

Pakistan

Country Conditions Report

Created by the Sexual Orientation and Gender Identity Working Group

International Human Rights Program

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# Introduction

Pakistan provides no protection in law based on sexual orientation, and LGTBQ+ individuals are at high risk of discrimination and violence within families, institutions, and society at large. Same-sex relations are prohibited under Article 377, the “unnatural offences” provision of the *Pakistani Penal Code,* as well as Articles 5 and 6 of the *Hudood Ordinances,* which criminalize sexual relationships outside of marriage under Islamic law. While individuals are rarely charged, these and other criminal offences are used to threaten and extort bribes from LGBTQ+ individuals. Same-sex relations, particularly between men, are fairly common, but individuals keep their identity hidden to avoid the overwhelming discrimination they face in the conservative Islamic society. While the state seems able to provide protection for LGBTQ+ people, it remains unwilling to do so.

Pakistan recently enacted the *Transgender Protection Act*, which guarantees transgender individuals certain rights and protection and condemns discrimination based on gender identity. The government also allows citizens to identify by their self-perceived gender on government documents, including a third gender option. These decisions were made in recognition of the long existence of a transgender community (known as the hijra community) in Pakistan since before British colonization, when transgender people had an important role to play in many social functions. Nearly all the recent progress made for the LGBTQ+ community has been in the area of transgender rights. However, there is evidence that transgender people continue to face a real threat of sexual harassment and violence in some parts of the country. There is little information available at this point about the changes experienced by transgender people as a result of this legislation.

Internationally, Pakistan remains active in attempting to prevent resolutions in support of LGBTQ+ rights within international organizations, including the United Nations. The government remains unwilling to end the criminalization of same-sex relations, and the risks suffered by individuals because of their sexual orientation are not acknowledged or addressed in Parliament. This reflects the persistent societal belief that homosexuality is sinful and offensive to Islam. Individuals who are publicly identified face harassment, humiliation, and discrimination. Those who resist societal pressures to adopt a heteronormative lifestyle may be rejected by their families and pressured into sex work.

# Legislation

*The Constitution of the Islamic Republic of Pakistan, 1973 (revised 2012)*[[1]](#footnote-0)

* Sexual orientation and gender identity are not explicitly mentioned in the *Constitution*.
* **Preamble** guarantees citizens “fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association,” but limits these rights as being “subject to law and public morality.” It also states that “adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes.” The observance of “the principles of democracy, freedom, equality, tolerance and social justice” are qualified with the phrase “as enunciated by Islam.”[[2]](#footnote-1)
* **Article 31 (Islamic way of life)** With respect to Muslims, the state will endeavour to promote “the observance of the Islamic moral standards.”[[3]](#footnote-2)
* **Article 35 (Protection of family, etc.)** “Marriage” and “the family” are recognized as receiving special protection from the state.[[4]](#footnote-3)
* **Article 37 (Promotion of social justice and eradication of social evils)** The state will prevent the proliferation of obscenities.[[5]](#footnote-4)
* **Article 227 (Islamic Provisions)** All legislation must conform with “the Injunctions of Islam as laid down in the Holy Quran and Sunnah.”[[6]](#footnote-5)

*Pakistan Penal Code, Act XLV of 1860*[[7]](#footnote-6)

* The Pakistan Penal code was enacted under the British Raj and adopted the criminalization of same-sex relations.
* **Article 377 (Unnatural Offences)** This is the main article that prohibits same-sex relations, prohibiting​​ “carnal intercourse against the order of nature with any man, woman or animal.” Punishments range from fines, imprisonment of two to ten years (either simple or hard labour), or imprisonment for life. Carnal intercourse is defined as “penetration.”[[8]](#footnote-7)
* **Article 269 (Negligent act likely to spread infection of disease dangerous to life)** This article prohibits any act that an individual “knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life.”[[9]](#footnote-8)
* **Article 292 (Sale, etc., of obscene books, etc.)** The spreading of any “obscene” materials, literature, or images is prohibited.[[10]](#footnote-9)
* **Article 294 (Obscene acts and songs)** Performance of any obscene acts in public places may be punished by fine or up to three months in prison.[[11]](#footnote-10)

*The Offence of Zina (Enforcement Of Hudood) Ordinance, 1979*[[12]](#footnote-11)

* The Hudood Ordinances were enacted in the 1970 during the Islamization of Pakistan as a supplement to the *Penal Code.*
* **Articles 5 and 6 (Zina liable to hadd)** Sexual intercourse outside of marriage is prohibited. Punishments include stoning to death or whipping up to 100 lashes.[[13]](#footnote-12)

*Prevention of Electronic Crimes Act (2016)*

* **Article 34 (Unlawful Online Content)** The government has the power to block or remove internet content “in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality.”[[14]](#footnote-13)

*Transgender Persons (Protection of Rights) Act, 2018*[[15]](#footnote-14)

* This landmark legislation gives protection to transgender individuals. The *Act* was created partly in recognition of the *khawaja* (third-gender) community in Pakistan, which was widely accepted in pre-colonial times.
* **“Transgender Person”** is defined as intersex individuals, castrated males, and “any person whose gender identity and/or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.”[[16]](#footnote-15)
* **Article 3 (Recognition of identity of Transgender person)** Transgender persons are granted the right to recognition of their self-perceived gender, including registration with government institutions and identification documents.
* **Article 4 (Prohibition against discrimination)** It is illegal to discriminate against a transgender person in terms of education, employment, healthcare, public services and benefits, transportation, residence and property, opportunity to hold office, and government and private establishments.
* **Article 5 (Prohibition against Harassment)** Harassment of transgender individuals based on their sex, gender identity, or gender expression, inside or outside the home, is illegal.
* **Article 6 (Obligations of the government)** The government commits to promoting the full participation of transgender people in society, including establishment of protection and rehabilitation centres, sensitization of public officials, and provision for vocational training and small business loans.
* **Article 7 (Right to Inherit)**
* **Article 8 (Right to Education)**
* **Article 9 (Right to employment)**
* **Article 10 (Right to Vote)**
* **Article 11 (Right to hold public office)**
* **Article 12 (Right to Health)** Includes the government taking measures to ensure transgender persons have “access to all necessary medical and psychological gender corrective treatment.”
* **Article 13 (Right to assembly)**
* **Article 14 (Right of access to public places)**
* **Article 15 (Right to property)**
* **Article 16 (Guarantee of Fundamental Rights)** There shall be no discrimination on the basis of sex, gender identity, or gender expression.

# Canadian Jurisprudence

The following section summarizes four cases exemplifying the IRB’s treatment of Pakistani refugee applicants who gave evidence relating to their sexual orientation and/or gender identity. LGBTQ+ individuals may be found ineligible for Convention Refugee status in Canada because of difficulties proving their identity or that they face a real threat of persecution.

1. *X, Re*, RADFile No. MC0-08732 (2021)[[17]](#footnote-16)

**Holding:** Refugee claim granted due to serious risk of persecution in Pakistan.

* **Appellant sought Convention Refugee (“CR”) status because he feared persecution due to his relationship with a transgender woman.**
* **At RPD, he was declined CR status because the panel found him not credible due to evidentiary inconsistencies and “vague and evasive testimony.”**[[18]](#footnote-17)
* **RAD overturned RPD’s decision and granted the appeal, finding that the RPD erred in its credibility assessment; Appellant was declared a CR.**

The Appellant testified he feared persecution from family members, religious persons, and police because of his affair with a transgender woman in Pakistan. He testified he was only attracted to persons who had transitioned from male to female, and had received death threats, been the victim of beatings, and had been arrested and tortured by police due to his sexual orientation.

At the RPD, Appellant’s application for CR status was denied because the panel found his evidence not credible. However, on appeal, the RAD found the RPD had erred in its credibility assessment and granted him CR status based on the serious possibility of persecution in Pakistan.

The panel looked at various reports and assessments of the treatment of sexual minorities in Pakistan, which demonstrated that these individuals face severe social stigma, violence, discrimination, and degradation in social class and rank.

The panel noted that the president of the Neengar Society, a Pakistani non-profit aimed at helping marginalized individuals, said “no one can openly claim to be gay or lesbian in Pakistan as it can still cost them their life”. They also relied on Human Rights Watch’s claim that there is “government persecution” toward transgender persons in Pakistan.[[19]](#footnote-18)

Finally, the panel relied on US Country Reports 2017, which said the police in Pakistan “generally refused to take action on cases involving members of the LGBTI community,” and that no laws in Pakistan protect against discrimination on the basis of sexual orientation or gender identity.[[20]](#footnote-19)

Holding that the Appellant had provided sufficient credible evidence to demonstrate a serious possibility of persecution in Pakistan, and that the RPD had erred in its credibility assessment, the panel granted the Appellant CR status.

2. *X, Re*, RAD File No. TB9-35033(2020)[[21]](#footnote-20)

**Holding:** Refugee claim denied because Appellant failed to establish his sexual orientation as a gay man.

* **Appellant sought CR status because he feared persecution in Pakistan, claiming an extremist group was aware of his LGBTQ+ status.**
* **At RPD, he was declined CR status because the panel found him not credible due to his failure to identify his agents of persecution, and to provide corroborating evidence regarding his same-sex relationship.**
* **RAD confirmed RPD’s decision, finding that the Appellant was “not gay as alleged.”[[22]](#footnote-21)**

The Appellant testified he feared persecution from an extremist organization in Pakistan, who had discovered him and his boyfriend in a “compromising situation” in a hotel in 2017. The RPD found this organization did not execute attacks in Pakistan, and that the Appellant’s failure to identify this group in his Statement of Claim detracted from his credibility. The RAD found the hotel incident did not occur.

Further, the RPD dismissed the Appellant’s reasons for failing to seek asylum while he was living in the UK, which he testified was due to the fact that nobody he knew there was part of the LGBTQ+ community.

The RPD also found that the Appellant failed to establish his LGBTQ+ identity. The panel cited his membership with an LGBTQ+ community centre (which was insufficient to prove his sexual orientation), his failure to obtain a letter of support from his boyfriend, and his general lack of credibility, as reasons why they found him to not be part of the LGBTQ+ community.

While the panel acknowledged that “homosexuality is perceived as a psychological disorder in Pakistan” and the country has “no LGBTQ+ rights,” they ultimately found the Appellant’s personal evidence unconvincing.[[23]](#footnote-22) They did not believe he was part of the LGBTQ+ community, and his request for asylum was denied.

3. *X, Re*, RADFile No. TB9-03521(2020)[[24]](#footnote-23)

**Holding:** Refugee claim granted due to serious possibility of persecution in Pakistan.

* **Appellant sought CR status because she feared persecution in Pakistan due to her being a lesbian.**
* **At RPD, she was denied CR status because they found she had failed to prove her LGBTQ+ status.**
* **RAD reversed RPD’s decision, finding that the RPD had erred in failing to admit certain types of evidence, and that the Appellant was credible regarding her sexual orientation.**

The Appellant testified she faced beatings, death threats, and general domestic abuse from her father and brothers in Pakistan due to her sexual orientation and her same-sex relationship with a former co-worker.

After finding that the RPD had erred in failing to admit certain pieces of evidence, the RAD conducted a country condition analysis to determine the Appellant’s prospect of serious persecution in Pakistan. They relied on sources indicating that while LGBTQ+ individuals from privileged backgrounds could enjoy some “openness” in private circles, they were still required to live discreetly.[[25]](#footnote-24) They also noted that while consensual same-sex relationships are criminalized in Pakistan, the law is rarely enforced.

However, the RAD also found that LGBTQ+ individuals faced the death penalty under Sharia law, though some sources claimed these laws did not apply to lesbian relationships. Objective sources also showed that lesbians in particular face forced marriages, honour killings, and other honour crimes such as physical harm and confinement.[[26]](#footnote-25)

The RAD also found that persecution of members of the LGBTQ+ community is widespread across all of Pakistan, so state protection or a reasonable internal flight alternative was not an option for the Appellant. On the totality of the evidence, the panel found the Appellant was a member of the LGBTQ+ community who faced a real possibility of persecution and granted her CR status.

4. *RAD File No. TB6-03735* (2016)[[27]](#footnote-26)

**Holding:** Refugee claim denied due to insufficient credible evidence to support a finding that the Appellant was a member of the LGBTQ+ community who was in danger of persecution in Pakistan.

* **Appellant sought CR status, testifying that he had been targeted due to his sexual orientation.**
* **At RPD, and upheld by RAD, he was found to have insufficient credible evidence relating to his sexual orientation or his being targeted in Pakistan.**

The Appellant testified he was “a homosexual and a bisexual,” and had been extorted, threatened, and violently attacked by several of his employees who were influenced by “religious fanatics.”[[28]](#footnote-27)

The RPD found that while some of the Appellants testimonies, such as his conflation of “homosexuality” with “bisexuality,” were inconsistent, this was not material because the Appellant’s knowledge of LGBTQ+ terminology would be “child-like” due to the taboo of sexual minority status in Pakistan. However, the RAD found that since the Appellant was well-educated and knew English, he should have been able to identify his sexual orientation “specifically an accurately,” and failure to do so raised doubts as to his sexual orientation.[[29]](#footnote-28)

The RAD was also not convinced by the Appellant’s testimony about being conspired against by his employees. The panel noted that Pakistani law provided harsh penalties for those accused of homosexuality, and thus found it uncredible that a religious fanatic would individually conspire against the Appellant rather than denouncing him as “homosexual” to the Pakistani authorities.[[30]](#footnote-29)

The Appellant also testified that being part of the LGBTQ+ community in Pakistan was seen as a crime “deserving scornful and certain death”, and that “being caught was a huge risk in Pakistan and that, even if someone suspects one to be homosexual, the attitude of the people becomes unbearable as they commence public humiliation.”[[31]](#footnote-30) However, the panel found that his failure to seek asylum in the various countries he visited despite these fears and concerns casted doubt on whether he truly feared persecution.

Ultimately, the panel held that there was insufficient credible evidence to support a finding that the Appellant was a sexual minority in danger of persecution by the alleged agents of persecution or by Pakistani authorities, and the appeal was dismissed.

# Domestic Jurisprudence

1. Supreme Court of Pakistan (2011)

In 2011, Pakistan’s transgender minority was finally allowed the right to vote. This ruling came from Pakistan’s Supreme Court, indicating that those from the transgender community were to be registered as voters. This was particularly meaningful to the hijra community in Pakistan.[[32]](#footnote-31)

1. Supreme Court of Pakistan, *Khaki v Rawalpindi* (2009)[[33]](#footnote-32)

The Court references the Constitution, particular Articles 22(4) and 25(1) to afford protection for hijras in Pakistan. Specific protections were to be added in areas such as inheritance, registry of identity, voting, employment, and schooling. No current laws and policies in the provinces were currently protecting the hijras from harassment and other crimes. The Court ordered law enforcement institutions to create policies to prevent such problems from arising in the future.

# International Law

***UN Treaties***[[34]](#footnote-33)

| **Treaty** | **Date of Signature** |  **Date of Ratification** |
| --- | --- | --- |
| ICCPR | 17 April 2008 | 23 Jun 2010 |
| ICCPR-First OP | N/A | N/A |
| ICCPR-Second OP | N/A | N/A |
| ICESCR | 03 Nov 2004 | 17 April 2008 |
| ICESCR-First OP | N/A | N/A |
| CAT | 17 April 2008 | 23 Jun 2010 |
| CAT-First OP | N/A | N/A |

***Human Rights Committee***

1. List of issues in relation to the initial report of Pakistan, March 2017[[35]](#footnote-34)
* Non-discrimination and equality between men and women has yet to be addressed: Pakistan should clarify whether it intends to decriminalize same-sex relations and adopt anti-discrimination legislation that addresses sexual orientation. The committee also asks for a comprehensive list of prohibited grounds of discrimination.[[36]](#footnote-35)
1. Concluding observations on the initial report of Pakistan, August 2017[[37]](#footnote-36)
* The committee is concerned that current non-discrimination provisions do not afford protection against the grounds prohibited by the Covenant, as related to articles 25 to 27 of the Constitution.
* Criminalization of same-sex relations is another concern.
* It is positive that intersex persons are now more welcomed but there is currently no information on effective measures to prevent and punish all forms of discrimination against LGBTQ+ persons.

***Committee on Economic, Social and Cultural Rights***

1. List of issues in relation to the initial report of Pakistan, November 2016[[38]](#footnote-37)
* The committee required clarification on whether the State party’s legislation prohibits discrimination on any ground in all aspects of life. Additionally, the State should also indicate whether they have the intention to adopt comprehensive-discrimination legislation.
1. Concluding observations on the initial report of Pakistan, July 2017[[39]](#footnote-38)
* Similar to the concluding observations of the Human Rights Committee, the Committee is concerned that not all grounds of discrimination are protected by the Pakistani legal provisions (including sexual orientation).

***Committee Against Torture***

1. Concluding observations on the initial report of Pakistan, June 2017[[40]](#footnote-39)
* The committee suggests that the State should take all necessary measures to ensure allegations of torture or ill-treatment are promptly investigated, that perpetrators are duly prosecuted and, if found guilty, convicted with proportionate penalties
* However, there is no mention of specific torture issues as it relates to LGBTQ+ persons.

***Universal Periodic Review* (2017)**

1. National report submitted by Pakistan, September 2017[[41]](#footnote-40)
* Measures against general discrimination were mentioned, including the rights of women, anti-rape laws, and rights of minorities, but nothing is mentioned specifically about LGBTQ+ persons.
1. Compilation on Pakistan, September 2017[[42]](#footnote-41)
* The Committee on the Rights of the Child reiterated its previous recommendation that discriminated children should be protected, including those with disabilities, living in poverty, or LGBTQ+ identifying children.[[43]](#footnote-42)
* General equality and non-discrimination provisions were recommended to be adopted by multiple committees. This included, healthcare, religious freedom, the decriminalization of same-sex marriage and necessary measures to combat discrimination against LGBTQ+ persons.[[44]](#footnote-43)

# Government Reports

***United States***

1. Department of State, “Country Reports on Human Rights Practices for 2020: Pakistan” March 30, 2021[[45]](#footnote-44)
* Crimes against LGBTQ+ people often go unreported, and police often take little action when they are reported.
* Cases of violence against transgender women still occur. In July a video was shared online that depicted men in Rawalpindi assaulting a group of transgender women, who were held at gunpoint and raped after being forced to strip.
* Transgender women, eunuchs, and intersex individuals are generally shunned and live in slums, surviving by begging, dancing at events, or engaging in prostitution.
* They have routinely been denied inheritance, access to education and healthcare, and housing. The *Transgender Persons Act* is intended to deal with these issues.

***United Kingdom***

1. Home Office, “Country Policy and Information Note - Pakistan: Sexual orientation and gender identity or expression,” April 2022[[46]](#footnote-45)
* In general, there is no real risk of persecution by the state, but homophobic attitudes may lead to abuse or harassment by individual members of law enforcement and discrimination when seeking healthcare or police protection.
* Homophobic attitudes persist in Pakistan, with LGBTQ+ individuals facing discrimination and pressure from family and society to conform to cultural and religious norms.[[47]](#footnote-46)
* Those who are open about their sexuality face abuse, humiliation, discrimination, and harassment.[[48]](#footnote-47)
* The state appears to be able but unwilling to provide protections to LGBTQ+ individuals.[[49]](#footnote-48)
* Homophobic attitudes are prevalent throughout the country and as such, there is unlikely to be anywhere within Pakistan that an LGBTQ+ person could reasonably relocate.[[50]](#footnote-49)

***Australia***

1. Department of Foreign Affairs and Trade, “DFAT Country Information Report: Pakistan” 25 January 2022[[51]](#footnote-50)
* LGBTQ+ people face a high risk of official and societal discrimination and, along with advocates for LGBTQ+ rights, a high risk of societal violence.[[52]](#footnote-51)
* Although s. 377 of the *Penal Code* is rarely enforced, it is often used as a threat to extract bribes.[[53]](#footnote-52)
* Sex between males is common, while homosexual identity is not. Homosexuality is not widely discussed or acknowledged. Individuals are often rejected by their families, thrown out of their homes, and forced into sex work.
* Given the social stigma of homosexuality, LGBTQ+ rights are generally advanced under the umbrella of transgender advocacy.
* LGBTQ+ advocacy groups are targeted by criminal gangs and the Taliban.

# Reports from International Agencies and NGOs

***Human Rights Watch***

World Report 2022 - Pakistan Events of 2021[[54]](#footnote-53)

* Pakistan’s penal code criminalizes same-sex sexual conduct, placing men who have sex with men and transgender people at risk of police abuse and other violence and discrimination.
* In July, activists claimed that the transgender community in Karachi was being targeted in an organized social media campaign to instigate violence against its members.
* On April 6, a 60-year-old transgender resident of Karachi’s Korangi neighbourhood was shot and killed by unidentified assailants who broke into their home.

***ILGA World***

State-Sponsored Homophobia 2019, March 2019[[55]](#footnote-54)

* Section 239 of the *Penal Code* (Obscene Acts and Songs) is often used to target male and trans sex workers.[[56]](#footnote-55)
* Websites for socialization and sharing among the LGBTQ+ community have been shut down based on claims that the content is contrary to Islam and societal norms.[[57]](#footnote-56)
* At the United Nations, Pakistan has actively opposed any resolutions or agreements that support the rights of LGBTQ+ individuals.

***Equaldex***

“LGBT Rights in Pakistan” – most recent data from 2020[[58]](#footnote-57)

* When asked whether homosexuality is justified, the *World Values Survey (2017-2020)* found that 88.5% of those surveyed believed that it is never justifiable, while only 3.3% found it justifiable.

# Media Reports and Local Expertise

1. “The Flickering Edge of Hope: Pakistan’s LGBTQ+ Community Battles Prejudice and Discrimination”, Saad, *The Diplomat*, April 19, 2021[[59]](#footnote-58)
* An overwhelming majority of Pakistan’s population believe that homosexuality is morally wrong and demeaning to national and religious interests.
* Socio-economic status has a significant impact on the experiences of LGBTQ+ individuals. The lower and middle classes take a stricter moral view, leading many homosexual men to marry at a young age to conform with social expectations.
* Privileged classes may have more progressive perspectives, but LGBTQ+ individuals still generally agree that this identity must be concealed to avoid a variety of risks.
* Many in the LGBTQ+ community feel that these beliefs will persist, despite changes in legislation and increased availability of scientific information.
1. “Pakistan: Transgender activist shot dead in Peshawar, netizens demand #JusticeforGulPanra”, Falah Gulzar, *Gulf News*, September 9, 2020[[60]](#footnote-59)
* Despite the enactment of the Transgender Protection Act in 2019, two transwomen were targeted and shot point-blank in the city of Peshawar in 2020.
* Transgender activist Gul Panra was shot six times and died in hospital.
* The second woman, Chahat, was left in critical condition.
* The hashtag #JusticeforGulPanra was trending on Twitter following news of the attack and users called for strict punishment of the culprits and for protection of minorities.
1. “15-Year-Old Christian Transgender Raped to Death in Faisalabad”, *Naya Daur,* April 6, 2020[[61]](#footnote-60)
* A 15-year-old transgender young man was raped and murdered. Activists stated that there was no police action in the days following the murder, despite witnesses to the crime.
* Reports state that 50 members of the transgender community have been killed and more than 300 assaulted or sexually harassed in a four-year period in the province of Khyber Pakhtunkhwa.
* Discrimination has caused the community to turn to prostitution, putting them at higher risk for contracting AIDS.

1. “2 transgender women tortured, killed in Pakistan”, *AP News,* July 28, 2019[[62]](#footnote-61)
* The bodies of two transgender women were found inside a locked house. They had been tortured and beaten to death.
* The article stated that the motive was unknown at the time of writing, but noted the frequent abuse experienced by transgender women in Pakistan. It also mentions that they are often the victims of honour killings carried out by family members.

# Scholarship

1. Jeffrey A. Redding, “The Pakistan Transgender Persons (Protection of Rights) Act of 2018 and its Impact on the Law of Gender in Pakistan” (2019) 20:1 *Australian Journal of Asian Law* 103.

Redding outlines the changes made to gender laws in Pakistan by the Act and contextualizes it within ongoing developments in Pakistan and globally with respect to transgender rights. He identifies areas for concern, including problems of implementation, the potential for further ostracization of the group through identification and segregation, problems with the Act’s anti-begging provisions, and questions about their ability to marry.

2. Syed Nadeem Farhat et al, “Transgender Law in Pakistan: Some Key Issues” (2020) 17:1 *Policy Perspectives* 7.

This paper provides a critical analysis of Pakistan’s Transgender Protection Act with consideration of the International Commission of Jurists’ Briefing Paper on the Act. It discusses the Act with relation to pressures of international law and the global LGBTQ movement, contrasting this with the actual rights guaranteed in the Pakistani Constitution and possible implications for the domestic transgender community.

3. Laine P. Munir, “Fleeing Gender: Reasons for Displacement in Pakistan’s Transgender Community” (2019) *LGBTI Asylum Seekers and Refugees from a Legal and Political Perspective* 49.

Munir examines the reasons for ongoing human rights abuses against transgender women in Pakistan leading to internal displacement, despite the existence of legal protection. Using qualitative data from case studies, the chapter identifies issues such as police persecution, lack of trust in the legal system, widespread stigmatization, and issues with the legal protections themselves.

4. Muhammad Azfar Nisar, “(Un)Becoming a Man: Legal Consciousness of the Third Gender Category in Pakistan” (2018) 32:1 *Gender and Society* 59.

Nisar aims to address the response of the Khawaja Sira community to the creation of the legal third gender category and to explore the reasons why many continue to register as men. Nisar identifies patriarchal stigma, high compliance costs, and the forfeiting of many important societal benefits related to masculine identity as reasons to avoid registering in the third gender category and cautions against overemphasizing the symbolic value of this change.

1. *The Constitution of the Islamic Republic of Pakistan,* 1973 (revised 2012), National Assembly of Pakistan, online: <<https://na.gov.pk/uploads/documents/1333523681_951.pdf>>. [↑](#footnote-ref-0)
2. *Ibid*, Preamble. [↑](#footnote-ref-1)
3. *Ibid*, art 31. [↑](#footnote-ref-2)
4. *Ibid*, art 35. [↑](#footnote-ref-3)
5. *Ibid*, art 37. [↑](#footnote-ref-4)
6. *Ibid*, art 277. [↑](#footnote-ref-5)
7. *Pakistan Penal Code, 1860*, online: <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>>. [↑](#footnote-ref-6)
8. *Ibid*, art 377. [↑](#footnote-ref-7)
9. *Ibid*, art 269. [↑](#footnote-ref-8)
10. *Ibid*, art 292. [↑](#footnote-ref-9)
11. *Ibid*, art 294. [↑](#footnote-ref-10)
12. *The Offence of Zina (Enforcement Of Hudood) Ordinance, 1979*, (9 February 1979), online: <<http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html>>. [↑](#footnote-ref-11)
13. *Ibid*, arts 5, 6. [↑](#footnote-ref-12)
14. *Prevention of Electronic Crimes Act (2016)*, art 34, online <<https://na.gov.pk/uploads/documents/1470910659_707.pdf>>. [↑](#footnote-ref-13)
15. *Transgender Persons (Protection of Rights) Act, 2018*, (2018), National Assembly of Pakistan, online: <<https://na.gov.pk/uploads/documents/1526547582_234.pdf>>. [↑](#footnote-ref-14)
16. *Ibid*, art 2(n). [↑](#footnote-ref-15)
17. *X, Re*, [2021 CarswellNat 5449](https://nextcanada.westlaw.com/Document/Id233069bcc20520ee0540010e03eefe0/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0) (WL). [↑](#footnote-ref-16)
18. *Ibid* at para 10. [↑](#footnote-ref-17)
19. *Ibid* at paras 34-35. [↑](#footnote-ref-18)
20. *Ibid* at para 36. [↑](#footnote-ref-19)
21. *X, Re*, [2020 CarswellNat 8346](https://nextcanada.westlaw.com/Document/Id21ee0ed51ff50e0e0540010e03eefe0/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0) (WL). [↑](#footnote-ref-20)
22. *Ibid* at para 5. [↑](#footnote-ref-21)
23. *Ibid* at para 31. [↑](#footnote-ref-22)
24. *X, Re*, [2020 CarswellNat 7113](https://nextcanada.westlaw.com/Document/Ic33026dd380a4a57e0540010e03eefe0/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0) (WL). [↑](#footnote-ref-23)
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