

AN ANALYSIS OF THE OBSTACLES FACED BY WOMEN AND OTHER GENDER MINORITIES WHILE OBTAINING NATIONAL IDENTIFICATION CARDS AND THEIR CONSEQUENCES

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ABSTRACT

Citizenship is a critical element of a person's legal identity in a State. As a citizen, one is legally entitled to the various rights prescribed in the Constitution, as well as the rights afforded under the State's legislation. However, barriers to attaining citizenship and legal identification can hinder access to these rights for certain segments of the population, such as women from the lower classes and gender minorities (such as transgender persons). This paper explores the various obstacles that exist in legislation and administrative procedures which women and gender minorities face when obtaining legal identification through statutory analysis and field research. By exploring the gap between 'formal equality' and 'substantive equality', this paper argues that substantive equality can only be achieved when the social, cultural, political and economic obstacles to attaining legal identification, and thereby citizenship, are eradicated.

KEYWORDS: Women, Gender Equality, Minorities, National Database and Regulation Authority Regulations, Citizenship Act, Constitution of Pakistan, NADRA, Transgender Persons Act 2018.

1. INTRODUCTION

Being a recognised citizen of a country enables a person to have proper legal, social and economic representation in said country. In Pakistan, to be considered a full citizen of the State, it is important to secure a Computerized National Identity Card ('**CNIC**'). Essentially, citizenship governs the relationship of an individual with the State. Be that as it may, our research has led us to the conclusion that citizenship in itself is a gendered and class-based construction that is grounded in a system of stratified rights and opportunities and is arranged in a way that benefits certain individuals over others. We have found that among other factors, citizenship differentiates between subjects according to their gender and class position.

The State ends up discriminating against women and other gender minorities, as well as people from different socio-economic backgrounds by intentionally or unintentionally creating numerous hindrances for them in obtaining CNICs. These hindrances are caused by the lack of recognition and acknowledgement of the historical disadvantages gender minorities and people belonging to low-income households are subject to, as well as a lack of affirmative action on the part of the Federal Government to compensate for these historical inequalities.

By conducting field research on the subject matter, we were able to highlight additional systematic and procedural obstacles placed in the way of these disadvantaged groups. The inability of some NADRA officials in appreciating the differences between genders and their resultant skepticism in granting CNICs to gender minorities; procedural barriers that can only be overcome by highly influential individuals and groups and not disadvantaged groups already facing issues of access and mobility; and the consistent apathy of some concerned officials regarding the issues faced by gender minorities in obtaining CNICs, were patterns that remained constant throughout our research on the subject matter. These trends, observed during our field research, further strengthened our conclusion that women and other gender minorities face resistance in trying to formulate and/or improve their relationship with the State through obtaining CNICs, at every stage.

2. RESEARCH METHODOLOGY AND LITERATURE REVIEW

This essay will delve into a cross-sectional analysis of the legislation governing citizenship rights in Pakistan, such as the National Database and Registration Authority Ordinance, 2000; the National Database and Regulation Authority (Application for National Identity Card) Regulations, 2002; and the Citizenship Act, 1951. To supplement our analysis of the aforementioned laws, we will rely on our comprehensive literature review which was conducted to help better explain how the idea of citizenship interacts with other socio-political factors that shape how one lives their life. For example, themes such as class, religion, access to public spaces, and gender were explored to gauge what citizenship means to different groups in society. In order to further expand on how legislation revolving around citizenship and issuance of CNICs is applied to the Pakistani society, we also rely on Pakistani case law that explains how these laws and policies affect gender minorities belonging to different socio-economic backgrounds in Pakistan, and how these minority groups react and respond to such laws and policies.

3. LIVED CITIZENSHIP

Lived citizenship as a key concept focuses on the ways in which social actors live, act, and practice citizenship in their everyday lives. A growing number of scholars have applied ideas of lived citizenship as a generative approach to recognise the embodied relationship and lived experiences of being a citizen on a day-to-day basis.¹ It is developed from a core of empirical works that analyse the experiences of citizenship of different categories of social actors in different contexts.² Lived citizenship is a key marker of contemporary feminist scholarship by allowing the same to move beyond rights-based approaches to citizenship that not only includes rights and status, but also identities, belonging, and participation as important aspects of lived citizenship. Several factors such as gender, ethnicity, class, and faith can prevent participation in and belonging to organised groups, or prevent participation and belonging in wider society. This becomes a barrier to full citizenship.³ In other words, the notion refers to the meanings that citizenship has in people's lives and the ways in which people's social and cultural backgrounds and material circumstances affect their lives as citizens.

In Pakistan, possessing a CNIC is an integral part of improving one's experience of 'lived citizenship'. When the State advertently or inadvertently causes hindrances in the way of access to citizenship, the consequences can be that many disadvantaged groups are deterred from ever obtaining CNICs. These disadvantaged groups are then forced to live their lives in Pakistan as alien citizens by virtue of being deprived of facilities and benefits that people with CNICs enjoy with ease.

Many facilities provided to citizens of Pakistan which are considered 'basic' and 'fundamental' are exclusive to only registered citizens. Whether it is access to certain spaces and privileges or the ability to enjoy basic necessities recognised under the constitutionally protected right to life⁴ or even the enjoyment of civil and political rights envisioned in the Constitution of Pakistan ('**Constitution**'), all such rights are only available to registered citizens of the State and not

¹ Kallio, Pauliina, Wood, and Häkli. "Lived citizenship: conceptualising an emerging field." *Citizenship Studies* 24.6 202.: 713-729.

² Athelstan, et al. "Thriving on the Edge of Cuts: Inspirations and Innovations in Gender Studies." 2011. <http://gjss.org/sites/default/files/issues/editorials/Journal-08-02--00-Athelstan-McLuckie-Mills-Pesarini-Poll-Boulila.pdf>

³ Nyhagen, Halsaa. "Religion and Citizenship as Lived Practice: Intersections of Faith, Gender, Participation and Belonging." 2016. https://link.springer.com/chapter/10.1057%2F9781137405340_4

⁴ Article 9 of the Constitution Islamic Republic of Pakistan, 1973 . http://www.na.gov.pk/uploads/documents/1333523681_951.pdf

undocumented individuals. Amongst other things, undocumented individuals in Pakistan cannot enrol in school; open bank accounts; vote; access government departments; register FIRs; and enrol in relief funds such as the Benazir Income Support and the Ehsaas Fund. Hence, exclusive enjoyment of these rights not only alienates undocumented members of society by depriving them of these basic necessities; the consequences of this exclusivity, on top of the hurdles caused by various actors for these members in obtaining CNICs and registration, further perpetuates discrimination against these groups. For example, inability to enroll in schools ensures that these groups are denied access to education; inability to open bank accounts ensures that these groups are deprived of salaried employment; inability to register FIRs ensures that these groups are deprived from access to justice; inability to access relief funds ensures that these groups remain in poverty; and inability to vote and access government departments ensures that these groups remain unheard and unrepresented etc. Perhaps one of the most severe and life-threatening consequences of not possessing a CNIC in Pakistan amidst the global pandemic of Covid-19 was the inability to access vaccines. Thus, groups that do not possess CNICs face hurdles not only in their public lives but also their private lives owing to their varying degrees of individual identity within the State, as well as due to inability to access “State Welfare”.⁵

4. THE LEGAL FRAMEWORK GOVERNING CITIZENSHIP RIGHTS IN PAKISTAN

Any right or status that is accrued to a person is derived from the law and for the purposes of expounding upon one’s citizenship status. Below, we will mention the provisions of laws that govern the acquiring of citizenship and case law which shall help extend our analysis of the same. Through such scrutiny, we were able to conclude that in Pakistan, legislation governing citizenship, or the lack thereof, perpetuates the oppression of our focused groups. This part of the essay will also cover aspects which have largely been overlooked by legislators, i.e., the rights of transgender and orphaned children and the lacunas in the system whereby they face difficulties in obtaining CNICs. Lastly, this section of our essay will also discuss case law that is pertinent to our overall analysis of the concept of citizenship in Pakistan.

⁵ Prokhovnik, Raia. "Public and private citizenship: From gender invisibility to feminist inclusiveness." *Feminist review* 60.1 1998. 84-104.
https://www.jstor.org/stable/pdf/1395548.pdf?casa_token=uXDDT3ljTBMAAAAAA:D6LoSX7FTtF9VTP1PK9t2qkw1QiCzAPdnJpf0h0HS4kn--JGJaeMkz7PvIahIa-AmSbWAvmXkzBFpf1Qw3YULBrT1Ro7q1_Ron81Dah7OusnKSbwJYWcA

As a starting point, we must first identify the gender categories that have been laid down in the law. According to article 263 of the Constitution, words importing the masculine gender shall be taken to include females.⁶ The statutory laws discussed below define “citizen” in gender-neutral terms; however, it can be observed that these ‘gender-neutral’ terms only denote the binary dichotomy of male-female, and consequently disenfranchise those who do not fall into the traditional gender binary, such as the *khwaja sira* community, as well as other gender non-conforming groups.

The National Database and Registration Authority (NADRA) Ordinance, 2000

The National Database and Registration Authority (NADRA) Ordinance, 2000 (the ‘**Ordinance**’) was promulgated to facilitate the registration of all persons, and to establish and maintain multipurpose databases, data warehouses, networking, interfacing of databases and related facilities. While the Ordinance itself is quite comprehensive, with 48 sections, for the purposes of this essay, we shall focus on the sections most relevant to our analysis.

Section 8(2) of the Ordinance, which discusses the powers of registration of persons, states:

“Notwithstanding anything contained in any other law for the time being in force the Federal Government may, by rules, for the purpose of incentivizing registration of a particular class of persons under this Ordinance, provide for any right, interest, privilege, benefit, reward or other advantage, tangible or intangible, available under Pakistan Law, to be extended to, or made available to or withdrawn from such class of persons required to be registered under this Ordinance and such right, interest, privilege, benefit, reward or other advantage shall accordingly become extended, or available to or withdrawn from, as the case may be, to such class of persons.”

From a bare perusal of the aforementioned section, it is evident that the Federal Government is empowered to make rules and regulations beneficial for disadvantaged groups such as gender minorities, in order to incentivise such groups to apply for CNICs. On the face of it, the Ordinance preaches equal opportunities for all genders; however, our field research highlighted that it is common practice in the NADRA offices to deny granting CNICs to women unless they are escorted/accompanied by a male legal heir such as their father, husband, brother, or son. This

⁶ Article 263, Constitution of Pakistan 1973. http://www.na.gov.pk/uploads/documents/1333523681_951.pdf

creates problems for women and other gender minorities who either do not have male family members or who do not have a cordial relationship with their male family members. Even otherwise, regardless of whether gender minorities in Pakistan have male heirs who are alive and well and ready to accompany them to NADRA offices, this dependency on male heirs in order to access State institutions, has no basis in law. Despite being empowered to cater to the special needs of disadvantaged groups, the Federal Government has left these groups to fend for themselves as NADRA officials perpetuate bureaucratic and patriarchal hurdles in obtaining citizenship rights for such groups.

Similarly, section 9(1) of the Ordinance, regarding the registration of citizens, states:

“Every citizen in or out of Pakistan who has attained the age of eighteen years shall get himself and a parent or guardian of every citizen who has not attained that age shall, not later than one month after the birth of such citizen, get such citizen registered in accordance with the provisions of this Ordinance: Provided that the Authority may, on case to case basis, extend the period for registration of a citizen who has not attained the age of eighteen years: Provided further that all such citizens who stand validly registered under any law immediately before the commencement of this Ordinance shall be deemed to have been registered under this Ordinance and their registration shall, subject to sections 17, 18 and 30 remain valid till the expiry of two years from the commencement of this Ordinance, or such time as may be notified by the Federal Government, or till such time as such citizen is registered afresh as hereinafter provided, whichever is earlier.”

According to the aforementioned section, if a citizen is above 18 years of age, he/she can get registered as a citizen without the presence of a parent or a guardian. However, as explained earlier, such is not the case when it comes to women and other gender minorities. Despite the promulgation of seemingly beneficial and non-discriminatory legislation, cultural and societal norms dictate the behavior of many NADRA officials who still refuse to allow access to citizenship via registration to gender minorities who are not accompanied by male legal heirs. Such norms clearly contradict the aforementioned sections of the Ordinance; however, the conduct of NADRA officials in relation to this issue has been left unchecked. From our discussions with NADRA officials regarding their conduct, we were told that they are not biased and are merely following the Standard Operating Procedures (“SOPs”) applicable to them. While the NADRA officials we interviewed failed to specify which SOPs compelled them to refuse grant of CNICs to

gender minorities unaccompanied by male legal heirs, even otherwise, the superior courts of Pakistan have ruled that their (the SOPs') only significance is to ensure efficiency and to benefit the citizens rather than making the process more complicated. In the matter of *Muhammad Salabuddin vs. NADRA*, the petitioner was unable to have his father's name changed on his NIC due to a NADRA SOP that required him to acquire a court order sanctioning the same, even though the mistake was on NADRA's part.⁷ Through this case, the Lahore High Court highlighted the fact that SOPs of NADRA were not binding and were merely there to achieve optimum levels of efficiency. The SOPs, though proper, are not legally binding upon NADRA officials. This principle clarifies that if following a certain policy is against the best interest of a citizen, the SOP can and should be ignored.

Another section of the Ordinance that we explored for the purposes of our research is section 30(e) which states:

“[if a person] does not, without reasonable cause, apply for a National Identity Card within ninety days of his attaining the age of eighteen years [it will be an offence punishable under this Ordinance].”

The aforementioned section holds that if one does not possess an NIC within ninety days of turning eighteen (18) years of age, they are liable to be punished under the Ordinance. A large part of the population in Pakistan, as per our research, does not possess identity cards.⁸ Lack of awareness and knowledge plays a significant role in the gap created between those who are holders of NICs, and those who are not. The customs and norms followed in most areas in Pakistan determine who can be the holder of NICs and whether NICs are even necessary for certain groups, particularly women and other gender minorities. Such customs disapprove of women being allowed in majority of public spaces and thus, lead to the conclusion that being a CNIC holder is an unnecessary requirement for them. These societal norms that disallow gender minorities from becoming registered citizens, further strengthen the existing dichotomy of the public and private spheres, where men are allowed to access public spaces and facilities, whereas gender minorities are restricted within the private sphere. This leads to not only a decrease in the participation of

⁷ PLD 2012 Lahore 378

⁸ Volume II, Gallup Big Data Analysis of Census 2017 <https://gallup.com.pk/wp/wp-content/uploads/2022/01/GP-Big-Data-Census-2017-Vol-11-Pakistani-Citizens-Holding-Computerized-National-Identity-Cards-3.pdf>

gender minorities in political and economic spheres of life, but also leads to the curtailment of their independence through not being able to vote, take a loan, apply for a job etc.

The final section of the Ordinance relevant to our analysis is section 47, which pertains to the ‘removal of difficulties’:

“If any difficulty arises in giving effect to any provision of this Ordinance, the Federal Government may make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty.”

The aforementioned section allows the Federal Government to make orders which may be beneficial for the citizens in case any difficulty arises. However, as per our research, no such orders have been passed by the Government to cater to the special needs of gender minorities in Pakistan. Hence, this provision of law is highly underutilised as, if properly used, it may assist the Government in enacting SOPs that compel NADRA officials to treat all individuals the same, regardless of their gender.

National Database and Regulation Authority (Application for National Identity Card) Regulations 2002

For the purposes of understanding the operation of NADRA through a cross-sectional approach, it is also pertinent to examine the National Database and Regulation Authority (Application for National Identity Card) Regulations, 2002 (the ‘**Regulations**’) that lays down the procedure to be followed by a non-resident to acquire citizenship in Pakistan.

Regulation 8 of the Regulations deals with the form of application as set out in Schedule I. This procedural regulation essentially lays down the obligation upon NADRA to ensure availability of the registration form. Keeping in mind the functions of NADRA, in a *suo moto* case taken up pursuant to a news clipping published in the Daily Express, the Supreme Court took notice of the difficulties faced by Hindu women while obtaining CNICs and subsequently being deprived of other rights provided to them under the Constitution such as the right to movement.⁹ The Hindu woman in question was denied an NIC because the form in Schedule I stated that for a married

⁹ 2012 SCMR 1147

woman to obtain an NIC she must submit a '*nikaabnama*'¹⁰ to legally establish her tie of marriage. The Supreme Court held this to be extremely discriminatory against Hindu and other non-Muslim married women. The Court held that any valid legal document such as an affidavit may be used in place of the '*nikaabnama*' until an amendment is made to the form to include women of religious minorities. Unfortunately, however, no such amendment has been made yet and the NADRA officials have little to no knowledge about the Court's decision in allowing this relief to non-Muslim women. This ignorance of procedural technicalities results in further discrimination against gender minorities. This *suo moto* case established that any statutory provision that leads to unnecessary burden on any resident of Pakistan to obtain citizenship card is against the principle of natural justice, especially if it is also discriminatory.

The Citizenship Act, 1951

The final statute analysed for the purposes of this essay is the Citizenship Act, 1951 (the '**Act**') that was enacted to introduce citizenship laws in Pakistan, post-independence in 1947. Section 10 of the Act lays down the law regarding married women and states that:

(1) Any woman who by reason of her marriage to a [British subject] before the first day of January 1949, has acquired the status of a British subject shall, if her husband becomes a citizen of Pakistan, be a citizen of Pakistan.

(2) Subject to the provisions of sub-section (1) and subsection (4) a woman who has been married to a citizen of Pakistan or to a person who but for his death would have been a citizen of Pakistan under section 3, 4 or 5 shall be entitled, on making application therefore to the Federal Government in the prescribed manner, and, if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty-one years of her age and is of full capacity.

(3) Subject as aforesaid, a woman who has been married to a person who, but for his death, could have been a citizen of Pakistan under the provisions of sub-section (1) of

¹⁰ A '*nikaabnama*', is an Islamic Marriage Contract, which is signed by both partners at the time of their marriage. This document is fundamental in officiating the marriage in Islam and helps in determining the rights and duties of both partners in a marriage (Husband and Wife).

section 6 (whether the migrated is provided in that sub-section or is deemed under the proviso to section 7 to have so migrated) shall be entitled as provided in subsection (2) subject further, if she is an alien, to her obtaining the certificate and taken the oath therein mentioned.

From a bare reading of the aforementioned section, it can be seen that if a non-resident woman marries a Pakistani man, she is allowed to become a citizen of Pakistan; however, the same cannot be said for a non-resident man who marries a Pakistani woman. In the *Suo Moto* Case No. 1/K, the Supreme Court acted upon a newspaper clipping describing how Pakistani women were not able to acquire citizenship for their foreign husbands whereas Pakistani men could do the same under section 10 of the Act.¹¹ This section was deemed discriminatory under Article 25 of the Constitution¹² as it did not treat men and women equally and directions were given to the Government to amend this section of the Act. It was also held in this case that there is nothing in Islam that prevents women from passing on citizenship rights to their husbands. Nevertheless, it is important to note that although this section was deemed to be repugnant with the principles of Islam and in contravention to Article 25 of the Constitution, no steps have yet been taken by the legislature to amend this law.

5. THE ABSENCE OF THE TRANSGENDER COMMUNITY FROM THE LAW

The terms used in the Ordinance and Regulations, and the Act are restricted to the male-female dichotomy, and hence, completely overlook the transgender community, as well as other gender non-conforming individuals. This lack of representation in statutory laws has resulted in exploitation of and discrimination against these minority groups. The Supreme Court of Pakistan issued a somewhat revolutionary order in November 2009, in the litigation instigated by Dr. Muhammad Aslam Khaki's petition relating to Pakistani transgender persons' official registration as well as the issuance to them of official governmental identity documents (the '**Order**'). In the Order, the Court directed NADRA to "adopt a strategy ... to record [a transgendered individual's] exact status in the [identity document] column meant for male or female after undertaking some medical tests based on hormones, etc."¹³ The Order could be seen as the culmination of many

¹¹ PLD 2008 FC 1

¹² Article 25, Constitution of Pakistan 1973. http://www.na.gov.pk/uploads/documents/1333523681_951.pdf

¹³ *Dr. Muhammad Aslam Khaki v SSP Operations* (Constitutional P. No. 43/2009)

legislative interventions proposed in 2009 *vis a vis* transgender rights, including but not limited to ordering a census on the transgender population, with one diligently executed in Punjab.

The Order can be regarded as one of the first legislative actions towards safeguarding the rights of transgender people in Pakistan. The Order, while it had its flaws in the nomenclature it used for the transgender community it undoubtedly prompted the promulgation of the Transgender Persons (Protection of Rights) Act, 2018 (the ‘**TPA**’).¹⁴

The TPA is commendable for its nuance, range and clarity. It allows the citizens of Pakistan to self-identify their gender, and bans discrimination against transgender persons in public places like schools, work, public transportation and doctor’s offices. As a result of the TPA, transgender people can apply for a driving license, passport, and other official documents using their chosen identities. The TPA also delineates heavy penalties for assault, unlawful eviction, and harassment of the transgender community. Furthermore, it accounts for sensitivity training for law enforcement and streamlines the process to change one’s gender in government records. However, though the enactment of the TPA is a step in the right direction, the transgender community, like all other gender minority groups, still face many difficulties in attaining CNICs.

When it comes to issuance of CNICs, we have found that the problems are twofold: one pertains to the socio- economic background of those applying for CNICs, and the second pertains to the cultural norms of various communities in Pakistan. Though there are very few cases which have been taken to court regarding issuance of CNICs, those which have been taken to court have had no satisfactory outcome. As discussed in the Sections above, while the Superior Courts of Pakistan have directed the Federal Government as well as NADRA officials to ensure that religious and gender minorities are not discriminated against on the basis of outdated laws and SOPs, no action has been taken by the Government and/or NADRA officials in pursuance of these directions.

In the matter of *Tatheer Fatima v State*, the petitioner sought relief from the Supreme Court of Pakistan seeking the removal of her father's name from official documents and replacing it with her mother's name instead, as her father had abandoned her in her childhood. Although the Court acknowledged the petitioner’s contention of having an absentee father, it stated that the relief

¹⁴ Transgender Persons (Protection of Rights) Act, 2018.
http://www.senate.gov.pk/uploads/documents/1521612511_419.pdf

sought was not within the ambit of the Supreme Court and should be sought from NADRA.¹⁵ These cases highlight the administrative obstacles that a citizen faces to the ‘Trichotomy of State Power’ due to which no substantial steps can be taken by the Judiciary to improve the problems faced by women and gender minorities as this is an ‘Executive’ issue that can only be rectified through legislative measures. This problem needs to be addressed promptly if any breakthrough in improving access to citizenship rights is to be achieved.

Positive steps have been taken to address the issues faced by the transgender community which will hopefully lead to more inclusion for them. However, the obstacles faced by gender minorities while obtaining NICs and the resultant discrimination and mistreatment that they endure, remains a persistent problem.

6. THE IMPORTANCE OF NATIONAL IDENTITY IN A NATION-STATE

The nation-state is a way of thinking about political and social membership, in that, identity within the State determines a person’s status and influence within the wider society. Accordingly, national identity can be seen as the awareness of affiliation with the nation that gives people a sense of who they are in relation to others. But when the very basis of national identity in a State becomes exclusive to only the privileged, then what remains is a group of highly influential people who enjoy all that the State has to offer, and disadvantaged groups whose identities are ignored - if not erased – by the State.¹⁶ In Pakistan, even before members of gender minority groups (especially those belonging to lower socio-economic backgrounds) decide to obtain a CNIC, they are faced with numerous obstacles. The issues of restriction on mobility and access faced by gender minorities due to being restricted to the private sphere to uphold patriarchal norms in society, make it increasingly difficult for them to even reach NADRA. The cycle of oppression and discrimination is sustained due to the State’s inability to take affirmative action to reduce the obstacles faced by these groups, as one problem leads to the other.

This discrimination against gender minorities is sanctioned by the State, as it allows certain groups of individuals to be better situated in society than the others. Disadvantaged groups have to face numerous problems to attain the same level of benefits and rights as privileged groups, and are

¹⁵ Civil Appeal No. 1143 of 2018

¹⁶ Taylor-Gooby P. “Citizenship, Dependency, and the Welfare Mix: Problems of Inclusion and Exclusion. *International Journal of Health Services*.” 1993. 23(3):455-474. doi:10.2190/GNRY-39A4-F80K-GEU9

often discouraged from pursuing full citizenship rights by way of obtaining CNICs.¹⁷ There are numerous structural issues that perpetuate the plight of women and other gender minorities, specifically those belonging to lower socio-economic backgrounds. These disadvantaged groups must overcome various hurdles to acquire a CNIC, despite seemingly non-discriminatory and beneficial legislation governing citizenship in Pakistan. The State is a silent spectator in the perpetuation of the idea that gender minorities are mere extensions of the patriarchs of their families, when it refuses to remedy the situation of NADRA's unlawful requirement of affiliation with a male family member to be awarded a CNIC. This condition of affiliation with a male family member is proof that gender minorities remain second class citizens of the State when compared to their male counterparts.

Once members of gender minority groups reach NADRA, they are forced to deal with issues of harassment and derogatory treatment at the hands of NADRA officials, particularly if they belong to the transgender community. Despite the protections given to members of the transgender community under the TPA, unless they have some political sway or affiliation, members of this community are often still subject to invasive physical exams to 'accurately determine' their gender. This, in turn, discourages them and proves to be a big deterrent for them from obtaining NICs.¹⁸

Although these conditions are often not sanctioned by law itself, the inherent bias of and patriarchal influence on NADRA officials enables discrimination against women and other gender minorities. The conditions only worsen for women and gender minorities belonging from lower socio-economic backgrounds.¹⁹ Thus, it is evident that inclusion within a nation-state requires more than the mere institutionalisation of legal rights and political participation. In other words, civil and political rights are empty if opportunity is not equalized and if remediable handicaps linked to status position continue to prevail.²⁰

As per our correspondence with the founder of Sarim Burney Welfare Trust which is a non-profitable trust representing the oppressed and less privileged population such as orphans and gender minorities, most women and gender minorities find it difficult to overcome the social and structural barriers in the way of obtaining CNICs and end up disappearing from the social eye, as

¹⁷ Mr. Sarim Burney, Founder, Sarim Burney Welfare Trust (Online, 10 April, 2021)

¹⁸ Trans Rights Activist 1 (Telephonic Conversation, 16 April 2021) [The identities of these activists have been kept confidential as per their request]

¹⁹ Ibid.

²⁰ Bader, Veit. *Citizenship and exclusion*. Springer, 1997. Page 100

well as from the eyes of the State, as an unregistered and undocumented individual.²¹ This invisibility in the eyes of the State is further perpetuated when women and gender minorities cannot participate in the political sphere by way of voting due to their lack of documentation. This political incapacitation goes against the very essence of a democracy as numerous women and gender minority people are left out of the democratic electoral process. Lack of representation and advocacy for this issue within the Parliament only furthers this vicious cycle.

The oppression of women and gender minorities as a result of not possessing NICs is systematic and is enabled by the State at various levels. Gender minorities belonging to low-income socio-economic backgrounds are dispossessed of their ability to qualify for various welfare programs. Welfare programs such as the Ehsaas Trust and Benazir Income Support require registration through identity card numbers. Consequently, citizens who do not have NICs end up losing out on basic welfare amongst other things. Apart from these welfare programs, access to healthcare and other State funded resources becomes difficult for those who do not possess NICs.²²

7. CONSEQUENCES OF A LACK OF CNIC

Women and gender minorities, especially those belonging to lower socio-economic backgrounds, often end up finding themselves in the informal work sector to make a living without the option of relying on welfare programs.²³ The fact that all kinds of work within the formal sector requires proper documentation and identification, is one of the reasons for 73.5% of female employment in Pakistan being in the informal sector.²⁴ Women and gender minorities working in the informal sector have little to no job security considering they are not protected by the various beneficial legislation pertaining to labourers,²⁵ are subject to working in the informal sector and have no protection from issues such as harassment and abuse and these issues often do not even get brought up owing to the imbalance of power.²⁶ Summary dismissals are also a norm for such

²¹ Mr. Sarim Burney, Founder, Sarim Burney Welfare Trust (Online Interview, 10 April, 2021)

²² Member, I-Care Foundation (Telephonic Conversation, 10 April 2021)

²³ Mr. Sarim Burney, Founder, Sarim Burney Welfare Trust (Online Interview, 10 April, 2021)

²⁴ Covid-19 & The new normal for women in the economy of Pakistan. *Institute of Development And Economic Alternatives IDEAS*, (2020) pg. 5-10
<https://think-asia.org/bitstream/handle/11540/13335/Covid-19-The-New-Normal-for-Women-in-the-Economy-in-Pakistan.pdf?sequence=1>

²⁵ Ahmed, S. Irfan (2020), Home-bounds grasping at straws. *The News*.
<https://www.thenews.com.pk/magazine/you/692867-home-bound-grasping-at-straws>

²⁶ Ibid.

workers as there are no legal protections for them in place.²⁷ Resultantly, those working in the informal sector have to face issues such as odd working hours, no pension, insurance, or health insurance.²⁸ The biggest drawback of working in the informal sector, however, is extremely low wages. These workers make even less than the minimum wage in some cases, since there are no laws governing this sector of the economy. Consequently, the State further perpetuates the economic incapacitation of the women and gender minority people, who are already deprived of basic rights and benefits.²⁹

Marriage can be considered as one of the most fundamental freedoms of a person and is a prerequisite for access to many other benefits in Pakistani society. However, the State refuses to recognise those marriages that have not been officially registered. It is no surprise that for registration of a marriage in Pakistan, the first piece of documentation required are attested copies of the bride and groom's CNICs. Access to public housing and many other facilities available for married couples is denied to those not officially registered as married couples.³⁰ Possession of NICs is also a prerequisite for obtaining passports and hence, the right to mobility and freedom of movement of those citizens that do not possess NICs is also severely affected. When these disadvantaged groups are refused recognition by the State and are also punished at every step of the way for this non-recognition, they become even more vulnerable and prone to exploitation. Unfortunately, these disadvantaged groups do not have recourse as access to the Pakistani criminal justice system is difficult enough for documented citizens owing to the various procedural technicalities at every step, let alone citizens who do not possess a CNIC. Thus, the State's passive attitude towards these groups deprives them of various rights at various levels.

8. CONCLUSION

In light of the discussion above, it is evident that without possession of a CNIC, a person is reduced to a second-class citizen of the State. The problem faced by women and other gender minorities, especially those belonging to lower income households, begins as soon as they aim to achieve some autonomy by identifying themselves as officially registered citizens of the State. Patriarchal biases of Pakistani society particularly in relation to the role of women in society and

²⁷ Member, I-Care Foundation (Telephonic Conversation, 10 April 2021)

²⁸ Ahmed, S. Irfan (2020), Home-bounds grasping at straws. *The News*.
<https://www.thenews.com.pk/magazine/you/692867-home-bound-grasping-at-straws>

²⁹ Ibid.

³⁰ Trans rights Activist 2, (Telephonic Conversation, 16 April 2021).

their restriction to the private sphere, as well as conservative ideas of gender dichotomies, make it almost impossible for gender minorities to achieve any kind of autonomy and independence in society. This discourages women and other gender minorities from even trying to achieve full citizenship rights within Pakistan and as a result they are met with a number of other problems. The State keeps perpetuating their ordeals at various levels and it is as if no branch of Government is ready to take any substantial step or make any useful effort to end the miseries of these disadvantaged groups. Although there is legislation pertaining to 'equality of all' members of the State, the debate of 'formal equality versus substantive equality' is pertinent to understand why the mere promulgation of acts and laws declaring everyone equal is not enough. Not taking away from the benefits of any such legislation, it is important to note the fundamental flaw in their lack of recognition of the need for affirmative action to situate these historically disadvantaged groups at an equal footing to those that are considered privileged. This problem of non-issuance of NICs to gender minorities is extremely pertinent in our current political and social context. Those without NICs and proper documentation cannot even be registered into schools and colleges and the vicious cycle of unawareness and lack of education keeps on continuing and the plight of these disadvantaged groups appears unending. The only way forward is if the State enacts appropriate legislation taking affirmative action for gender minorities to make it easier for them to access the Executive branches; apply the law in its true spirit of justice and equality; and ensure such application by keeping every concerned party in check and also providing them with necessary sensitivity training so they deal with the already disadvantaged groups with the care they deserve.