

**TRANSGENDER -  
(THE NEED FOR MAINSTREAMING)  
INTERIM REPORT**

**FROM:  
THE NATIONAL COMMISSION FOR  
HUMAN RIGHTS**

## RECOMMENDATIONS (A WAY FORWARD):

Now is the time to propose prompt and expedient legislation and amendments in the national legal system for the betterment of the transgender community.

To incorporate in our report the perspective and recommendations of different stakeholders, especially the transgender community, the NCHR was a part of a multi-stakeholder consultation held by Forum for Dignity Initiatives (FDI) in support with Heinrich Boll Stiftung on 27<sup>th</sup> December, 2016, with media personnel, legal experts, educationists, transgender community representatives and human rights activist from Islamabad and Rawalpindi as participants. The main concern of the consultation was to identify the issues of transgender and the possible solutions for it.

Taking into account of the above-mentioned International Guidelines, Conventions, Islamic teachings, Laws from different Jurisdictions and consultation with the stakeholders, following are the recommendations proposed by the National Commission of Human Rights (NCHR) to amend and introduce Laws on 'transgender' in order to protect the best interest of the transgender people within the Jurisdiction of Pakistan.

## SPECIFIC RECOMMENDATIONS

### Specific Legislative Measures

- The provincial and federal government may legislate laws for transegender person on the same pattern as Women Harassment Act, 2010 and Punjab Women Protection Act, 2015, to protect rights their rights.
- Specific and comprehensive law for the protection of rights of the transgender people may be drafted with coordination of all the stakeholders, outlining the mechanism and the procedures as to how institutions should integrate the transgender in the community and shield their rights of residence, employment, education, etc.
- Following the 18<sup>th</sup> amednement, the provincial governments can dtaftrt their own laws to safeguard the rights of the transgender persons. The provincial governments should enact legislation that would protect the fundamental rights of this community.
- Enact hate crime laws to combat hate crime and hate speech that establish transphobia as aggravating factors for purposes of sentencing. PEMPR laws may be revised for this porpose and a specific provision may be added to prohibit hate speech against the transegdner persons on electronic media.
- Section 8 of the Pakistan Penal Code, 1860 (**PPC**), defines gender as "he" and its derivatives are used of any person, whether male or female. This provision shall also include transman/transwomen

along with male or female in order to apply this law equally on all citizens of Pakistan whether male, female or third gender. Similarly section 10 may also include transman/transwomen.

- Section 375 and 376 of PPC read with section 100 of the PPC which pertains and provides law as part of general exception which offers protection to victim of rape be extended in the cases against transgender or transwomen as already provided to males and females.
- Lawful sexual intercourse in Pakistani law is defined as penetrative sex between a man and a woman, with the penetrative member being the man's penis. Any other kind of sex is criminalized as *zina*. While there have been limited prosecutions under section 377, it and other sexual offences are used to threaten and extort sex workers, including Khwaja Siras, who then fall victim to monetary extortion and sexual violence from law enforcement officers. Henceforth, ensure that individuals are not arrested or detained on the basis of their sexual orientation or gender identity, and are not subjected to baseless and degrading physical examinations intended to determine their sexual orientation. Amend section 377 of the Pakistan Penal Code, 1860, and include a provision making molestation of transgender people a crime and an offence under PPC.

#### Recognition of Identity of Transgender People and Obligation of Establishment and other persons

- Necessitate the issuance of the identity papers which indicate a person's gender/sex — including birth certificates, CNICs, passports, electoral records and other essential documents. The government should make sure that such procedures are unbiased, expedient and non-discriminatory. Respect, dignity and privacy of the person must be guaranteed.
- The government may in every establishment consisting of one hundred or more persons designate a person to be a compliant officer to deal with complaints relating to violations against the transgender people.
- The transgender people may have the right to live/reside with their family and given right to enjoy and use facilities of such their house in a non-discriminatory manner. No person should separate the trans children from their family/family except if court allows to for the best interest and welfare of such person.
- Family laws may be amended where transchild protection is responsibility of parents and without court intervention such child may not be forced to leave their house.
- In circumstances where family is unable to take care of a transgender, the court may by an order direct such person to be placed in rehabilitation centre.
- The blood relatives must be penalised if a transchild is forced to leave the house or any trans under 18 found at the "Dera", the parents and the guru, both must be held responsible.

## Equal Right to Education

- Pursuant to Article 25-A and 37-B of the 1973 constitution, the government may take effective and rapid legislative measures to ensure equal access to education from primary level to post graduation.<sup>1</sup>
- The public educational institutions may provide education and other activities to the transgender people without discrimination on equal basis with others. To encourage the transgender students, scholarships may also be offered to them.
- The government may allocate funds for the trans-children to ensure they enjoy the right of education and ensure that laws and policies provide adequate protection for students, staff and teachers of transgender people against all forms of social exclusion and violence within the school environment, including bullying and harassment.
- The transgender people who have already suffered such forms of discrimination in the educational system must be accommodated and be given the opportunity to continue education in a friendly and healthy environment and the aid legal recourse may be available to them.
- Workshops must be given to the teachers and sensitise them.
- Chapter of 'gender identity' may be added in the school syllabus to educate them and make the transgender an acceptable community.

## Equal Right to Employment

- The government may legislate measures to eliminate and prohibit discrimination of the transgender people in public and private employment by providing protection under the Pakistani labour laws. Further identify the transgender people in the definitions of workers, employees and all the relevant interpretations.
- The government may allocate employment quota for transgender people and guarantee strict implementation of such policy by the respective authorities and contains penalties and aid of legal recourse in case of non-compliance.
- Introduce exclusive learning classes in educational and vocational institutes. Government may establish skill development/vocational centres and introduce welfare schemes to provide them with employment skills.

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<sup>1</sup> Article 25 A: "Right to education - The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law."  
Article 37-b: "remove illiteracy and provide free and compulsory secondary education within minimum possible period."

- The micro-finance institutions may revise their loan policies to create some flexibility for the transgender people and release loan for those skilled persons who incline to initiate their own small businesses.
- The government for the welfare of Transgender people may introduce subsistence or ‘guzara’ allowance for the unemployed individuals of this community.

### Equal Right to Health

- In pursuance of Article 9 and Article 38 of the 1973 constitution, the government may take necessary legislative, administrative and other measures to ensure that the transgender people enjoy safe health standards, without any discrimination.<sup>2</sup>
- Separate human immunodeficiency virus Sero-surveillance Centres should be created for them. The government may order the review of medical curriculum and research for doctors to address their specific health issues and facilitate access to the transgender persons in the hospitals and other healthcare bodies and centres.
- A comprehensive insurance or welfare schemes may be initiated for coverage of medical expenses for transgender people.
- The transgender people may be provided with the HIV/AIDS preventive items and National Family Planning Programme and civil society organisations should raise awareness and educate them with the preventive measures. Proper facilities shall be given to the affected for screening or testing (VCT) of HIV/AIDS.
- It may be adequate to introduce a third ward for the transgender people along with the male and female ward and the government may direct the hospitals to insert the option of transgender patients in the admission forms.
- Introduce and implement policies and programmes of education and training, necessary to enable persons working in the healthcare sector to provide the highest attainable standard of healthcare to the transgender people.

### Equal Right to Political Representation

- It is imperative to allow the individuals of this community to represent their fellow transgender people. The legislators and government shall ensure proportionate representation of trans-persons

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<sup>2</sup> Article 9: Security of a Person, which is jeopardized if proper healthcare is not available  
 Article 38, Promotion of social and economic well-being of the people which places a positive responsibility on the government to provide citizens with access to healthcare.

among enacting laws and formulating policies respectively. At least one seat may be reserved in the national and the provincial assembly each.

- The leading political parties shall be encouraged to include the advancement of the Transgender people in their mandate and give them party tickets to contest for elections.

### Accountability

- The government may establish a Council for the transgender people. The council may consist of representatives of; each ministry not below the rank of joint secretary, representative from the National Commission for Human Rights, provincial and local governments, experts of the non-governmental organisations working for the welfare of the transgender and representative of any other stakeholder required. It may also include a transgender representative.
- The council may advise the government on formulation of policies, programmes, legislation and projects with relevance to the transgender community. The council may also have the power to monitor and evaluate the impact of policies aimed for achieving equality and full participation of the transgender people.
- Special ombudsman may also be appointed for the protection of rights of transgender people and to monitor the formulation and enforcement of laws and policies by the public authorities to ensure the elimination of discrimination and violence against this community.
- Establish accessible, adequate and effective, civil, criminal administrative and other procedures, as well as monitoring mechanisms, to ensure the accountability of committers for human rights violations related to them.
- The individuals or institutions who do not abide by laws and policies formulated for the transgender and discriminate or force them into activities such as begging, prostitution or uses harms them in anyway must be punished and penalties may be imposed on them.

### GENERAL RECOMMENDATIONS

- Allocate budget for the welfare of transgender people.
- The government shall direct the Police department to minimize unnecessary raids and illegal detention, show compassionate behaviour, and register the FIRs reported by trans-community. The civil society including NGO's should conduct sensitisation sessions with police officials in order to mainstream respect and rights of the Transgender people.
- Ensure that any attack on the Transgender people whether by government officials or by any individual or group, are promptly investigated, and that, where strong evidence is found, those responsible are prosecuted, tried and duly punished under law.

- Introduce protection policy for human rights defenders who are supporting transgender human rights as they are equally under threat
- The government may take necessary measures to secure full and effective participation and inclusion of the transgender in the society.
- Programmes may be initiated to provide social support and awareness amongst the society in relation to the Transgender people. The government and civil society shall step up, and run awareness-raising campaigns.
- Enlightening the society with the help of media (print, electronic and social), local leaders, schools teachers and religious persons will be of essential help. The government must take some transgender-specific initiatives to increase their acceptance in society.
- The integration and sensitizing the society must start from the schools by educating the children of primary schools and teaching them how the transgender people are ‘one of us’.
- Educate police and other law enforcement agencies regarding the arbitrariness of arrest, violence and detention of the Transgender people.
- Train and bring awareness for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to the transgender people.
- Train law enforcement personnel and judges in gender-sensitive approaches to addressing violations related to sexual orientation and gender identity.
- Reasonable steps must be taken to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated on the Transgender people and offer appropriate remedies including redress and reparation and, where appropriate, medical and psychological support.
- Transgender people must be given access to strengthen their contacts various stakeholders of the society including legislators, policy makers, government departments, NGOs, INGO’s, bar associations, private sector employers, local governments, political parties, religious authorities and media.