



INTERNATIONAL GAY AND LESBIAN
HUMAN RIGHTS COMMISSION
HUMAN RIGHTS FOR EVERYONE. EVERYWHERE.

REPORT

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Human Rights and Transgender People in Pakistan

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Summary

There is no known grassroots activism among lesbians, gays, bisexuals, transsexuals and transgender (zenana) communities in Pakistan. This lack of activism, the silences around sexualit(ies), and deeply closeted status of most gays and lesbians in Pakistan (many of whom live double lives to avoid revealing their sexual orientation) makes it difficult to accurately assess their living conditions and human rights situation. Anecdotal information from Pakistani gay people who have left the country describes fear, secrecy, isolation, suicides, forced marriage, family and community pressure to conform to heterosexual norms.

Against this background, a landmark case involving transgender rights is currently unfolding in Pakistan. Nighat Saeed Khan, director of ASR Resource Centre in Lahore, Pakistan notes that, "Transgender individuals in Pakistan have typically faced a myriad of dangers from police, family, community, and religious authorities, and had to leave the country."ⁱⁱ The current case challenges this status quo. It marks an attempt by a female-to-male transgender man and his wife to have their marriage recognized, an outcome that is predicated on the court's recognition of the right to transgender identity.

Pakistan's Landmark Transgender Case: A Case History

Thirty-one year old Shumail Raj has lived as a transgender man for 16 years, after undergoing surgery to remove his breasts and uterus. He married his cousin, 26-year old Shahzina Tariq according to Muslim law in September 2006. Shumail and Shahzina, both Faisalabad

residents, maintain that they got married because they loved each other and wanted to live together. However, they admit that their marriage was also prompted by Shahzina's father's plan to settle a family gambling debt by selling his daughter into marriage to another man.

Shahzina's father, Tariq Hussain, rejected his daughter's marriage, accused Shumail of

kidnapping his daughter and committing fraud, and used police officers from their hometown to harass the couple. In response, Shumail and Shahzina filed a complaint with the lower court in Faisalabad. The court decided in their favor since they were both adults and legally married. But the harassment continued, and in May 2007 Shahzina and Shumail sought additional legal help, this time from the High Court in Lahore, where they filed a complaint.ⁱⁱⁱ

At a hearing before High Court Judge Khawaja Sharif, Tariq Hussain testified that Shumail was not a man, prompting the judge to order a medical examination for Shumail. The examination revealed that Shumail had undergone gender re-assignment surgery, but the judge nevertheless pronounced Shumail “a girl” and accused the couple of perjury for lying about Shumail’s gender and also about the legality of their marriage (same-sex marriages are not allowed in Pakistan). On May 28, 2007, Shumail and Shahzina were each sentenced to three years in prison and fined 10,000 rupees (\$166) for perjury. On June 22, Babar Awan, a Supreme Court lawyer, filed an appeal for the couple, arguing that since Shumail had undergone gender re-assignment surgery and his physical characteristics conformed to social and cultural expectations of masculinity, there was no perjury. On June 28, the Supreme Court agreed to hear the case and ordered the couple released on bail set at 50,000 rupees (\$825) each.

Reactions Within Pakistan

In response to an international call for letters of support by various individual activists and organizations, including IGLHRC, Shazina and Shumail received over 800 letters of support, 43 from within Pakistan including 12 from local feminist activists.

Some individuals working for non-governmental organizations (NGOs) focused on human rights and women’s rights generated email articles and letters to the media. However, most of the moral support has come from psychiatrists, psychologists and medical practitioners, some of whom have held seminars and meetings, written articles and letters to the press, and participated in three discussions on television. Clearly, a door has now been opened for public discussion about

a traditionally silenced issue. As Ms. Khan notes, “Those giving support are very committed to a public debate on gender identities, a debate which in many ways has already started.”

The Future

The case is precedent setting for Pakistan because the issue of gender identity has been sent to the Supreme Court. But the declaration of martial law in 2007, the dismissal of the Chief Justice of the Supreme Court, and the assassination of Benazir Bhutto have disrupted the criminal legal system’s functioning. Shumail’s and Shahzina’s future is uncertain. The troubling question is whether the couple can stay married.

If the court rules that Shumail is a woman, his right to claim his transgender identity will be violated. It could also create problems with his living arrangements. In Pakistan, two women can share a home, but not as intimate partners. Although Shumail and Shahzina have always stated that they are not lesbians and that they do not have a same-sex relationship, Section 377^{iv} of the Penal Code penalizes “unnatural offences” between heterosexual and homosexual couples. On the other hand, if the court rules that Shumail is a man, then there is uncertainty about how the more conservative members of the community, including the media, will respond to the couple.

Ms. Khan, whose organization has been housing the couple and providing them with employment, cautions, “They need to be very quiet about this ... there is danger even after the court makes a ruling.” She adds, “If we can bring about a change in the law in Pakistan that will allow a change in gender identities and legal identities and marriage between transsexuals and their partners, this will have a positive fallout on other Muslim countries and in South Asia.”

Recommendations

IGLHRC makes the following recommendations to protect and promote the human rights of all people in Pakistan irrespective of their sexual orientation, gender identity and expression:

1. Repeal Section 377 of the Pakistan Penal Code in order to decriminalize sexual



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| <p>conduct between consenting adults, sexual expression, and gender expression.</p> <p>2. Recognize the changed gender identity of individuals who have and have not gone through gender reassignment surgery and accord them the same legal rights as other citizens.</p> <p>3. Protect and promote the right of all women in Pakistan to choose their own marital partners so as to end forced marriage and</p> | <p>family violence against women who defy family expectations.</p> <p>4. Provide human rights training to all law enforcement officers to improve overall police treatment of gender and sexual minorities with the goal of preventing collusion between police officers and members of community and family who intimidate and coerce LGBTI people into heterosexual roles.</p> |
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ENDNOTES

ⁱ The International Gay and Lesbian Human Rights Commission (IGLHRC) is a US-based NGO working to secure the full enjoyment of the human rights of all people and communities subject to discrimination or abuse on the basis of sexual orientation or expression, gender identity or expression, and/or HIV status.

ⁱⁱ In 2001, Vision Pakistan, an NGO providing healthcare services and a drop-in center for the zenana (male-to-female) community in Lahore, and human rights lawyers filed a petition against the National AIDS Control Program (NACP) of Pakistan, the World Bank, and two foreign agencies for forced HIV/AIDS testing of zenanas (male-to-female transgender communities). The petition is still pending in the Lahore High Court.

ⁱⁱⁱ Pakistan has High Courts in several jurisdictions; the Lahore High Court where the case was heard is the oldest in the country and is next in rank to the Supreme Court.

^{iv} Pakistan maintains criminal sanctions against sexual activity between consenting adults. Pakistan's Penal Code (Act XLV of 1860) in Section 377 which deals with 'unnatural offences' states: "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to a fine."

