



House of the Federation

SENATE OF PAKISTAN

REPORT NO. 25

SPECIAL REPORT OF THE STANDING COMMITTEE **ON HUMAN RIGHTS**

on

“Consolidation of Bills proposing amendments in or repeal of the Transgender Persons (Protection of Rights) Act, 2018, in order to provide a comprehensive law for protection, relief and rehabilitation of the rights of khunsa (intersex) persons, and their welfare, in line with the Shariah and Constitutional guarantees.”

Presented by:

SENATOR WALID IQBAL
CHAIRMAN

STANDING COMMITTEE ON HUMAN RIGHTS

SENATE SECRETARIAT

Subject: REPORT OF THE STANDING COMMITTEE ON HUMAN RIGHTS.

I, Chairman of the Standing Committee on Human Rights, have the honour to present this special report on "Consolidation of Bills proposing amendments in or repeal of the Transgender Persons (Protection of Rights) Act, 2018, in order to provide a comprehensive law for protection, relief and rehabilitation of the rights of khunsa (intersex) persons, and their welfare, in line with the Shariah and Constitutional guarantees."

2. The composition of the Standing Committee is as follows:-

1.	Senator Walid Iqbal	Chairman
2.	Senator Prof. Dr. Mehr Taj Roghani	Member
3.	Senator Mohammad Humayun Mohmand	Member
4.	Senator Seemee Ezdi	Member
5.	Senator Syed Faisal Ali Subzwari	Member
6.	Senator Quratul Ain Marri	Member
7.	Senator Kamran Michael	Member
8.	Senator Mushahid Hussain Sayed	Member
9.	Senator Abida Muhammad Azeem	Member
10.	Senator Muhammad Tahir Bizinjo	Member
11.	Senator Irfanul Haque Siddiqui	Member
12.	Senator Falak Naz	Member
13.	Senator Syed Waqar Mehdi	Member
14.	Minister for Human Rights	Ex-officio Member

3. The following six Bills, to amend or repeal the Transgender Persons (Protection of Rights) Act, 2018, with somewhat identical object and reasons, as introduced in the Senate, were referred by the House to the Standing Committee on Human Rights for consideration and report:-

- i. The Transgender Persons (Protection of Rights) (Amendment) Bill, 2021", introduced by Senator Mushtaq Ahmed, in the Senate sitting held on 15th November 2021. (Annexure-B)

Salient features of the Bill,-

The Transgender Persons (Protection of Rights) Act, 2018, has effects that are repugnant to the injunctions of Islam and the Constitution of Pakistan including legalization of homosexual marriages; repugnancy to Law of inheritance in Quran; violation of dignity/modesty of Muslim Women; and making the recognition of Gender a subjective matter. Therefore amendments have been proposed to bring this

- v. The Transgender Persons (Protection of Rights) (Amendment) Bill, 2022", introduced by Senator Syed Muhammad Sabir Shah, in the Senate sitting held on 3rd October, 2022. (Annexure-F)

Salient features of the Bill,-

The transgender law was enacted by Parliament in 2018 to provide legal recognition to transgender persons. The main concept was that the transgender persons are also human beings, and the legislation was meant to protect their rights, including inheritance, education, employment, health and purchase of property. The act has a chance of weakness or misuse of it as the complaints started coming after two years on a provision that there was a possibility that sections 3 and 4 could be misused. In terms of the aforementioned sections, after reaching the age of 18 years, transgender persons could declare their genders on their identity cards. It should be suitably amended and made subject to the decision of the Medical Board. Furthermore, the Act is devoid of one more pressing issue i.e. disowning of transgender child and adoption of same by khwajasira community. Therefore, amendments have been proposed to address these issues.

- vi. The Transgender Persons (Protection of Rights) (Amendment) Bill, 2022", introduced by Senators Molana Abdul Ghafoor Haideri, Atta-Ur-Rehman, Molvi Faiz Muhammad and Kamran Murtaza, in the Senate sitting held on 3rd October, 2022. (Annexure-G)

Salient features of the Bill,-

The Transgender Persons (Protection of Rights) Act, 2018 has been enacted to protect and safeguard the rights of transgender community in Pakistan. However, it has failed to achieve the afore-cited purpose. There are various lacunas and loopholes in this Act, which need to be dealt with on priority basis. The phrase "Transgender Persons" itself is not appropriate and needs to be replaced with the "Intersex Persons". Moreover, the concept of "self-perceived identity" is against the spirit of Islam, as the same does not allow any person to adopt an identity on the basis of his or her own choice, but should solely be determined on the basis of physical appearance, genital features, congenital ambiguities or by a report of duly notified medical board. In addition, same characteristics must be applied, in case of inheritance of any intersex person, to be based on their religion or personal law. Hence, these amendments have been brought to bring this Act in conformity with Quran and Shariat.

4. The Committee extensively deliberated upon all the Bills and also invited Members-in-Charge and concerned stakeholders to give their input. Furthermore, in pursuance of Ruling of the Hon'ble Chairman Senate of Pakistan dated 03-10-2022, Senator Walid Iqbal, Chairman Standing Committee on Human Rights, had also written letters to all Members of the Senate inviting them to attend the meeting of the Standing Committee on Human Rights to give their valuable input or to share their input in writing **Annexure-H**.. However, response was received from Senator Taj Haider only. (Written response shared by Senator Taj Haider is at **Annexure-I**).

(Protection of Rights) Bill, 2023, before the Committee in its meeting held 17.02.2023. The draft Bill was also shared with the Members-in-Charge of the Bills and they were also invited in the meetings of the Committee to deliberate upon the Khunsa (Intersex) Persons (Protection of Rights) Bill, 2023. The Committee passed the Bill in its meeting held on 14.03.2023 and desired that a Special Report shall be presented before the House for laying this draft Bill. Thereafter, a notice for introduction of Bill may be given to formally introduce the Bill in the Senate.

10. The Khunsa (Intersex) Persons (Protection of Rights) Act, 2023, as drafted by the Standing Committee on Human Rights is aimed at reforming and repealing the Transgender Persons (Protection of Rights) Act, 2018, for the reason that numerous provisions of the 2018 Act are repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah. "Transgender" is an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to that typically associated with the sex to which they were assigned at birth. Furthermore, "gender identity" refers to a person's internal sense of being male, female or something else and "gender expression" refers to the way a person communicates gender identity to others through behaviour, clothing, hairstyles, voice or body characteristics. The 2018 Act inter alia enables any adult, acting alone, to declare, and get officially registered, his or her own gender on the basis of an internal sense of being male, female or something else and/or how he or she is perceived by others. By contrast, Islamic law recognizes gender solely on the basis of physical attributes, genital features or congenital ambiguities, which medical diagnosis/expertise can determine, and disallows any gender classification based on someone's internal sense or the perception of others. Accordingly, the scope of the Act of 2018 has to be narrowed down, to a significant extent, just to that sub-set of "transgender" persons as is recognized under Islamic law as "khunsa" (the English term "intersex" being closest to it in exact translation), which is the Bill's main object. Accordingly, in the case of khunsa (intersex) persons, the Bill aims to give effect to the Islamic law approach involving classification as khunsa (intersex) male, khunsa (intersex) female, and khunsa (intersex) mushkil, based on medical diagnosis/expertise, as well as khunsa (intersex) persons are to be treated in matters of official registration and enforcement of a variety of personal laws, including that of inheritance. The Bill not only keeps intact, in the case of khunsa (intersex) persons, those very rights and protections as are afforded to transgender persons under the 2018 Act, but also provides for certain additional rights and protections over and above the same, along with increasing the severity of punishment in cases involving maltreatment of khunsa (intersex) persons. In addition, the Bill nevertheless defines and recognizes "gender dysphoria" as a condition in the same terms and to the same extent as is done by the World Health Organization, and extends to persons afflicted with

[TO BE INTRODUCED IN THE SENATE]

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to provide for protection, relief and rehabilitation of the rights of khunsa (intersex) persons, and their welfare

WHEREAS it is expedient to provide for protection, relief and rehabilitation of the rights of khunsa (intersex) 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 Khunsa (Intersex) Persons (Protection of Rights) Act, 2023.

(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 Khunsa (Intersex) Persons (Protection of Rights) Act, 2023;

(b) “**CNIC**” means Computerized National Identity Card;

(c) “**Complainant**” means the khunsa (intersex) person or the person afflicted with gender dysphoria, as the case may be, who has made a complaint on being aggrieved by an act of harassment;

(d) “**CRC**” means Child Registration Certificate or B-Form;

(e) “**Gender Dysphoria**” means a sexual condition whereby there is a marked and persistent incongruence or difference between a person’s experienced gender (being that person’s innermost feeling of what his or her own gender is) and the sex assigned to that person at birth, which condition is also referred to by the World Health Organization as “gender incongruence”;

(f) “**Government**” means the Federal Government or any Provincial Government, as applicable;

(g) “**Harassment**” includes sexual, physical, mental and psychological harassment which means any aggressive pressure or intimidation intended to coerce, unwelcome sexual advance, request for sexual favours 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,

CHAPTER-II

RECOGNITION OF IDENTITY OF A KHUNSA (INTERSEX) PERSON

3. Recognition of identity of khunsa (intersex) person. - (1) A khunsa (intersex) person shall be recognized on the basis of his, her or its physical attributes, genital features or congenital ambiguities, as male, female or khunsa mushkil, respectively, upon certification by the medical board, in accordance with the provisions of this Act.

(2) A person recognized as male, female or khunsa mushkil under sub-section (1) shall get himself, herself or itself registered as per the certification made by the medical board with all government departments including, but not limited to NADRA.

(3) Every khunsa (intersex) person, being a citizen of Pakistan, who has attained the age of eighteen years shall get himself, herself or itself registered according to the certification made by the medical board 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 khunsa (intersex) person already issued CNIC by NADRA shall be allowed to change the name and correct the gender, according to the certification made by the medical board, on the CNIC, CRC, Driving Licence and Passport in accordance with the provisions of the NADRA Ordinance, 2000.

(5) If a new born child has both male and female, or ambiguous genital features, such as their state is clearly difficult to determine by the parents or the medical practitioner or other person supervising the birth of such child, then it shall be the duty of the parents of such child to promptly refer the matter to the medical board for gender certification of such child in accordance with the Act.

4. Powers and Functions of the Medical Board. - (1) The medical board shall have the following powers and functions, namely:-

- (a) To examine khunsa (intersex) persons based on applications made under this Act, either directly by a khunsa (intersex) person or through any parent or next friend, for issuance of a gender establishment certificate;
- (b) To examine persons claiming to be afflicted with gender dysphoria based on applications made under this Act, either directly by any such person or through any parent or next friend, for issuance of a certificate that the applicant is afflicted by such a condition;
- (c) To act as expert witnesses for examination by judicial and administrative forums, such as NADRA; and
- (d) To give advice to the Federal or Provincial Government, as the case may be, for matters concerning welfare and wellbeing of khunsa (intersex) persons as well as persons afflicted with gender dysphoria.

(2) The manner of making, processing and deciding upon applications pursuant to this section 4 shall be as prescribed.

(3) The medical board shall take its decisions, in respect of an application made pursuant to this section 4, within thirty days of receiving an application, with reasons to be recorded in writing and in accordance with prescribed tests, which shall, in the case of an application made under clause (a) of sub-section (1) of this section 4, include but not be limited to karyotype genetic test.

CHAPTER-IV OBLIGATIONS OF THE GOVERNMENT

7. Obligations of the Government. - The Government shall take steps to secure full and effective participation of khunsa (intersex) persons and their inclusion in society, namely:-

- (a) Establish Protection Centres and Safe Houses to ensure the rescue, protection and rehabilitation of khunsa (intersex) persons in addition to providing medical facilities, psychological care, counseling and adult education to khunsa (intersex) persons;
- (b) Establish separate prisons, jails, confinement cells, etc. for khunsa (intersex) 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 khunsa (intersex) persons and the requirement of protection and relief of such persons;
- (d) Formulate special vocational training programmes to facilitate, promote and support livelihood for khunsa (intersex) persons;
- (e) Encourage khunsa (intersex) persons to start small businesses by providing incentives, easy loan schemes and grants; and
- (f) Take any other necessary measures to accomplish the objectives of this Act.

CHAPTER-V PROTECTION OF RIGHTS OF KHUNSA (INTERSEX) PERSONS

8. Right to Inherit. - (1) There shall be no discrimination against khunsa (intersex) persons in acquiring the rightful share of property as prescribed under the law of inheritance.

(2) The share of (intersex) persons shall be determined as per the gender declared on CNIC or CRC, as the case may be, as certified by the medical board, where applicable, in accordance with the law of inheritance in Pakistan.

(3) The share of inheritance for khunsa (intersex) persons will, for the avoidance of doubt, be as follows, namely:-

- (a) For a Muslim khunsa (intersex) person, who is certified and registered as a male in terms of section 3 of the Act, the share of inheritance will be that of man, and in case of such a non-Muslim person, the share will be as prescribed by the applicable law of inheritance in Pakistan;
- (b) For a Muslim khunsa (intersex) person, who is certified and registered as a female in terms of section 3 of the Act, the share of inheritance will be that of woman, and in case of such a non-Muslim person, the share will be as prescribed by the applicable law of inheritance in Pakistan; and

11. Right to vote. - No khunsa (intersex) 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 khunsa (intersex) person.

12. Right to hold public office. - There shall be no discrimination on the basis of sex, for khunsa (intersex) persons if they wish to contest election to hold public office.

13. Right to health. - The Government shall take the following measures to ensure non-discrimination in relation to khunsa (intersex) persons, namely: -

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

14. Prohibition of Sex Re-Assignment Surgery. - Any sex re-assignment surgery or any other treatment to change the genital features of a male or female person shall be prohibited on the basis of any psychological disorder or gender dysphoria.

15. Protection of rights of persons with gender dysphoria. - The following provisions of the Act, namely, section 5, section 6, clauses (c), (d) and (e) of section 7, sub-section (1) of section 8, sections 9 to 13, sub-sections (2) and (3) of section 16, and sections 17 to 21, shall apply *mutatis mutandis* to persons certified by the medical board to be afflicted with gender dysphoria, as regards their condition, as they apply to khunsa (intersex) persons, as regards their sex.

16. Right to assembly. - (1) The Government must ensure the freedom of assembly for khunsa (intersex) 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 khunsa (intersex) persons.

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

17. Right of access to public places. - (1) No khunsa (intersex) person shall be denied access to public places, places of entertainment, or places intended for religious purpose, solely on the basis of their sex.

(2) The Government must ensure 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 khunsa (intersex) persons to access facilities available for access of general public and public places mentioned in sub-section (1).

18. Right to property. - (1) No khunsa (intersex) person shall be denied right to purchase, sell, rent or lease property, household or tenancy on the basis of sex.

STATEMENT OF OBJECTS AND REASONS

The Khunsa (Intersex) Persons (Protection of Rights) Act, 2023, is aimed at reforming and repealing the Transgender Persons (Protection of Rights) Act, 2018, for the reason that numerous provisions of the 2018 Act are repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah.

2. "Transgender" is an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to that typically associated with the sex to which they were assigned at birth. Furthermore, "gender identity" refers to a person's internal sense of being male, female or something else and "gender expression" refers to the way a person communicates gender identity to others through behaviour, clothing, hairstyles, voice or body characteristics.

3. The 2018 Act *inter alia* enables any adult, acting alone, to declare, and get officially registered, his or her own gender on the basis of an internal sense of being male, female or something else and/or how he or she is perceived by others. By contrast, Islamic law recognizes gender solely on the basis of physical attributes, genital features or congenital ambiguities, which medical diagnosis/expertise can determine, and disallows any gender classification based on someone's internal sense or the perception of others. Accordingly, the scope of the Act of 2018 has to be narrowed down, to a significant extent, just to that subset of "transgender" persons as is recognized under Islamic law as "khunsa" (the English term "intersex" being closest to it in exact translation), which is the Bill's main object.

4. Accordingly, in the case of khunsa (intersex) persons, the Bill aims to give effect to the Islamic law approach involving classification as khunsa (intersex) male, khunsa (intersex) female, and khunsa (intersex) mushkil, based on medical diagnosis/expertise, as well as khunsa (intersex) persons are to be treated in matters of official registration and enforcement of a variety of personal laws, including that of inheritance. The Bill not only keeps intact, in the case of khunsa (intersex) persons, those very rights and protections as are afforded to transgender persons under the 2018 Act, but also provides for certain additional rights and protections over and above the same, along with increasing the severity of punishment in cases involving maltreatment of khunsa (intersex) persons. In addition, the Bill nevertheless defines and recognizes "gender dysphoria" as a condition in the same terms and to the same extent as is done by the World Health Organization, and extends to persons afflicted with such condition several of the rights and protections as have been guaranteed therein to khunsa (intersex) persons.

5. The Bill aims to achieve the above-mentioned objectives.

INTRODUCED ON 15-11-2021

[AS INTRODUCED IN THE SENATE]

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*further to amend the Transgender Persons (Protection of Rights) Act,
2018*

WHEREAS It is expedient and substantial to bring meaningful and significant amendments in the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement. - (1) This Act may be called the Transgender Persons (Protection of Rights) (Amendment) Act, 2021.

(2) It shall come into force at once.

2. Amendment of section 2, Act XIII of 2018. - In the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018), hereinafter referred to as the said Act, in section 2, in sub-section (1), in clause (n), paragraphs (ii) and (iii) shall be omitted.

3. Amendment of section 3, Act XIII of 2018. - In the said Act, in section 3,-

- (a) in sub-section (1), for the words "as per his or her self-perceived gender identity" the words "as per the advice of the Medical Board" shall be substituted;
- (b) in sub-section (2), for the words "as per self-perceived gender identity" the words "as per the advice of the Medical Board" shall be substituted;
- (c) in sub-section (3), for the words "self-perceived gender identity" the words "the advice of the Medical Board" shall be substituted; and
- (d) in sub-section (4), for the words "his or her self-perceived gender identity" the words "the advice of the Medical Board" shall be substituted.

4. Insertion of section 3A, Act XIII of 2018. - In the said Act, after section 3, the following new section 3A shall be inserted, namely: -

"3A Gender Re-assignment Medical Board. - (1) There shall be a gender re-assignment medical board for each district.

INTRODUCED ON 26.09.2022.

[AS INTRODUCED IN THE SENATE]

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further to amend the Transgender Persons (Protection of Rights) Act, 2018

WHEREAS It is expedient further to amend the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement. - (1) This Act may be called the Transgender Persons (Protection of Rights) (Amendment) Act, 2022.

(2) It shall come into force at once.

2. Amendment of section 2, Act XIII of 2018. - In the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018), hereinafter referred to as the said Act, in section 2,-

(i) for clauses (e) and (f) the following shall be substituted, namely:-

"(e) **"gender expression"** refers to a person's presentation of one's gender identity in terms of male, female and transgender;

(f) **"gender identity"** means a person characterized as male, female or transgender on the basis of one's physical and biological traits;" and

(ii) for clause (n), the following shall be substituted, namely:-

"(n) **"transgender person"** is a person who is hermaphrodite, with or without both male and female organs, or keeps one hole for urination."

3. Amendment of section 3, Act XIII of 2018. - In the said Act, in section 3,-

(i) in sub-section (1), the expression "as per his or her self-perceived gender identity, as such," shall be omitted;

(ii) in sub-section (2), the expression "as per self-perceived gender identity" shall be omitted;

(iii) in sub-section (3), the expression "according to self-perceived gender identity" shall be omitted; and

(iv) sub-section (4) shall be omitted.

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[TO BE INTRODUCED IN THE SENATE]

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to provide for protection, relief and rehabilitation of rights of the khunsa 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 khunsa 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 Khunsa Persons (Protection of Rights) Act, 2022.

(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 Khunsa Persons (Protection of Rights) Act, 2022;

(b) "**CNIC**" means Computerized National Identity Card;

(m) **"Rules"** means the rules made under this Act; or

(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 Pakistani Penal Code, 1860 (XLV of 1860).

CHAPTER II

RECOGNITION OF IDENTITY OF KHUNSA PERSON

3. Recognition of Identity of Khunsa Person.- (1) A Khunsa is a person who has a mixture of male and female genital features or congenital ambiguities.

(2) A person recognized as Khunsa under sub-section (1) shall have a right to get himself or herself registered as a male or female as per the advice of Medical Board with all government departments including, but not limited to NADRA.

(3) Every Khunsa Person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to get himself or herself registered as male or female as per the advice of Medical Board 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. Gender Re-assignment Medical Board. – (1) there shall be a gender re-assignment medical board for each district.

(2) The gender reassignment medical board shall be notified after approval of the Prime Minister Pakistan in case of Islamabad Capital Territory and Chief Minister in case of respective provinces.

(3) The gender re-assignment medical board shall comprise of the following.-

(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, centres in whose care, custody or employment a Khunsa person may be.

6. Prohibition against Harassment.- Harassment of Khunsa Persons, as defined in this Act, both within and outside the home is prohibited.

CHAPTER IV OBLIGATIONS BY THE GOVERNMENT

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

- (a) Establish Protection Centres and Safe Houses to ensure the rescue, protection and rehabilitation of Khunsa Persons in addition to providing medical facilities, psychological care, counselling and adult education to the Khunsa Persons;
- (b) Establish separate prisons, jails, confinement cells, etc for the Khunsa persons involved in any kind of offence or offences;

(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 Khunsa Persons as guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan, 1973.

(4) It is unlawful for an institution whether private or public, to discriminate against a person on the ground of person's sex, 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.

10. 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 Khunsa 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 Khunsa person in any matter relating to employment including, but not limited to, recruitment, promotion, appointment, transfer and other related issues.

(b) to facilitate access by providing an enabling and safe environment for Khunsa Persons in hospitals and other healthcare institutions and centres;

(c) to ensure Khunsa Persons access to all necessary medical and psychological gender corrective treatment;

14. Right to Health.- Any sex reassignment surgery or any other treatment to change the genital features of a male or female shall be prohibited on the basis of any psychological disorder or gender dysphoria."

15. Right to assembly.- (1) The Government must ensure the freedom of assembly for Khunsa 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 Khunsa Persons.

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

16. Right of access to public places. - (1) No Khunsa person shall be denied access to public places, places of entertainment or places intended for religious purpose solely on the basis of their sex.

(2) The Government must ensure Khunsa 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 Khunsa Persons to access facilities available for access of general public and public places mentioned in subsection (1).

CHAPTER VII
MISCELLANEOUS

21. Power of Government to make rules.- The Government may, by notification, make rules for carrying out the purposes of this Act.

22. 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.

23. Repeal and savings.—(1) Subject to section 6 of the General Clauses Act, 1897 (X of 1897), the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018) hereinafter referred to as the repealed Act, shall stand repealed.

(2) Notwithstanding the repeal of the repealed Act or anything contrary contained herein, all decisions taken, regulations made or amended and disciplinary actions taken by any Authority under the dissolved the Transgender Persons (Protection of Rights) Act, 2018 shall be deemed to have been validly made:

Provided that all regulations made and promulgated pursuant to the repealed Act, or the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018) stand repealed and shall not be enforceable subject to sub-section (3):

(3) All registrations, recognitions etc., granted under the dissolved the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018) shall

INTRODUCED ON 03.10.2022

Annexure - E

AS

[TO BE INTRODUCED IN THE SENATE]

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BILL

further to amend the Transgender Persons (Protection of Rights) Act, 2018

WHEREAS it is expedient further to amend the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called Transgender Persons (Protection of Rights) (Amendment), Act, 2022.

(2) It shall come into force at once

2. Amendment of long title and preamble, Act XIII of 2018.- In the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018), hereinafter referred to as the said Act, in the long title and preamble, for the word "transgender", occurring twice the word "intersex" shall be substituted.

3. Amendment of section 1, Act XIII of 2018.- In the said Act, in section 1, in sub-section (1), for the word "Transgender" the word "Intersex" shall be substituted.

4. Amendment of section 2, Act XIII of 2018.- In the said Act, in section 2, in sub-section (1),-

(i) in clause (a), for the word "Transgender" the word "Intersex" shall be substituted;

(ii) in clause (c), for the word "transgender" the word "intersex" shall be substituted;

(iii) clause (e) shall be omitted;

(iv) for clause (f), the following shall be substituted, namely:-

"(f) **"gender Identity"** means a person's sexual identity that corresponds to his / her sex at birth whether male, female or intersex."; and

(v) in clause (l) after semi colon ";" occurring at the end the word "and" shall be added;

(vi) in clause (m) for the expression "; and" a full stop "." Shall substituted; and

(vii) clause (n) shall be omitted.

- (v) in clause (d) for the word "transgender" the word "intersex" shall be substituted; and
- (vi) in clause (e) for the word "transgender", the word "intersex" shall be substituted.

10. Amendment of Chapter V, Act XIII of 2018.- In the said Act, in Chapter V, in the heading for the word "**TRANSGENDER**" the word "**INTERSEX**" shall be substituted.

11. Amendment of section 7, Act XIII of 2018.- In the said Act, in section 7,-

- (i) in sub-section (1), for the word "transgender", the word "intersex" shall be substituted;
- (ii) in sub-section (2), for the word "transgender" the word "intersex" shall be substituted.
- (iii) in sub-section (3),-
 - (a) for the word "transgender", the word "intersex" shall be substituted;
 - (b) in clause (i) for the word "transgender" the word "intersex" shall be substituted;
 - (c) in clause (ii) for the word "transgender" the word "intersex" shall be substituted; and
 - (d) in clause (iii), sub-clauses (a), (b), (c) and (d) shall be omitted..

12. Amendment of section 8, Act XIII of 2018.- In the said Act, in section 8,-

- (i) in sub-section (1), for the word "transgender" the word "intersex" shall be substituted;
- (ii) in sub-section (3), for the word "transgender", the word "intersex" shall be substituted; and

18. Amendment of section 14, Act XIII of 2018.- In the said Act, in section 14,-

- (i) in sub-section (1) for the word "transgender", the word "intersex" shall be substituted;
- (ii) in sub-section (2) for the word "transgender", the word "intersex" shall be substituted; and
- (iii) in sub-section (3) for the word "transgender", the word "intersex" shall be substituted.

19. Amendment of section 15, Act XIII of 2018. In the said Act, -in section 15,-

- (i) in sub-section (1) for the word "transgender" the word "intersex" shall be substituted; and
- (ii) in sub-section (2) for the word "transgender" the word "intersex" shall be substituted.

20. Amendment of section 16, Act XIII of 2018.- In the said Act, in section 16, in sub-section (1) for the word "transgender", the word "intersex" shall be substituted.

21. Amendment of section 17, Act XIII of 2018.- In the said Act, in section 17, for the word "transgender" the word "intersex" shall be substituted.

22. Amendment of section 18, Act XIII of 2018.- In the said Act, in section 18, for the word "transgender" the word "intersex" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Intersex persons (commonly known as *Khwajasara*) face tremendous social and other problems in the society and their rights must be protected. "The Transgender Persons (Protection of Rights) Act 2018" has not been able to effectively address their problems amicably and effectively.

This Act has grossly intruded on the rights of women who are already deprived of many rights and face enormous issues and discrimination. Whereas under this Act a man, as per his self perceived gender identity, can legally change his identity to woman as such "he" would be able to become member of the Parliament on reserved seats for women, get admission in female educational institution, utilize female facilities e.g. public toilets and parks reserved for women and also claim inheritance rights etc. In a similarly way a man, as per his self perceived gender identity, who has registered himself as woman shall have the legal right to marry a "person" who is registered as man thus opening a way

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BILL

further to amend the Transgender Persons (Protection of Rights) Act, 2018

WHEREAS it is expedient further to amend the Transgender Persons (Protection of Rights) Act, 2018 for the purposes herein after appearing;

It is hereby enacted as follows:-

1. Short title and commencement.-(1) This Act may be called the Transgender Persons (Protection of Rights) (Amendment) Act, 2022.

(2) It shall come into force at once.

2. Amendment of section 3, Transgender Persons (Protection of Rights) Act, 2018. -

In the Transgender Persons (Protection of Rights) Act, 2018, hereinafter referred to as the Act, in section 3, following amendments shall be made namely

- i. In subsection (1) for the expression "have a right to be recognized as per his or her self-perceived gender identity" the expression, "as determined by the Medical Certificate issued by the concerned Medical Board" shall be substituted.
- ii. In subsection (2) for the phrase "self-perceived", the expression, "Medical Certificate" shall be substituted.
- iii. In subsection (3) for the phrase "self-perceived", the expression, "Medical Certificate" shall be substituted.
- iv. In subsection (4) for the phrase "self-perceived", the expression, "Medical Certificate" shall be substituted.

3. Insertion of Section 4A after section 4 of the Act. - In the Act after section 4 a new section 4A shall be added namely,

"Prohibition against disowning of transgender baby. - No parent shall be allowed to disown the transgender baby born to him/her.

The act has a chance of weakness or misuse of it as the complaints started coming after two years on a provision that there was a possibility that sections 3 and 4 could be misused. According to the aforementioned sections, after reaching the age of 18 years, transgender persons could declare their genders on their identity cards. It should be suitably amended and made subject to the decision of the Medical Board.

Furthermore, the Act is devoid of one more compressing issue i.e. disowning of transgender child and adoption of same by khwaja sira community. Verily one is shocked to know that most of the parents do not accept their transgender-children and are in utter disregard of their instinctive urge and the deep rooted parental love and attachment. A young trans child, when turned out from a parents' home, their family and nearly all the relatives show no sympathy toward the child who has to suffer for it. In these circumstances transgender-children are forced to join the khwaja sira community, which, in such a critical situation is the only resort for the banished child. The community provides such children with the basic necessities of life.. They, in turn, adopt the profession of dancing and entertainment etc. Actually, lack of education and awareness is also a factor responsible for this state of affairs. Educated and civilized parents do not let others know about their child's gender identity. On the other hand, if such a child is disowned by all his/her dear-ones; then they have no option but to join the khwaja sira community which is the only door open to them for earning their livelihood.

The situation clamors to introduce the said bill.

The Bill has been designed to achieve the above said purpose.

SENATOR SYED MUHAMMAD SABIR SHAH
MEMBER-IN-CHARGE

(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, centres in whose care, custody or employment a Khunsa person may be.

6. Prohibition against Harassment.- Harassment of Khunsa Persons, as defined in this Act, both within and outside the home is prohibited.

CHAPTER IV OBLIGATIONS BY THE GOVERNMENT

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

(a) Establish Protection Centres and Safe Houses to ensure the rescue, protection and rehabilitation of Khunsa Persons in addition to providing medical facilities, psychological care, counselling and adult education to the Khunsa Persons;

(b) Establish separate prisons, jails, confinement cells, etc for the Khunsa persons involved in any kind of offence or offences;

- (ii) existing sub-section (2) shall be renumbered as sub-section (1), and for the said sub-section, the following shall be substituted namely:-
 "The share of an intersex person shall be determined as per his or her physical appearance, genital features, congenital ambiguities or on the basis of a duly notified medical board, and the sex declared by such board shall be in accordance with the religion and personal law of the said person."
 - (iii) for the existing sub-section (3), re-numbered as sub-section (2), the following shall be substituted, namely:-
 (2) The share of inheritance for intersex persons, in accordance with their physical appearance, genital features, congenital ambiguities or on the basis of a duly notified medical board, and the sex declared by such board shall be as follows:-
 (i) for intersex male, the share of inheritance shall be that of man;
 (ii) for intersex female, the share of inheritance shall 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 eighteen years, if the person's gender identity is intersex male, then the share of inheritance shall be that of man;
 (b) upon reaching the age of eighteen years, if the person's gender identity is intersex female, the share of inheritance shall be that of woman;
 (c) upon reaching the age of eighteen years, if the person's gender identity is neither intersex male nor intersex female, the share of inheritance will be an average of two separate distributions for a man and 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."
9. **Amendment of section 8, Act XIII of 2018.** – In the said Act, in section 8:
 (i) in sub-section (1), for the words, "transgender persons", the words "intersex persons" shall be substituted;
 (ii) in sub-section (3), for the words, "transgender persons", the words "intersex persons" shall be substituted;
 (iii) in sub-section (4), the words "and gender expression" shall be omitted.
 (iv) in paragraph (d), sub-section (4), the words "and expression" shall be omitted.
10. **Amendment of section 9, Act XIII of 2018.** – In the said Act, in section 9:
 (i) for the words, "transgender persons", wherever occurring, the words "intersex persons" shall be substituted;
 (ii) words "or gender expression" shall be omitted.
11. **Amendment of section 10, Act XIII of 2018.** – In the said Act, in section 10:
 (i) for the words, "transgender person", the words "intersex person" shall be substituted;
 (ii) for the proviso, the following shall be substituted:
 "Provided that the access to a polling station shall be according to the gender declared on the CNIC of the intersex person, based upon physical

STATEMENT OF OBJECTS AND REASONS

The Transgender Persons (Protection of Rights) Act, 2018 has been enacted to protect and safeguard the rights of transgender community in Pakistan. However, it has failed to achieve the afore-cited purpose. There are various lacunas and loopholes in this Act, which needs to be dealt with on priority basis. The phrase "Transgender Persons" itself is not appropriate and needs to be replaced with the "Intersex Persons". The definition of transgender opens door for conflicts and contradictions among various school of thoughts of Islam, and requires to be omitted. Moreover, the concept of "self-perceived identity" is against the spirit of Islam, as the same does not allow any person to adopt an identity on the basis of his or her own choice, but should solely be determined on the basis of physical appearance, genital features, congenital ambiguities or by a report of duly notified medical board. In addition, same characteristics must be applied, in case of inheritance of any intersex person, to be based on their religion or personal law. Hence, these amendments have been brought to bring this Act in conformity with Quran and Shariat.

2. This bill is aimed to achieve the above-said objective.

SENATOR MOLANA ABDUL GHAFOOR HAIDERI
SENATOR ATTA-UR-REHMAN
SENATOR MOLVI FAIZ MUHAMMAD
SENATOR KAMRAN MURTAZA
MEMBERS-IN-CHARGE

F.No.10(1)/2021-24/C-I
Islamabad the 29th November, 2022

To,

All Hon'ble Members
Senate of Pakistan

Subject:

Invitation to participate in the proceedings of the meetings of the Senate Standing Committee on Human Rights for consideration on the Bills regarding amendments to the Transgender Persons (Protection of Rights) Act, 2018.

Dear Madam/Sir,

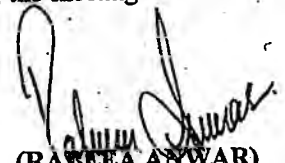
The following Private Members Bills proposing amendments to the Transgender Persons (Protection of Rights) Act, 2018 and one new legislative proposal dealing with the protection of Khunsa Persons rights are pending for consideration and report before the Senate Standing Committee on Human Rights:-

- i. The Transgender Persons (Protection of Rights) (Amendment) Bill, 2021" introduced by Senator Mushtaq Ahmed, in the Senate sitting held on 15th November, 2021.
- ii. The Transgender Persons (Protection of Rights) (Amendment) Bill, 2022" introduced by Senator Fawzia Arshad, in the Senate sitting held on 26th September, 2022.
- iii. The Transgender Persons (Protection of Rights) (Amendment) Bill, 2022" introduced by Senator Mohsin Aziz, in the Senate sitting held on 3rd October, 2022.
- iv. The Transgender Persons (Protection of Rights) (Amendment) Bill, 2022" introduced by Senator Syed Muhammad Sabir Shah, in the Senate sitting held on 3rd October, 2022.
- v. The Transgender Persons (Protection of Rights) (Amendment) Bill, 2022" introduced by Senators Molana Abdul Ghafoor Haideri, Atta-Ur-Rehman, Molvi Faiz Muhammad and Kamran Murtaza, in the Senate sitting held on 3rd October, 2022.
- vi. The Khunsa Persons (Protection of Rights) Bill, 2022 introduced by Senator Mushtaq Ahmed, in the Senate sitting held on 3rd October, 2022.

(copies of the Bills can be obtained from www.senate.gov.pk)

2. In pursuance of Ruling of the Hon'ble Chairman Senate of Pakistan dated 03-10-2022, Senator Walid Iqbal, Chairman Standing Committee on Human Rights, has been pleased to invite you to attend the meeting of the Standing Committee on Human Rights to give your valuable input, if any, in the matter. (Date of the meeting will be decided after the receipt of confirmations from the Hon'ble Members of Senate). However, instead of physical presence, you may like to share your valuable input at rabeeah.anwar@senate.gov.pk.

3. It is, therefore, requested that your kind willingness to attend the meeting may kindly be conveyed by 12th December, 2022, so that necessary arrangements for holding the meeting can be made in a timely manner.


(RABEEAH ANWAR)
J.S/Secretary Standing
Committees on Human Rights

Copy for information to:-

1. The Principal Secretary to Chairman Senate, Senate Secretariat, Islamabad.
2. The P.S to Secretary Senate, Senate Secretariat, Islamabad
3. The Director Staff to Chairman Senate Standing Committee on Human Rights.

SENATE OF PAKISTAN



Ministry of the Federation

SENATOR TAJ HAIDER

Standing Committee on
Parliamentary Affairs

Member:

Standing Committee on Climate Change
Standing Committee on Defence Production
Standing Committee on Devolution
Standing Committee on Water Resources

Islamabad, 26th Dec, 2022
No. 2/SSCPA/DO/2022

Dear Madam/Sir,

Thank you for including my name in the list of invitees for the Human Rights Senate Standing Committee on the 28th of December, 2022.

As you are aware all PPP senators including me will be at Garhi Khuda Bux on 27-12-2022 to pay tribute to Shaheed Bibi Sahiba. The public meeting will end late in the evening and it will not be possible for us to join the SSC meeting on 28-12-2022.

I have, however, prepared a note containing my humble submissions for the deliberations at the meeting. I shall highly appreciate if the enclosed note can be circulated among the Honourable participants.

Thanks and regards,

Yours sincerely,

O/c

Taj Haider

(TAJ HAIDER)

JS/ Secretary (Committee) on
SSC on Human Rights,
Senate Secretariat,
Islamabad

Please Issue RGI

26/12/22
21:30P
26/12/22

remain our Book of Guidance for all times. Do not be lost in different interpretations of its words which may have been given by vested interests.

من ز قرآن برگزیدم منز را - استخوان پیش سگان انداختم

رومی

Give a fair chance to اجتهاد . Allah surely guides those who seek.

In order to seek guidance on the essence and purpose of a Quranic injunction it is necessary to have a deep and objective understanding of the objective situation in which the particular injunction was revealed. This essence and purpose is the permanent reality.

Then there is also a changing reality since objective conditions in a society are always changing. A deep and objective understanding of the changing objective reality is also crucial.

The process adopted by different Doctors of Law (فقہ) was to apply their minds to find solutions to the changing reality and problems (objective conditions) of their times in the light and guidance of the permanent reality (essence of Quranic injunctions). Hence the different schools of Fiqah started by the most eminent Doctors of Law whom we also call Imams. As genuine seekers of Truth all of these Imams deserve our high respect and instead of following one Imam and rejecting all others we should follow their common practice of seeking solutions to the changing reality in the light of the permanent reality. This remains the challenge before the present day Muslim legislators.

All of them were unanimous in their opinion that those who govern us should be appointed with consensus. There was no place for ملوکیت or جبری بیعت in Islam. Enough was enough for the Muslim emperors who ruled super powers of their times. New Fiqahs were banned by them and as a result new thought came to a standstill in the world of Islam.

Fiqah froze for more than 800 years. The ever changing Time did not. We find that in the absence of a common and acceptable law, different sects under different leaders have been emerging in Muslim society often with the result of new divisions and fragmentation of the Muslim society. Some of us have been very keen on declaring one sect of Islam or the other as outright Kafirs.

Iqbal has dealt with this blockage in our thought in his remarkable book "The Reconstruction of Religious Thought in Islam". This book also known as the "Madras Lectures" was authored by him after a labour of 3 continuous years and after detailed correspondence with more than 40 eminent scholars of his time belonging to different Muslim countries. During the last days of his life he often expressed his wish to write another book which he called "تشکیل جدید فقه اسلامی" but he died shortly thereafter and remained seriously ill during that time.

THE QUESTION OF GENDER.

There have been many cases where surgeons have performed surgery with success and converted a seemingly transgender person into a male or female depending on his physical condition. I have myself arranged finances for at least 3 such surgeries. But this is not possible with every case.

All such cases are those of children of caring parents. It is a tragedy that most of the others are abandoned and are picked up by an indigenous but natural setup of transgender persons who look after them. Shouldn't we endeavor to provide medical facilities at our public hospitals where parents can bring their transgender children to be examined and operated upon to become males or females

Haven't we read in our Holy Book that Namaz protects us against **منكر** and **فحشا** (29/45)
We are saying our prayers regularly yet the **منكر** and **فحشا** are spreading.

Is it that our prayers are of the kind described in Surah **مَاعُون** ?-