

# SENATE OF PAKISTAN HOUSE OF THE FEDERATION

Report No. 16 of the Committee



REPORT OF THE FUNCTIONAL COMMITTEE ON HUMAN RIGHTS ON "THE  
TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2017" MOVED BY  
SENATOR KARIM AHMED KHAWAJA, AND  
"THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2017" MOVED  
BY SENATORS RUBINA KHALID, RUBINA IRFAN, SAMINA SAEED AND  
KALSOOM PARVEEN.

**PRESENTED BY  
SENATOR NASREEN JALIL  
CHAIRPERSON**

## SENATE SECRETARIAT

**Subject:- REPORT ON HUMAN RIGHTS ON "THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2017 MOVED BY SENATOR KARIM AHMED KHAWAJA, AND "THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2017 MOVED BY SENATORS RUBINA KHALID, RUBINA IRFAN, SAMINA SAEED AND KALSOOM PARVEEN.**

I, Senator Nasreen Jalil, Chairperson Senate Functional Committee on Human Rights have honour to present, on behalf of the Committee, the Report on the issues referred by the House during the sitting of the Senate held on 21<sup>st</sup> Aug, 2017. The matters were referred by the House to the Senate Functional Committee on Human Rights for consideration and Report.

2. The agenda before the Committee was as under:-

- i. Discussion on "The Transgender Persons (Protection of Rights) Bill, 2017 moved by Senator Karim Ahmed Khawaja.
- ii. Discussion on "The Transgender Persons (Protection of Rights) Bill, 2017 moved by Senators Rubina Khalid, Rubina Irfan, Samina Saeed and Kalsoom Parveen.

3. The composition of the Committee is as under:-

i.	Senator Nasreen Jalil	Chairperson
ii.	Senator Ms. Sitara Ayaz	Member
iii.	Senator Dr. Jehanzeb Jamaldini	Member
iv.	Senator Muhammad Mohsin Khan Leghari	Member
v.	Senator Mufti Abdul Sattar	Member
vi.	Senator Mir Kabir Ahmed Muhammad Shahi	Member
vii.	Senator Nisar Muhammad	Member
viii.	Senator Mrs. Sehar Kamran	Member
ix.	Senator Aitzaz Ahsan	Member
x.	Senator Farhatullah Babar	Member
xi.	Senator Dr. Syed Asif Saeed Kirmani	Member
xii.	Senator Ms. Samina Abid	Member

4. Accordingly, the issue was discussed in various meetings of the Functional Committee on Human Rights. The first meeting on the subject matter was held on 25<sup>th</sup> Sep, 2017 and was attended by the followign Members.

i.	Senator Nasreen Jalil	Chairperson
ii.	Senator Ms. Samina Saeed	Member
iii.	Senator Dr. Jehanzeb Jamaldini	Member

iv.	Senator Farhatullah Babar	Member
v.	Senator Karim Ahmed Khawaja	Member
vi.	Senator Sitara Ayaz	Member
vii.	Senator Kalsoom Parveen	Mover

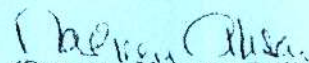
5. The Committee thoroughly discussed the subject Bills in its various meetings and clause by clause consideration was also held. The Committee summoned the representatives of transgender persons so as to legislate as per their desire/needs. The Committee deeply discussed the issue of identity of the transgender Persons, that whether a medical board would identify a transgender person or right of self perceived identity should be given to eunuch. The Committee discussed the issue at length and in this connection also, inquired Chairman, Council of Islamic Ideology, to give his view. The Chairman, Council of Islamic Ideology also supported the right of self perceived identity, in consultation with the representatives of transgender community and all other stakeholders.

6. The Committee after thoroughly discussing both Bills, decided to club them with consensus of all Committee Members. The Committee unanimously recommended that the Bill drafted by the Committee may be passed by the House.

7. The Bill as drafted by the Committee is annexed as A. The Bill as Introduced by the Senator Rubina Khalid and Senator Karim Ahmed Khawaja is annexed as B and C respectively.



(Malik Arshad Iqbal)  
Secretary Committee

  
(Senator Nasreen Jalil)  
Chairperson Committee

[AS REPORTED BY THE COMMITTEE]

**A**

**BILL**

*to provide for protection, relief and rehabilitation of rights of the transgender persons and their welfare and for matters connected therewith and incidental thereto*

**WHEREAS** it is expedient to provide for protection, relief and rehabilitation of rights of the transgender persons and their welfare and for matters connected therewith and incidental thereto;

It is hereby enacted as follows: -

**CHAPTER I  
PRELIMINARY**

**1. Short title, extent and commencement.** - (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2017.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

**2. Definitions.-** (1) In this Act, unless there is anything repugnant in the subject or context,-

- (a) **"Act"** means the Transgender Persons (Protection of Rights) Act, 2017;
- (b) **"CNIC"** means Computerized National Identity Card;
- (c) **"Complainant"** means a transgender person who has made a complaint on being aggrieved by an act of harassment;
- (d) **"CRC"** means Child Registration Certificate or B-Form;
- (e) **"Gender expression"** refers to a person's presentation of their gender identity, and/or the one that is perceived by others;
- (f) **"Gender identity"** means a person's innermost and individual sense of self as male, female or a blend of both or neither; that can correspond or not to the sex assigned at birth;
- (g) **"Government"** means the Federal Government;

- (h) **"Harassment"** includes sexual, physical, mental and psychological harassment which means any aggressive pressure or intimidation intended to coerce, unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with living, mobility or work performance or creating an intimidating, hostile or offensive work or living environment including the attempt to punish the complainant for refusal to comply with such requests or to bring forth the complaint;
  - (i) **"NADRA"** means the National Database and Registration Authority;
  - (j) **"Notification"** means a notification published in the Gazette;
  - (k) **"PMDC"** means Pakistan Medical and Dental Council made under the PMDC Ordinance, 1962;
  - (l) **"Prescribed"** means prescribed by rules made by the Government under this Act;
  - (m) **"Rules"** means the rules made under this Act; and
  - (n) **"Transgender Person"** is a person who is:-
    - (i) Intersex (Khunsa) with mixture of male and female genital features or congenital ambiguities; or
    - (ii) Eunuch assigned male at birth, but undergoes genital excision or castration; or
    - (iii) a Transgender Man, Transgender Woman, KhawajaSira or 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.
- (2) A word or expression not defined in the Act shall have the same meaning as assigned to it in the Code of Criminal Procedure, 1898 or Pakistan Penal Code, 1860 (XLV of 1860).

## **CHAPTER II RECOGNITION OF IDENTITY OF TRANSGENDER PERSON**

**3. Recognition of identity of Transgender Person.** -(1) A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.

(2) A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to NADRA.

(3) Every Transgender Person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to get himself or herself registered according to self-perceived gender identity with NADRA on the CNIC, CRC, Driving Licence and Passport in accordance with the provisions of the NADRA Ordinance, 2000 or any other relevant laws.

(4) A Transgender Person already issued CNIC by NADRA shall be allowed to change the name and gender according to his or her self-perceived identity on the CNIC, CRC, Driving Licence and Passport in accordance with the provisions of the NADRA Ordinance, 2000.

## **CHAPTER III PROHIBITION OF CERTAIN ACTS**

**4. Prohibition against discrimination.** -No person shall discriminate against a transgender person on any of the following grounds, namely:-

- (a) the denial of, or discontinuation of, or unfair treatment in, educational institutions and services thereof;
- (b) the unfair treatment in, or in relation to, employment, trade or occupation;
- (c) the denial of, or termination from, employment or occupation;
- (d) the denial of, or discontinuation of, or unfair treatment in healthcare services;

- (e) the denial of, or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment of use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of general public or customarily available to the public;
- (f) the denial of, or discontinuation of, or unfair treatment with regard to right to movement, safe travel, and use of public facilities of transportation;
- (g) the denial of, or discontinuation of, or unfair treatment with regard to the right to reside, sale/purchase, rent or otherwise occupy, inherit any movable and immovable property;
- (h) the denial of, or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; or
- (i) the denial of access to, removal from, or unfair treatment in, government or private establishment, organizations, institutions, departments, centers in whose care, custody or employment a transgender person may be.

**5. Prohibition against Harassment.** - Harassment of Transgender Persons, as defined in this Act, both within and outside the home, based on their sex, gender identity and/or gender expression is prohibited.

#### **CHAPTER IV OBLIGATIONS BY THE GOVERNMENT**

**6. Obligations of the Government.** - The Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society, namely: -

- (a) Establish Protection Centers and Safe Houses to ensure the rescue, protection and rehabilitation of Transgender Persons in addition to providing medical facilities, psychological care, counseling and adult education to the Transgender Persons;

- (b) Establish separate prisons, jails, confinement cells, etc for the transgender persons involved in any kind of offence or offences;
- (c) Institute mechanisms for the periodic sensitization and awareness of the public servants, in particular, but not limited to, law enforcement agencies and medical institutions, relating to the issues involving the Transgender Persons and the requirement of protection and relief of such persons;
- (d) Formulate special vocational training programmes to facilitate, promote and support livelihood for Transgender Persons;
- (e) Encourage Transgender Persons to start small business by providing incentives, easy loan schemes and grants; and
- (f) Take any other necessary measures to accomplish the objective of this Act.

## **CHAPTER V**

### **PROTECTION OF RIGHTS OF TRANSGENDER PERSONS**

**7. Right to Inherit.** – (1) There shall be no discrimination against Transgender Persons in acquiring the rightful share of property as prescribed under the law of inheritance.

(2) The share of Transgender Persons shall be determined as per the gender declared on CNIC in accordance with the law of inheritance in Pakistan.

(3) The share of inheritance for transgender persons will be as follows:

- (i) For Transgender Male, the share of inheritance will be that of man;
- (ii) For Transgender Female, the share of inheritance will be that of woman;

- (iii) For person who has both male and female or ambiguous characteristics, such as their state is difficult to determine upon birth, following shall apply:-
- (a) Upon reaching the age of 18 years, if the person's self-perceived gender identity is Transgender Male, the share of inheritance will be that of man;
  - (b) Upon reaching the age of 18 years, if the person's self-perceived gender identity is Transgender Female, the share of inheritance will be that of woman;
  - (c) Upon reaching the age of 18 years, if the person's self-perceived gender identity is neither Transgender Mannor Transgender Woman, the share of inheritance will be an average of two separate distributions for a man and a woman; and
  - (d) Below the age of eighteen years, the gender as, determined by medical officer on the basis of predominant male or female features.

**8. Right to Education.**— (1) There shall be no discrimination against Transgender Persons in acquiring admission in any educational institutions, public or private, subject to fulfillment of the prescribed requirements.

(2) All educational institutions shall provide education and opportunities for sports, recreation and leisure activities without any discrimination, and on an equal basis with others.

(3) The Government shall take steps to provide free and compulsory education to Transgender Persons as guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan, 1973.

(5) It is unlawful for an Institution whether private or public, to discriminate against a person on the ground of person's sex, gender identity and/or gender expression, including but not limited to:

- (a) in determining who should be offered admission; or
- (b) in the terms or conditions on which admission is offered; or
- (c) by denying the person's access, or limiting the person's access, to opportunities, training or to any other positive externalities associated with the education; or
- (d) by denying access to appropriate student facilities based on a person's sex, gender identity and/or expression.

**9. Right to employment.**– (1)The Government must ensure the right to enter into any lawful profession or occupation, and to conduct any lawful trade or business for the Transgender Persons as guaranteed under Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973.

(2) No establishment, institution, department, organization, shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion, appointment, transfer and other related issues.

(3) It shall be unlawful for an employer to discriminate against an employee on the ground of their sex, gender identity and/or gender expression:

- (a) in determining who should be offered employment; or
- (b) in the terms or conditions on which employment is offered; or
- (c) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or

- (d) by dismissing the employee; or
- (e) by subjecting the employee to any other detriment.

**10. Right to Vote.** – No Transgender Person shall be deprived of their right to cast a vote during national, provincial and/or local government elections:

Provided that the access to polling stations shall be determined according to the gender declared on the CNIC of a Transgender Person.

**11. Right to hold public office.** – (1) There shall be no discrimination on the basis of sex, gender identity and/or gender expression for Transgender Persons if they wish to contest election to hold public office.

**12. Right to Health.** – The Government shall take the following measures to ensure non-discrimination in relation to Transgender Persons, namely: –

- (a) to review medical curriculum and improve research for Doctors and nursing staff to address specific health issues of Transgender Persons in cooperation with PMDC;
- (b) to facilitate access by providing an enabling and safe environment for Transgender Persons in hospitals and other healthcare institutions and centers;
- (c) to ensure Transgender Persons access to all necessary medical and psychological gender corrective treatment;

**13. Right to assembly.** – (1) The Government must ensure the freedom of assembly for Transgender Persons in accordance with Article 16 of the Constitution of the Islamic Republic of Pakistan, 1973.

(2) The Government must take steps to ensure appropriate safety measures for Transgender Persons.

(3) No discrimination shall be made on the basis of person's sex, gender identity and/or gender expression subject to reasonable restrictions imposed by law in the interest of public order.

**14. Right of access to public places.** – (1) No Transgender person shall be denied access to public places, places of entertainment or places intended for religious purpose solely on the basis of their sex, gender identity and/or gender expression.

(2) The Government must ensure Transgender Persons access to public places in view of Article 26 of the Constitution of the Islamic Republic of Pakistan, 1973.

(3) It shall be unlawful to prevent Transgender Persons to access facilities available for access of general public and public places mentioned in sub-section (1).

**15. Right to property.** – (1) No Transgender Person shall be denied right to purchase, sell, rent or lease property, household or tenancy on the basis of sex, gender identity and/or gender expression.

(2) It shall be unlawful to discriminate any Transgender Person with regards to renting, subletting or tenancy on the basis of their sex, gender identity and/or gender expression.

**16. Guarantee of Fundamental Rights.** – (1) In addition to rights mentioned in this chapter, Fundamental Rights mentioned in Chapter I, Part II of the Constitution of the Islamic Republic of Pakistan, 1973 shall be available unequivocally for every Transgender Person.

(2) It shall be the duty of the Government to ensure that the fundamental rights mentioned in sub-section (1) are protected and there shall be no discrimination for any person on the basis of sex, gender identity and/or gender expression.

**17. Offences and Penalties.**– (1) Whoever, employs, compels or uses any transgender person for begging shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

## **CHAPTER VI ENFORCEMENT MECHANISM**

**18. Enforcement Mechanism.** – In addition to the remedies available under the Constitution or Pakistan Penal Code 1860, Code of Criminal Procedure, 1898 or the code of Civil Procedure 1908, the aggrieved transgender person shall have a right to move a complaint to the, Federal Ombudsman, National Commission for Status of Women\_and National Commission of Human Rights (NCHR) if any of the Rights guaranteed herein are denied to him or her.

## **CHAPTER VII MISCELLANEOUS**

**19. Act having over-riding effect to any other law.**– The provisions of this Act shall have an over-riding effect on any other law for the time being in force.

**20. Power of Government to make rules.**– The Government may, by notification, make rules for carrying out the purposes of this Act.

**21. Power to remove difficulties.**–If any difficulty arises in giving effect to the provisions of this Act, the Government may make such order or give such directions, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

### **STATEMENT OF OBJECTS AND REASONS**

Transgender people constitute one of the most marginalized communities in the country and they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on. The Supreme Court of Pakistan passed a ruling in 2009 stating that no Pakistani laws provide room to disenfranchise "eunuchs" from their fundamental rights. Though Article 25 of the Constitution of the Islamic Republic of Pakistan guarantees to all citizens equality before law, clause (1) of Article 26 and clause (1) of Article 27, inter alia prohibit, in explicit terms, discrimination on the basis of sex and Article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against Transgender Persons continue to take place.

The Transgender Persons (Protection of Rights) Bill, 2017 seeks to:

- (i) define a Transgender Person;
- (ii) prohibit discrimination against Transgender Persons;
- (iii) confer right upon Transgender Persons to be recognised as such, and a right to self-perceived gender identity;
- (iv) provide that no establishment shall discriminate against Transgender Persons in matters relating to employment, recruitment, promotion, education and other related issues; and
- (v) provide for welfare measures by the Government for Transgender Persons.

The Bill seeks to achieve the above objects.

**SENATOR RUBINA KHALID  
SENATOR RUBINA IRFAN  
SENATOR SAMINA ABID  
SENATOR KALSOOM PERVEEN  
SENATOR KARIM AHMED KHAWAJA  
MEMBERS-IN-CHARGE**

[TO BE INTRODUCED IN THE SENATE]

A

BILL

*to provide for protection, relief and rehabilitation of rights of the transgender persons and their welfare and for matters connected therewith and incidental thereto*

**WHEREAS** it is expedient to provide for protection, relief and rehabilitation of rights of the transgender persons and their welfare and for matters connected therewith and incidental thereto;

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  - (i) Intersex (Khunsa) with mixture of male and female genital features or congenital ambiguities; or
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(2) A word or expression not defined in the Act shall have the same meaning as assigned to it in the Code of Criminal Procedure, 1898 or Pakistan Penal Code, 1860 (XLV of 1860).

**CHAPTER II**  
**RECOGNITION OF IDENTITY OF TRANSGENDER PERSON**

**3. Recognition of identity of Transgender Person.** – (1) A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.

(2) A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to NADRA.

(3) Every Transgender Person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to get himself or herself registered according to self-perceived gender identity with NADRA on the CNIC, CRC, Driving Licence and Passport in accordance with the provisions of the NADRA Ordinance, 2000 or any other relevant laws.

(4) A Transgender Person already issued CNIC by NADRA shall be allowed to change the name and gender according to his or her self-perceived identity on the CNIC, CRC, Driving Licence and Passport in accordance with the provisions of the NADRA Ordinance, 2000.

**CHAPTER III**  
**PROHIBITION OF CERTAIN ACTS**

**4. Prohibition against discrimination.** – No person shall discriminate against a transgender person on any of the following grounds, namely:-

- (a) the denial of, or discontinuation of, or unfair treatment in, educational institutions and services thereof;
- (b) the unfair treatment in, or in relation to, employment, trade or occupation;
- (c) the denial of, or termination from, employment or occupation;
- (d) the denial of, or discontinuation of, or unfair treatment in healthcare services;

## 4

- (e) the denial of, or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment of use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of general public or customarily available to the public;
- (f) the denial of, or discontinuation of, or unfair treatment with regard to right to movement, safe travel, and use of public facilities of transportation;
- (g) the denial of, or discontinuation of, or unfair treatment with regard to the right to reside, sale/purchase, rent or otherwise occupy, inherit any movable and immovable property;
- (h) the denial of, or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; or
- (i) the denial of access to, removal from, or unfair treatment in, government or private establishment, organizations, institutions, departments, centers in whose care, custody or employment a transgender person may be.

**5. Prohibition against Harassment.** - Harassment of Transgender Persons, as defined in this Act, both within and outside the home, based on their sex, gender identity and/or gender expression is prohibited.

## CHAPTER IV OBLIGATIONS BY THE GOVERNMENT

**6. Obligations of the Government.** - The Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society, namely: -

- (a) Establish Protection Centers and Safe Houses to ensure the rescue, protection and rehabilitation of Transgender Persons in addition to providing medical facilities, psychological care, counseling and adult education to the Transgender Persons;

- (b) Establish separate prisons, jails, confinement cells, etc for the transgender persons involved in any kind of offence or offences;
- (c) Institute mechanisms for the periodic sensitization and awareness of the public servants, in particular, but not limited to, law enforcement agencies and medical institutions, relating to the issues involving the Transgender Persons and the requirement of protection and relief of such persons;
- (d) Formulate special vocational training programmes to facilitate, promote and support livelihood for Transgender Persons;
- (e) Encourage Transgender Persons to start small business by providing incentives, easy loan schemes and grants; and
- (f) Take any other necessary measures to accomplish the objective of this Act.

## **CHAPTER V PROTECTION OF RIGHTS OF TRANSGENDER PERSONS**

**7. Right to Inherit.** – (1) There shall be no discrimination against Transgender Persons in acquiring the rightful share of property as prescribed under the law of inheritance.

(2) The share of Transgender Persons shall be determined as per the gender declared on CNIC in accordance with the law of inheritance in Pakistan.

(3) The share of inheritance for transgender persons will be as follows:

- (i) For Transgender Male, the share of inheritance will be that of man;
- (ii) For Transgender Female, the share of inheritance will be that of woman;

- (iii) For person who has both male and female or ambiguous characteristics, such as their state is difficult to determine upon birth, following shall apply:-
- (a) Upon reaching the age of 18 years, if the person's self-perceived gender identity is Transgender Male, the share of inheritance will be that of man;
  - (b) Upon reaching the age of 18 years, if the person's self-perceived gender identity is Transgender Female, the share of inheritance will be that of woman;
  - (c) Upon reaching the age of 18 years, if the person's self-perceived gender identity is neither Transgender Man nor Transgender Woman, the share of inheritance will be an average of two separate distributions for a man and a woman; and
  - (d) Below the age of eighteen years, the gender as, determined by medical officer on the basis of predominant male or female features.

**8. Right to Education.**— (1) There shall be no discrimination against Transgender Persons in acquiring admission in any educational institutions, public or private, subject to fulfillment of the prescribed requirements.

(2) All educational institutions shall provide education and opportunities for sports, recreation and leisure activities without any discrimination, and on an equal basis with others.

(3) There shall be reserved three percent quota for Transgender Persons in every public and private higher educational institutions.

(4) The Government shall take steps to provide free and compulsory education to Transgender Persons as guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan, 1973.

(5) It is unlawful for an Institution whether private or public, to discriminate against a person on the ground of person's sex, gender identity and/or gender expression, including but not limited to:

- (a) in determining who should be offered admission; or
- (b) in the terms or conditions on which admission is offered; or
- (c) by denying the person's access, or limiting the person's access, to opportunities, training or to any other positive externalities associated with the education; or
- (d) by denying access to appropriate student facilities based on a person's sex, gender identity and/or expression.

**9. Right to employment.**– (1) The Government must ensure the right to enter into any lawful profession or occupation, and to conduct any lawful trade or business for the Transgender Persons as guaranteed under Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973.

(2) No establishment, institution, department, organization, shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion, appointment, transfer and other related issues.

(3) There shall be reserved three percent quota for all employments in public and private sector departments/organizations for Transgender Persons subject to fulfillment of prescribed requirements.

(4) It shall be unlawful for an employer to discriminate against an employee on the ground of their sex, gender identity and/or gender expression:

- (a) in determining who should be offered employment; or
- (b) in the terms or conditions on which employment is offered; or
- (c) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or

- (d) by dismissing the employee; or
- (e) by subjecting the employee to any other detriment.

**10. Right to Vote.** – No Transgender Person shall be deprived of their right to cast a vote during national, provincial and/or local government elections:

Provided that the access to polling stations shall be determined according to the gender declared on the CNIC of a Transgender Person.

**11. Right to hold public office.** – (1) There shall be no discrimination on the basis of sex, gender identity and/or gender expression for Transgender Persons if they wish to contest election to hold public office.

(2) There shall be reserved three percent of quota for political representation of Transgender Persons in local as well as national level bodies.

**12. Right to Health.** – The Government shall take the following measures to ensure non-discrimination in relation to Transgender Persons, namely: –

- (a) to review medical curriculum and improve research for Doctors and nursing staff to address specific health issues of Transgender Persons in cooperation with PMDC;
- (b) to facilitate access by providing an enabling and safe environment for Transgender Persons in hospitals and other healthcare institutions and centers;
- (c) to ensure Transgender Persons access to all necessary medical and psychological gender corrective treatment;
- (d) to create provisions for coverage of medical expenses by a comprehensive insurance scheme for Transgender Persons.

**13. Right to assembly.** – (1) The Government must ensure the freedom of assembly for Transgender Persons in accordance with Article 16 of the Constitution of the Islamic Republic of Pakistan, 1973.

(2) The Government must take steps to ensure appropriate safety measures for Transgender Persons.

(3) No discrimination shall be made on the basis of person's sex, gender identity and/or gender expression subject to reasonable restrictions imposed by law in the interest of public order.

**14. Right of access to public places.** – (1) No Transgender person shall be denied access to public places, places of entertainment or places intended for religious purpose solely on the basis of their sex, gender identity and/or gender expression.

(2) The Government must ensure Transgender Persons access to public places in view of Article 26 of the Constitution of the Islamic Republic of Pakistan, 1973.

(3) It shall be unlawful to prevent Transgender Persons to access facilities available for access of general public and public places mentioned in sub-section (1).

**15. Right to property.** – (1) No Transgender Person shall be denied right to purchase, sell, rent or lease property, household or tenancy on the basis of sex, gender identity and/or gender expression.

(2) It shall be unlawful to discriminate any Transgender Person with regards to renting, subletting or tenancy on the basis of their sex, gender identity and/or gender expression.

**16. Guarantee of Fundamental Rights.** – (1) In addition to rights mentioned in this chapter, Fundamental Rights mentioned in Chapter I, Part II of the Constitution of the Islamic Republic of Pakistan, 1973 shall be available unequivocally for every Transgender Person.

(2) It shall be the duty of the Government to ensure that the fundamental rights mentioned in sub-section (1) are protected and there shall be no discrimination for any person on the basis of sex, gender identity and/or gender expression.

**CHAPTER VI  
ENFORCEMENT MECHANISM**

**17. Enforcement Mechanism.** – In addition to the remedies available under the Constitution or Pakistan Penal Code 1860, Code of Criminal Procedure, 1898 or the code of Civil Procedure 1908, the aggrieved transgender person shall have a right to move a complaint to the National Commission of Human Rights (NCHR) if any of the Rights guaranteed herein are denied to him or her.

**CHAPTER VII  
MISCELLANEOUS**

**18. Act having over-riding effect to any other law.**– The provisions of this Act shall have an over-riding effect on any other law for the time being in force.

**19. Power of Government to make rules.**– The Government may, by notification, make rules for carrying out the purposes of this Act.

**20. Power to remove difficulties.**– If any difficulty arises in giving effect to the provisions of this Act, the Government may make such order or give such directions, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

**STATEMENT OF OBJECTS AND REASONS**

Transgender people constitute one of the most marginalized communities in the country and they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on. The Supreme Court of Pakistan passed a ruling in 2009 stating that no Pakistani laws provide room to disenfranchise "eunuchs" from their fundamental rights. Though Article 25 of the Constitution of the Islamic Republic of Pakistan guarantees to all citizens equality before law, clause (1) of Article 26 and clause (1) of Article 27, inter alia prohibit, in explicit terms, discrimination on the basis of sex and Article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against Transgender Persons continue to take place.

The Transgender Persons (Protection of Rights) Bill, 2017 seeks to:

- (i) define a Transgender Person;
- (ii) prohibit discrimination against Transgender Persons;
- (iii) confer right upon Transgender Persons to be recognised as such, and a right to self-perceived gender identity;
- (iv) provide that no establishment shall discriminate against Transgender Persons in matters relating to employment, recruitment, promotion, education and other related issues; and
- (v) provide for welfare measures by the Government for Transgender Persons.

The Bill seeks to achieve the above objects.

**SENATOR RUBINA KHALID  
SENATOR RUBINA IRFAN  
SENATOR SAMINA ABID  
SENATOR KALSOOM PERVEEN  
MEMBERS-IN-CHARGE**

[TO BE INTRODUCED IN THE SENATE]

A

**BILL**

*to provide for the protection of rights of transgender persons and their welfare  
and for matters connected therewith and incidental thereto*

**WHEREAS** it is expedient to provide for the protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

It is hereby enacted as follows:-

**CHAPTER-I  
PRELIMINARY**

**1. Short title, extent and commencement.-** (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2017.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

**2. Definitions.-** (1) In this Act, unless there is anything repugnant in the subject or context,-

(a) "Act" means the Transgender Person (Protection of Rights) Act, 2017;

(b) "Authority" means the National Database and Registration Authority;

(c) "Discriminatory Practices" means practices as mentioned in section 3 of the Act;

(d) "Gender Identity" refers to personal sense of identity as characterized among others by manner of clothing, inclinations, and behaviour in relation to masculine or feminine conventions;

(e) "Gender Recognition Committees" means Committees appointed under section 5 of the Act;

(f) "Government" means the Federal Government;

(g) "Public Place" means any place accessible to public such as auditorium, buildings, health institutions, amusement centres, restaurants, public offices, court buildings, cinema halls, conference or seminar halls, eating houses, hotel lounges, bus stations, sports stadiums, educational institutors, Libraries or any other place

(h) "Rules" means the rules made under this Act; and

(i) "Transgender person" means a person who is,

(i) neither wholly female nor wholly male; or

(ii) a combination of female and male; or

(iii) neither female nor male;

and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.

**3. Prohibition against discriminatory practices.-** No person shall discriminate against any transgender person in any of or more than one of the following ways:-

(a) refusal of admission or expulsion from any educational or training institution;

(b) biased or unfair treatment in relation to matters of employment or occupation;

(c) denial of access to public or private medical or other health services;

(d) denial of access to public places;

(e) the denial of the right to participate in the elections;

(f) unfair treatment in relation to right to movement;

(g) the denial of the right to sale, purchase, rent, reside or otherwise occupy any property or premises;

(h) denial of the opportunity to hold a public or private office; or

(i) any other practice which the Government may declare as a discriminatory practice.

**4. Recognition of identity of Transgender person.-** (1) A transgender person shall have a right to be recognized as such, in accordance with the provisions of this Act.

(2) A person recognized as transgender under sub-section (1) shall have a right to self-perceived gender identity.

**5. Gender Recognition Committees.-** (1) The Government shall establish as many Gender Recognition Committees as it deems fit for the purpose of recognition of transgender persons.

(2) The Gender Recognition Committee shall comprise of:-

- (a) A Medical Officer;
- (b) An officer of the Authority;
- (c) a Psychologist or Psychiatrist;
- (d) a representative of transgender community; and
- (e) a representative from the civil society.

**6. Application for certificate of identity.-** (1) A transgender person may make an application to the Authority for issuance of a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

(2) On the receipt of an application under sub-section (1), the Authority shall refer such application to the Gender Recognition Committee, which shall make recommendations in such form and manner, within such time, as may be prescribed.

**7. Issuance of certificate of identity.-** (1) The Authority shall issue to the applicant under section 6 a certificate of identity as transgender person on the basis of the recommendations made by the Gender Recognition Committee, indicating the gender of such person as transgender.

(2) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

(3) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

**8. Change in gender.-** After the issuance of a certificate under sub-section (1) of section 7, if there is any change in the gender of a transgender person, he shall make an application to the Authority for revised certificate.

**9. Transgender Welfare Committee.-** (1) The Government shall establish a Committee to be known as the Transgender Welfare Committee.

(2) The Committee shall consist of , -

- |  |          |
|--|----------|
| (a) Minister for Human Rights;   | Chairman |
| (b) Secretary, Ministry of Human Rights;   | Member   |
| (c) Minister for Law and Justice;  | Member   |
| (d) Secretary, Ministry of Law and Justice   | Member   |
| (e) Minister for Social Welfare Department, Balochistan;   | Member   |
| (f) Minister for Social Welfare, Department, Khyber Pakhtunkhwa;   | Member   |
| (g) Minister for Social Welfare Department, Punjab;  | Member   |
| (h) Minister for Social Welfare Department, Sindh;   | Member   |
| (i) Wafaqi Mohtasib;   | Member   |
| (j) Two representatives from the transgender community; and  | Member   |
| (k) Two representatives from the Non-Governmental Organizations (NGOs) working for the welfare of the transgender community. | Member   |

(3) The Committee shall meet at least twice in a year.

**10. Functions of the Committee.-** The Committee shall perform following functions, namely;

- (a) to advise the Government on formulation of comprehensive policies for welfare and integration of the transgender community;
- (b) to design comprehensive strategies for elimination of all forms of discrimination against transgender persons;
- (c) to initiate public awareness campaigns to educate the public about the rights and status of the transgender persons;
- (d) to supervise and review the implementation of the provisions of this Act;

- (e) to maintain coordination and liaison with government and non-government organizations working for the welfare of the transgender community;
- (f) to take initiatives to ensure full participation of the transgender persons in every sphere of life; and
- (g) to perform any other function as may be prescribed by the Government.

**11. Welfare and Rehabilitation of Transgender Persons.-** (1) The Government shall establish separate institutions for education and vocational training of transgender persons.

(2) The Government shall ensure that every healthcare institution provides all medical facilities to the transgender persons without any discrimination.

(3) The Government shall take initiatives to provide financial support to disabled transgender Persons.

(4) The Government shall establish a special helpline centre for gender based violence.

(5) The Government shall ensure that equitable employment opportunities are provided to the transgender persons.

(6) The Government shall establish rehabilitation centres for transgender persons who are abandoned by their parents or legal guardians.

**12. Offences and Penalties.-** (1) Whoever, discriminates against any transgender person in contravention of section 3, shall be punished with fine which may extend to one hundred thousand rupees.

(2) Whoever, endangers or threatens the life and safety of a transgender person shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to one hundred thousand rupees or with both.

(3) Whoever, employs, compels or uses any transgender person for begging shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

**13. Act not in derogation of any other law.-** The provisions of this Act shall be in addition to, and not derogation of, any other law for the time being in force.

**14. Power to make rules.-** The Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

**15. Power to remove difficulties.-** If any difficulty arises in giving effect to any provisions of this Act, the Government may make such order, not inconsistent with the express provisions of this Act, as may appear to it to be necessary or expedient for the purpose of removing the difficulty.

### **STATEMENT OF OBJECTS AND REASONS**

Transgender community is one of the most marginalized communities in the country. Transgender persons face discrimination in educational institutions, healthcare centres, and other public places. Furthermore, transgender persons are routinely harassed and bullied, which has increased the troubles of this already oppressed community. The rising incidents of violence against the transgender person are testament to the plight of this community in the country.

The Constitution of the Islamic Republic of Pakistan ensures equal rights for all citizens. Article 25 of the Constitution provides for equality of all citizens. To ensure that the transgender persons enjoy equal rights there is an urgent need to introduce a specific legislation. This Bill strives to safeguard the rights of transgender persons.

This Bill strives to achieve the aforementioned objectives.

**SENATOR KARIM AHMED KHAWAJA**  
**Member In-charge**

## SENATE SECRETARIAT

Subject:- MINUTES OF THE MEETING OF SENATE FUNCTIONAL COMMITTEE ON HUMAN RIGHTS

The meeting of the Senate Functional Committee on Human Rights was held under the Chairpersonship of Senator Nasreen Jalil on 9<sup>th</sup> Feb, 2018 at 02:30 p.m in Committee Room No. 4, Islamabad.

2. The following Members of the Committee attended the meeting:-

i.	Nasreen Jalil	Chairperson
ii.	Senator Mufti Abdul Sattar	Member
iii.	Senator Ms. Sitara Ayaz	Member
iv.	Senator Mrs. Sehar Kamran	Member
v.	Senator Karim Ahmed Khawaja	Mover

3. The agenda before the Committee was as under:-

- (i) Consideration of "The Transgender Persons (Protection of Rights) Bill, 2017 moved by Senator Karim Ahmed Khawaja.
- (ii) Consideration of "The Transgender Persons (Protection of Rights) Bill, 2017 moved by Senators Rubina Khalid, Rubina Irfan, Samina Saeed and Kalsoom Parveen.
- (iii) Re-consideration of the amendments regarding procedural changes to check the misuse of blasphemy law in Pakistan.
- (iv) Briefing by Taha Siddiqui, on the attempt of abduction, in Islamabad on 10<sup>th</sup> Jan, 2018.
- (v) Any other item with permission of the Chair.

4. The meeting commenced with the recitation of the Holy Quran. The Chairperson Committee, Senator Nasreen Jalil welcomed all the Members Committee, Chairman, Council of Islamic Ideology, and other officers and officials who attended the meeting.

5. Coming to agenda item No. I. the Committee thoroughly discussed the Bills. The Chairperson Committee asked the Chairman, Council of Islamic Ideology, Dr. Qibla Ayaz, briefed the Committee that he had various meetings with the representatives of Transgender community to deeply discover the true needs of the Transgender Community. He further briefed that during meeting the representative of transgender showed their concern that our society has not yet so mature to accept the transgender persons among them, and also quoted the various

example of maltreatment with the transgender community. Furthermore, the transgender also desired to have right of self perceived identity to lessen the grievances of transgender in the country. While concluding he remarked that right of self perceived identity should be given to transgender persons, and at the time of need (issue inheritance etc), the court can verify the identity of transgender through medical board. The Committee expressed its gratitude on the positive input by the Chairman Council of Islamic Ideology, and shared that the Bill as amended by the Committee has the provision of right of self perceived identity.

6. The Committee after thoroughly discussing both Bills, decided to club them with consensus of all Committee Members. The Committee unanimously recommended that the Bill drafted by the Committee may be passed by the House.


7. While coming to discuss agenda item No. III. Senator Mufti Abdul Sattar, showed its great concern the consideration of the procedural changes to blasphemy law, and added that there are many other laws which are being misused and not only Blasphemy law is specifically misutilized, therefore, he requested the Committee to drop the agenda item and ensure that no procedural changes whatsoever, to blasphemy law should be made. The Committee decided to defer the matter.

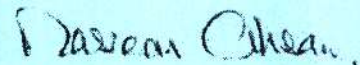
8. With regard to agenda item No. IV, the Committee was briefed that the victim didn't bother to attend the meeting, therefore, the Committee decided to drop the matter.

9. After detailed discussion and deliberations, the Committee recommended as follows:-

- i. The Committee unanimously recommended that the Bill drafted by the Committee may be passed by the House.
- ii. The Committee decided to defer up the agenda item No. III.
- iii. The Committee decided to drop Agenda Item No. III

10. The meeting ended with a vote of thanks to and from the Chair.

  
(Malik Arshad Iqbal)  
Secretary Committee

  
(Senator Nasreen Jalil)  
Chairperson of the Committee