter 7): The Bill stipulates the following offences;
  - vii. Forced or bonded labour of transgender persons
  - viii. Denying access to public place
  - ix. Forcing a transgender person to leave place of residence
  - x. Endangering the life, safety, health, well-being of a transgender person
  - xi. Imprisonment for a term not less than six months or fine or both

## Legal Issues

- Jurisdiction: Pursuant to Article 141 – 144 of the Constitution, the Bill can only be applicable to Islamabad Capital Territory and not all of Pakistan. The provinces can pass the law in their respective provincial assemblies pursuant to the above articles
- The Bill is in complete violation of the constitutional framework of Pakistan
- Promulgation of a special law for the rights of transgender persons is a provincial legislative subject
- The process of issuance of certificate for transgender persons confers arbitrary powers to the district government which can only lead to further abuse and persecution of transgender persons
- The process in Chapter 3 violates freedom of transgender persons and makes them a subject of state regulation and control
- District Committees are a matter within the purview of provincial governments in terms of the Constitution
- Welfare measures given in Chapter 4 are at the behest of provincial governments and not federal government
- Grievance redressal mechanism in Chapter 5 is incoherent, uncertain and inadequate. The redressal mechanism includes only a line or two instead of introducing a proper framework in consonance with the constitutional guarantees of rights to a fair trial

- With regard to right of residence in Chapter 5, the provision of rehabilitation center is unclear and vague
- The provision in Chapter 6 are also at the behest of provincial governments as they include institutions which are provincial subjects
- Punishments stipulated for the offences which includes sexual and physical abuse against transgender persons are inadequate and vague (no minimum fine amount stipulated)
- The Bill is need of thorough review in light of the constitutional framework of Pakistan
- The state regulation of transgender identities in the Bill can lead to further violence and persecution
- The Bill responds to the issue of discrimination against transgender persons but completely fails to cater to the issue of violence against transgender persons

## Issues Raised by Transgender Community

- Strict reservation regarding District Screening Committees – it is a tool for discrimination against transgender
- Inheritance issues of transgender persons should be taken up in the Bill
- Precedent set by NADRA against screening of transgender persons should be followed up
- WHO definitions regarding gender and transgender should be added in the proposed Bill
- The requirement of 100 individuals for grievance redressal is problematic
- Special provisions for transgender kids/minors
- Role of district social welfare and psychologist in District Screening Committee?
- Ramifications of mental health of transgender person in dealing with the District Screening Committee have been ignored
- The dignity of transgender community has been targeted in the Bill
- Right to religious beliefs have been ignored in the Bill
- Registration of transgender persons with NADRA still an issue
- Medical benefits for transgender community need attention
- Sexual violence against transgender community is an issue of prime importance which has been ignored
- Re-defining of sexual violence across all laws
- Upholding of right to education, health and benefits to be provided by provincial governments

- STIs, HIV and other medical issues faced by transgender persons should be taken into account
- Principle of non-discrimination against transgender persons is welcomed
- The Bill is a welcomed first step which needs further improvement
- Monitoring and implementation framework for the special proposed law is important in order to ensure implementation as well
- Mainstreaming of transgender people is an important component which is also welcomed
- Right to marriage and family should be taken up in the bill
- State regulation of gender identities should be done away with
- No medical screening is accepted to transgender community
- Government interventions should take into account the complexities of the transgender community as well
- Extension of social security and social benefit schemes to transgender persons (social safety net)
- Extension of all laws, schemes and policies to transgender communities through a gender audit
- More comprehensive definition section. Most terms left vague.
- Civil registration laws are accommodating transgender persons as rules which need to be taken into account
- Registration laws pertaining to death, life, marriage, succession, birth should grant such rights to transgender persons
- Civil service laws should also include issues or violence against transgender persons
- Affirmative actions (quota and relaxations) for transgender persons in order to alleviate their suffering
- Affirmative actions in educational opportunities
- High suicide rate amongst transgender minors
- Mainstreaming, counselling and acceptance of transgender persons
- Inclusion of transgender persons and activists for better laws and policies
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## Recommendations

- A criminal law amendment, like the anti-rape and anti-honour killing law, will provide much greater protection to transgender persons
- Criminal Law amendments in the PPC and CR/PPC fall within the legislative purview of the federal and will extend to the whole of Pakistan
- A more comprehensive grievance redressal mechanism needs to be inserted in the Bill
- The Bill should focus more on prevention of violence and discrimination rather than state regulation

# Annex 1

**[AS INTRODUCED IN THE SENATE]**

**A**

**BILL**

*to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto*

It is hereby enacted as follows:-

**CHAPTER I  
PRELIMINARY**

**1. Short title, extent and commencement.-** (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2017.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

**2. Definitions.-** (1) In this Act, unless there is anything repugnant in the subject or context,-

(a) "Act" means the Transgender Persons (Protection of Rights) Act, 2016;

(b) "Government" means the Government of Pakistan;

(c) "Parliament" means the National Assembly of Pakistan and the Senate of Pakistan as defined by the Constitution;

(d) "Rules" means the rules made under this Act; and

(e) "Transgender person" means a person who is,-

(i) neither wholly female nor wholly male; or

(ii) a combination of female or male; or

(iii) 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.

## **CHAPTER II**

### **PROHIBITION OF CERTAIN ACTS**

**3. Prohibition against discrimination.-** No person shall discriminate against a transgender person on any of the following grounds, namely:-

- (a) the denial of, or discontinuation of, or unfair treatment in, educational establishments and services thereof;
- (b) the unfair treatment in, or in relation to, employment or occupation;
- (c) the denial of, or termination from, employment or occupation;
- (d) the denial of, or discontinuation of, or unfair treatment in, healthcare services;
- (e) the denial of or, discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;
- (f) the denial of, or discontinuation of, or unfair treatment with regard to the right of movement;
- (g) the denial of or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;
- (h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; or
- (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

## **CHAPTER III**

### **RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS**

**4. Recognition of identity of Transgender person.-** (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. Application for certificate of identity.-** 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. District Screening Committee.-** (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 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;
- (d) a representative of transgender community; and
- (e) an officer of the Government to be nominated by that Government.

**7. Issue of certificate of identity.-** (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. Change in gender.-** (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), shall refer such application to the District Screening Committee and on the recommendation made by the District Screening Committee, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued 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 sub-section (2) shall not affect the rights and entitlements of such person under this Act.

#### **CHAPTER IV WELFARE MEASURES BY GOVERNMENT**

**9. Obligation of the Government.-** (1) The Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.

(2) The Government shall take such measures as may be necessary to protect the rights and interests of the transgender persons, and facilitate their access to welfare schemes framed by that Government.

(3) The Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

(4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons.

(5) The Government shall take appropriate measures to promote and protect the rights of transgender persons to participate in cultural and recreational activities.

#### **CHAPTER V OBLIGATION OF ESTABLISHMENTS AND OTHERPERSON**

**10. Non discrimination in employment.-** No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

**11. Obligations of establishments.-** Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to the transgender person as may be prescribed.

**12. Grievance redressal mechanism.-** Every establishment consisting of one hundred or more persons shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.

**13. Right of residence.-** (1) 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.

(2) 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; and
- (c) a right to enjoy and use the facilities of such house-hold in a non-discriminatory manner.

(3) 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.

## **CHAPTER VI**

### **EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSON**

**14. Obligation of educational institutions to provide inclusive education to transgender persons.-** All educational institutions funded or recognized by the Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others.

**15. Vocational training and self employment.-** The Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

**16. Health care facilities.-** The Government shall take the following measures in relation to the transgender persons, namely:-

- (a) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

- (b) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;
- (c) review of medical curriculum and research for doctors to address their specific health issues;
- (d) to facilitate access to the transgender persons in the hospitals and other healthcare institutions and centers; and
- (e) provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

## **CHAPTER VII OFFENCES AND PENALTIES**

### **17. 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 labor 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 or with fine or with both.

## **CHAPTER VIII MISCELLANEOUS**

**18. Act not in derogation of any other law.-** The provisions of this Act shall be in addition to, and not derogation of, any other law for the time being in force.

**19. Protection of action taken in good faith.-** No suit, prosecution or other legal proceeding shall lie against the Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder.

**20. Power to make rules.-** (1) The Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

- (a) the form and manner in which an application shall be made under section 5;
- (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7;
- (c) the form and manner in which an application shall be made under sub-section (1) of section 8;
- (d) facilities to be provided under this Act; and
- (e) any other matter which is required to be or may be prescribed.

**21. Power to remove difficulties.-** If any difficulty arises in giving effect to any provisions of this Act, the Federal Government may make such order, not inconsistent with the express provisions of this Act, as may appear to it to be necessary or expedient for the purpose of removing the difficulty.

## **STATEMENT OF OBJECTS AND REASONS**

The Act seeks to protect the most marginalized communities of transgender in the country owing to their innocence with both of them general categories of genders. The community faces problems ranging from exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on.

2. Notwithstanding the protection guarantees by the Constitution of Pakistan, 1973 in Article 14 for dignity of human being and privacy of home, in Article 15 freedom of movement and Article 38 expressly makes it obligingly upon the State to secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living etc., the discrimination and atrocities against the transgender community is upon secret. In order to effectively address the issue being confronted by this marginalized community, the instant Bill seeks to,-

- (a) define a transgender person;
- (b) prohibit discrimination against transgender person;
- (c) confer right upon transgender person recognized as such, and a right to self-perceived gender identity;
- (d) issue of certificate of identity to transgender persons;
- (e) provide that no establishment shall discriminate against transgender person in matters relating to employment, recruitment, promotion and other related issues; and
- (f) provide for grievance redressal mechanism in each establishment.

3. This Bill has been designed to achieve the aforesaid objectives.

**SENATOR ZAHEER-UD-DIN BABAR AWAN**  
**Member-in-Charge**



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