ISSN E: 3006-1466
ISSN P: 3006-1458
CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
CJSSR
CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
Vol.04 No.01 (2026)

TRANSGENDER RIGHTS IN PAKISTAN: BRIDGING THE GAP BETWEEN LEGISLATIVE RECOGNITION AND EFFECTIVE LEGAL PROTECTION

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Abstract

Pakistan occupies a paradoxical position in global transgender rights discourse: a centuries-old *khwaja sira* social presence coexists with fragile and contested legal recognition. This article examines the structural gap between legislative text and effective legal protection, focusing on the Transgender Persons (Protection of Rights) Act, 2018, and its subsequent partial invalidation. The 2018 Act, enacted after sustained civil society advocacy, permitted self-perceived gender identity, directed NADRA to reflect it on identity documents, affirmed inheritance rights, and prohibited discrimination in education, employment, healthcare, and public accommodation. Yet it created few penal consequences, no dedicated enforcement body, and no accessible remedial mechanism. Judicial recognition predated the statute: the Supreme Court's 2009 and 2010 rulings affirmed equal constitutional status and directed third-gender registration, but functioned largely as symbolic gestures, with high illiteracy and informal employment persisting. In May 2023, the Federal Shariat Court struck down Sections 2(f), 3, and 7, holding that gender must be determined by dominant physical features and biological sex at birth rather than self-perception, and speculating about access to women-only spaces without documented evidence. The Supreme Court appeal remains pending, compounded by constitutional restructuring through the 26th and 27th Amendments. Beyond judicial uncertainty, implementation gaps are stark: police lack training, hospitals and schools lack institutional policies, no dedicated ombudsperson exists, and complainants face the same overburdened courts as other litigants. Social stigma, family rejection, targeted violence, economic exclusion, and constrained healthcare access reinforce legal fragility. A comparative regional lens distinguishes Pakistan by the constitutional authority of a religious court to roll back enacted statutory protections. The article recommends a genuine enforcement architecture, mandatory sensitization training, public awareness campaigns involving constructive religious scholarship, timely resolution of the pending appeal, and resourcing of civil society organizations.

Keywords: Transgender Rights; Transgender Persons (Protection of Rights) Act 2018; Federal Shariat Court; Khwaja Sira; Legal Limbo; Implementation Gap; South Asian Comparison

Introduction

Pakistan occupies a paradoxical place in the global conversation on transgender rights. The *khwaja sira* community has a documented social presence in South Asia stretching back centuries, long predating the modern vocabulary of gender identity. Yet formal legal recognition arrived only in the last two decades, and even that recognition has proven fragile. In 2018, Pakistan's parliament passed one of the most progressive transgender rights laws in the region.[1] Within five years, key sections of that same law were struck down by a religious court, and the

[1] Redding, J. (2019). The Pakistan Transgender Persons (Protection of Rights) Act of 2018 and its impact on the law of gender in Pakistan. *SSRN*. https://papers.ssrn.com/abstract=3490418

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CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
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community's legal status has since drifted into an unresolved limbo.[2] This tension — between a statute that reads as remarkably forward-looking on paper and a lived reality marked by violence, exclusion, and institutional indifference — is the central problem this article examines. The gap is not simply one of enforcement; it is a deeper structural gap between what Pakistani law says a transgender citizen is entitled to and what the state's institutions are actually built to deliver.

The Legislative Framework: The Transgender Persons (Protection of Rights) Act, 2018

The National Assembly enacted the Transgender Persons (Protection of Rights) Act in May 2018 after sustained advocacy from civil society and transgender rights organizations.[3] The law was notable for several reasons. It allowed individuals to register their gender identity based on self-perception rather than requiring medical or biological verification, and it directed the National Database and Registration Authority (NADRA) to reflect this on identity documents. It affirmed inheritance rights for transgender persons under existing family law frameworks, prohibited discrimination in education, employment, healthcare, and public accommodation, and placed an obligation on provincial and local governments to provide welfare support, including access to shelters, health facilities, and vocational training. At the time of passage, the law was held up internationally as evidence that a conservative, Muslim-majority state could legislate meaningfully on gender identity.[4]

What the Act lacked, however, was teeth. It created few penal consequences for violations, no dedicated enforcement body, and no clear administrative mechanism through which a transgender person facing discrimination could seek a timely remedy. This absence of an implementation architecture is, as later sections of this article argue, the single most consistent thread running through Pakistan's transgender rights failures.

Judicial Milestones Before and After the 2018 Act

Legal recognition did not begin in 2018. As early as 2009 and more explicitly in 2010, the Supreme Court of Pakistan issued rulings affirming that transgender citizens held equal constitutional status to other Pakistanis and directed NADRA to register a third-gender category on identity cards.[5] In principle, this should have opened access to equal education, employment, and protection from discrimination. In practice, these judicial declarations functioned largely as symbolic gestures; national census data has repeatedly shown extremely high illiteracy rates within the community, and dancing and sex work have remained the dominant sources of income for many transgender Pakistanis, even after the Supreme Court's pronouncements.

The more consequential judicial intervention came in May 2023, when the Federal Shariat Court — a constitutional body empowered to determine whether legislation conforms to Islamic injunctions — ruled on a set of petitions that had challenged the 2018 Act since 2021. The Court

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[2] Dawn. (2023, May 20). FSC strikes down transgender law for being 'against Islam'. *Dawn*. https://dawn.com/news/1754516/fsc-strikes-down-transgender-law-for-being-against-islam

[3] Government of Pakistan. (2018). *The Transgender Persons (Protection of Rights) Act, 2018* (Act No. XIII of 2018). *Gazette of Pakistan*, Extraordinary, Part I, May 24, 2018. https://lpr.adb.org/sites/default/files/2024-07/pakistan-transgender-persons-protection-and-rights-act-2018-act-no-xiii-of-2018.pdf

[4] International Commission of Jurists. (2020, October). *Pakistan: Transgender Persons (Protection of Rights) Act, 2018 – Executive summary*. https://icj.org/wp-content/uploads/2020/12/Pakistan-Transgender-Summary-Advocacy-Analysis-brief-2020-ENG-URD.pdf

[5] *Dr. Muhammad Aslam Khaki v. S.S.P. (Operations) Rawalpindi*, PLD 2013 SC 188 (Pak.) (Constitution Petition No. 43 of 2009). https://translaw.clpr.org.in/?p=85

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struck down Sections 2(f), 3, and 7 of the Act, which defined gender identity, established the right to self-perceived gender identity, and secured inheritance rights, respectively.[6] The bench held that a person's gender must be determined by "dominant physical features" and biological sex at birth rather than self-perception, and it further speculated, without citing documented cases, that the self-identification provision could be exploited by men seeking access to women-only spaces.[7]

The ruling triggered immediate backlash. The Human Rights Commission of Pakistan called it a regressive decision that sought the erasure of an entire demographic's fundamental rights and undermined the will of Parliament. Amnesty International similarly criticized the Court for basing its findings on speculative scenarios rather than empirical evidence, noting there was no publicly available record of the abuses the Court had warned against. Transgender rights organizations, including the Transgender Rights Consultants Pakistan, announced their intention to appeal to the Supreme Court.[8]

The Unresolved Appeal and Continuing Legal Limbo

More than three years after the Federal Shariat Court's ruling, the Supreme Court appeal remains pending. NADRA briefly suspended new X-marker national identity card registrations following the ruling before resuming them once the matter was brought before the Supreme Court,[9] but no final judgment has been issued. This prolonged uncertainty has been compounded by broader constitutional restructuring in Pakistan: the 26th Amendment's creation of a Constitutional Bench and the subsequent 27th Amendment establishing a new Federal Constitutional Court in late 2025 have added ambiguity over which judicial forum will ultimately decide the case.[10] For a community whose legal identity depends on the outcome, this institutional reshuffling has meant years spent in a status that is neither fully protected under the original 2018 Act nor fully stripped of it — a limbo that leaves individuals uncertain whether the identity documents they hold, or the rights attached to them, will survive judicial review.

Implementation Gaps: Where the Law Meets the Street

Even where the 2018 Act's provisions remain technically in force, the distance between statute and lived experience is stark. Police officers frequently lack training on how to interact with transgender complainants, and reports of transgender individuals being mocked, detained arbitrarily, or turned away when attempting to file complaints are common. Hospitals and

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[6] Dawn. (2023, May 20). FSC strikes down transgender law for being 'against Islam'. *Dawn*. https://dawn.com/news/1754516/fsc-strikes-down-transgender-law-for-being-against-islam

[7] Amnesty International. (2023, May 19). *Pakistan: Revocation of rights of transgender and gender-diverse people must be stopped*. https://www.amnesty.org/en/latest/news/2023/05/pakistan-revocation-of-rights-of-transgender-and-gender-diverse-people-must-be-stopped/

[8] Express Tribune. (2023, May 19). FSC rejects gender change autonomy. *The Express Tribune*. https://tribune.com.pk/story/2417570/entertainment

Dawn. (2023, May 20). Shariat court's decision termed 'attack on human rights of transgender persons'. *Dawn*. https://www.dawn.com/news/1754495/shariat-courts-decision-termed-attack-on-human-rights-of-transgender-persons

[9] Sadozai, I. (2023, September 25). Nadra resumes registration of transgender persons. *Dawn*. https://www.dawn.com/news/1777815

[10] Malik, Z. (2025, November 28). Shifting the scales: How Pakistan's 27th Amendment undermines judicial independence and cements executive dominance. *ConstitutionNet*. https://constitutionnet.org/fr/node/19965

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CJSSR
CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
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schools often lack any institutional policy for accommodating transgender patients or students, leaving compliance to the discretion of individual staff. There is no dedicated ombudsperson or fast-track tribunal for transgender rights violations, meaning complainants must navigate the same overburdened civil and criminal court system as any other litigant — a process that can take years and requires resources most transgender Pakistanis do not have.

Social and Cultural Barriers

Legal gaps are reinforced by deep social stigma. Family rejection is common and often occurs early in life, pushing transgender individuals out of education systems and into informal, itinerant *khwaja sira* communities for survival and support. Religious conservatism, expressed institutionally through the Federal Shariat Court's 2023 ruling, reflects a broader current of public opinion that views gender self-identification as incompatible with religious teaching. This social climate makes legislative gains politically fragile: a law passed by parliamentary consensus can still be undone by a court applying a different interpretive framework, and public sympathy for transgender rights remains limited enough that political actors have little incentive to defend the law vigorously.

Violence and Access to Justice

Targeted violence against transgender Pakistanis, particularly in Khyber Pakhtunkhwa and parts of Punjab, has been documented for years, including killings, assault, and harassment.[11] Underreporting is severe, driven by fear of police mistreatment, social ostracization, and the near-total absence of witness or victim protection mechanisms tailored to transgender complainants. When cases are reported, investigations are often slow or abandoned, and convictions are rare. The result is a de facto impunity that both reflects and deepens the community's exclusion from the justice system.

Economic and Social Exclusion

Employment discrimination remains pervasive, and formal-sector jobs are largely inaccessible to transgender individuals regardless of qualification. This exclusion, combined with low literacy rates rooted in early school dropout, channels many into begging, dance performance, or sex work as primary income sources — occupations that carry their own risks of exploitation and violence and that reinforce the social stigma used to justify further exclusion. Healthcare access is similarly constrained; gender-affirming care is largely unavailable through the public health system, and general medical treatment is often complicated by staff unfamiliarity or hostility.

A Comparative Regional Lens

Pakistan's experience is not unique in South Asia, though its trajectory has diverged from its neighbors. India's Supreme Court recognized a third gender category in 2014 and Parliament passed the Transgender Persons (Protection of Rights) Act in 2019, though that law too has drawn criticism from activists for weak enforcement provisions and a cumbersome certification process.[12] Bangladesh recognized a *hijra* gender category administratively in 2013, with

[11] Human Rights Watch. (2016, August 23). *Pakistan: Attacks on transgender women surge*. https://www.hrw.org/news/2016/08/23/pakistan-attacks-transgender-women-surge

International Commission of Jurists. (2022, March 31). *International Transgender Day of Visibility: End impunity for attacks against transgender people*. https://www.icj.org/?p=43878

[12] *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (India). https://clpr.org.in/wp-content/uploads/2024/11/1_NALSA_v_UoI.pdf

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similarly uneven implementation.[13] Nepal has gone furthest on paper, with its Supreme Court and 2015 Constitution recognizing a third gender and providing for its inclusion on citizenship documents, though social stigma persists there as well.[14] What distinguishes Pakistan is not the presence of implementation gaps — these are common across the region — but the fact that a religious court had the constitutional authority to substantively roll back statutory protections after they were enacted, a structural vulnerability less present in India, Bangladesh, or Nepal's legal systems.

Recommendations

Closing the gap between legislative text and lived protection requires action on several fronts simultaneously. First, any future legislative or judicial settlement needs a genuine enforcement architecture: a dedicated complaints body, meaningful penalties for institutional discrimination, and a specific timeline for case resolution. Second, mandatory sensitization training for police, healthcare staff, and educators would address the everyday points of contact where discrimination is most acutely felt, independent of what the law formally says. Third, sustained public awareness campaigns, ideally involving religious scholars willing to engage constructively with the community's rights, could help narrow the gap between legal recognition and social acceptance rather than leaving the two working against each other. Fourth, the pending Supreme Court appeal deserves timely resolution; years of legal limbo serve no one, and the uncertainty itself functions as a form of harm. Finally, civil society organizations working directly with the *khwaja sira* community should be resourced and consulted as a matter of course in any future policymaking, given their demonstrated closer proximity to the community's actual needs than either parliament or the courts have shown to date.

Conclusion

Pakistan's transgender rights story illustrates a broader lesson about the limits of legislative symbolism: a progressive law is not self-executing, and formal equality does not translate automatically into substantive equality. The 2018 Act represented a genuine legislative achievement, but its subsequent partial dismantling by the Federal Shariat Court, combined with chronic weaknesses in enforcement, has left Pakistan's transgender community in a precarious position — legally unsettled, socially marginalized, and economically excluded. Bridging this gap will require more than another statute; it will require sustained institutional commitment, an end to the current judicial limbo, and a shift in the everyday practices of the police stations, hospitals, and schools where the law is either honored or ignored.

Recommendations

1. Establish a Dedicated Enforcement Architecture: Parliament should create an autonomous National Transgender Rights Commission with statutory powers to receive complaints,

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Quartz. (2019). India's transgender rights bill disappoints the LGBTQ community. *Quartz*. https://qz.com/india/1756897/indias-transgender-rights-bill-disappoints-the-lgbtq-community

[13] Human Rights Watch. (2016, December 23). *Bangladesh: Gender recognition process spurs abuse*. https://www.hrw.org/news/2016/12/23/bangladesh-gender-recognition-process-spurs-abuse

[14] *Sunil Babu Pant & Others v. Nepal Government & Others* (Supreme Court of Nepal, December 21, 2007). https://www.icj.org/sogicasebook/sunil-babu-pant-and-others-v-nepal-government-and-others-supreme-court-of-nepal-21-december-2007/

Constitution of Nepal (2015), arts. 12, 18(3), 42. https://translaw.clpr.org.in/legislation/the-constitution-of-nepal-2015-constitution-nepal/

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CJSSR
CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
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investigate institutional discrimination, impose meaningful penalties, and ensure time-bound case resolution.

2. Mandate Sensitization Training for Frontline Institutions: Provincial governments should make sensitivity and awareness training compulsory for police officers, healthcare staff, and educators, integrating it into recruitment and promotion criteria so that everyday points of contact cease to be sites of discrimination.

3. Guarantee Equal Access to Education, Employment, and Healthcare: Federal and provincial authorities should provide targeted scholarships, vocational training programmes, public-sector employment quotas or incentives, and free healthcare—including gender-affirming care—through public hospitals to address structural exclusion.

4. Resolve the Judicial Limbo Without Delay: The Supreme Court should prioritize and decide the pending appeal against the Federal Shariat Court's 2023 ruling, and any future legislative or judicial settlement must be crafted with a clear enforcement mechanism so that statutory protections cannot be substantively rolled back.

5. Launch Sustained Public Awareness Campaigns Involving Religious Scholars: The state, media, and civil society should collaborate with constructive religious scholarship to promote the dignity and rights of transgender persons, narrowing the gap between legal recognition and social acceptance rather than leaving law and social norms in opposition.

6. Resource and Consult Civil Society Organizations: Policymakers should systematically fund and consult organizations working directly with the *khwaja sira* community in all future legislative and administrative processes, recognizing their demonstrated proximity to the community's actual needs as essential partners in implementation.

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