



House of the Federation

SENATE OF PAKISTAN

REPORT NO. 24

REPORT OF THE STANDING COMMITTEE ON HUMAN RIGHTS

ON

“The Khunsa Persons (Protection of Rights) Bill, 2022”

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 report on "The Khunsa Persons (Protection of Rights) Bill, 2022" introduced by Senator Mushtaq Ahmed, in the Senate sitting held on 3rd October, 2022. The Bill, upon introduction, was referred to the Standing Committee for consideration and report.

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 Committee considered the Bill in its meetings held on 21st October, 2022, 26th January, 2023, 13th February, 2023, 17th February, 2023 and 14th March, 2023, respectively, under the Chairmanship of Senator Walid Iqbal. Final consideration of the Bill was held in the meeting held on 14th March, 2023, which was attended by the following Honorable Senators:-

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 Muhammad Tahir Bizinjo	Member
6.	Senator Irfanul Haque Siddiqui	Member
7.	Senator Falak Naz	Member
8.	Senator Syed Waqar Mehdi	Member
9.	Senator Mushtaq Ahmed	Mover
10.	Senator Molvi Faiz Muhammad	Mover
11.	Senator Kamran Murtaza	Mover

4. Senator Mushtaq Ahmed Member-In-Charge briefed the Committee about the salient features of the Bill that the Transgender Persons (Protection of Rights) Act, 2018 as


enforced contradicts the injunctions of Islam and the Constitution of Pakistan and the real picture of Khunsa Persons. Therefore, in this Bill, the word transgender has been replaced with khunsa and many other relevant corrections have been made and to ensure that the concocted theories of gender belong to a non-binary be discouraged and the rights assured to Khunsa Persons be guaranteed in letter and spirit. The Transgender Act is proposed to be repealed for the sole purpose to ensure that the Khunsa (Intersex) Persons get their due share of rights within the organized political society according to the teachings of Islam.

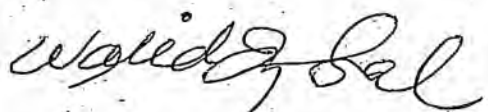
5. As per the stance taken by the Ministry of Human Rights, the aforesaid Bill along with other pending Bills on the same subject have been thoroughly examined by the Ministry. It has been observed that all of the Bills seek to amend or repeal the Act 2018 primarily with respect to "definition of Transgender", "to substitute word Transgender with intersex/khunsa", "right to self-perceived gender identity", "constitution of medical board to establish identity as Transgender" and "procedure to calculate the share of inheritance". It is informed that the Transgender Persons (Protection of Rights) Act, 2018 is currently sub-judice before the Federal Shariat Court with respect to the "definition of Transgender from the perspective of Islam" and related "right to self-perceived gender identity". Accordingly, this Ministry is of the view that the cited Act, 2018 may not be amended till the Federal Shariat Court (FSC) give its judgment concerning the same. After the receipt of the judgment from the FSC, the appropriate action to amend the subject Act in compliance to the Court's decision will be initiated accordingly. The Ministry suggested that we may wait for the decision of the Federal Shariat Court before initiating any action to either amend or repeal the Act, 2018.

6. The Committee took note that following five other Bills to amend or repeal the Transgender Persons (Protection of Rights), with the somewhat identical object and reasons, have been introduced in the Senate and same are pending with the Committee:-

- 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.
7. The Committee extensively deliberated upon all the Bills and also invited concerned stakeholders to give their input. 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.
8. In the meeting dated 13-02-2023, it was decided that all the Bills, including this Bill and the Bills mentioned at para 6 above should be clubbed and a comprehensive Bill addressing all issues shall be drafted by the Committee. The Member-in-Charge of this Bill and other Bills as well, also endorsed this proposal. Accordingly, the Committee in consultation with the Members-in-Charge of the Bills has drafted a Bill titled as “The Khunsa (Intersex) Persons (Protection of Rights) Bill, 2023” has been drafted and same has been passed by the Committee on 14-03-2023. As per the requirements of Senate Rules, the said Bill is being laid before the House in the form of a special report.
9. It is pertinent to mention for record purposes that Senator Mushtaq Ahmed, Member-in-Charge opposed inclusion of two clauses in the Bill drafted by the Committee providing definition of ‘gender dysphoria’ and protection of certain rights of persons with gender dysphoria.
10. Accordingly, the Committee recommends that “The Khunsa Persons (Protection of Rights) Bill, 2022”, as introduced in the Senate may not be passed by the House. (Copy of Bill as introduced in the Senate is annexed as “A”).


(RABEEA ANWAR)
J.S/ Secretary Committee


(SENATOR WALID IQBAL)
Chairman Standing Committee on Human Rights

AS
[TO BE INTRODUCED IN THE SENATE]

A

BILL

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;

(c) **"Complainant"** means a Khunsa 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"** means a persons' expression as per his or her sex; not different than the sex assigned to him or her at the time of birth or as per the advice of Medical Board.

(f) **"Government"** means the Federal Government;

(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 including the attempt to punish the complainant for refusal to comply with such requests or to bring forth the complaint;

(h) **"Khunsa Person"** is a person who is Intersex with mixture of male and female genital features or congenital ambiguities;

(i) **"NADRA"** means the National Database and Registration Authority;

(j) **"Notification"** means a notification published in the Gazette;

(k) **"PMC"** means Pakistan Medical Commission made under the Pakistan Medical Commission Act, 2020;

(l) **"Prescribed"** means prescribed by rules made by the Government under this Act; and

(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.-

- | | |
|-----------------------------------|-------------------|
| (i) One Professor doctor; | Convener |
| (ii) One male General Surgeon; | Member |
| (iii) One Female General Surgeon; | Member |
| (iv) One Psychologist; and | Member |
| (v) One Chief Medical Officer; | Member Secretary" |

CHAPTER III

PROHIBITION OF CERTAIN ACTS

5. Prohibition against discrimination. - No person shall discriminate against a Khunsa 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, 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;

- (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 Khunsa 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 Persons;
- (e) Encourage Khunsa 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 KHUNSA PERSONS

8. **Right to Inherit.** - (1) There shall be no discrimination against Khunsa Persons in acquiring the rightful share of property as prescribed under the law of Inheritance.

(2) The share of Khunsa Persons shall be determined as per the decision of the Medical Board either of a male or a female.

9. **Right to Education.**- (1) There shall be no discrimination against Khunsa Persons in acquiring admission in any educational institutions, public or private, subject to fulfilment 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 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.

(3) It shall be unlawful for an employer to discriminate against an employee on the ground of their sex:

- (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.

11. Right to vote. - No Khunsa 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 Person.

12. Right to hold public office. - (1) There shall be no discrimination on the basis of sex, for Khunsa 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 Persons, namely: -

- (a) to review medical curriculum and improve research for Doctors and nursing staff to address specific health issues of Khunsa Persons in cooperation with PMDC;

(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 sub-section (1).

17. Right to property. - (1) No Khunsa Person shall be denied right to purchase, sell, rent or lease property, household or tenancy on the basis of sex.

(2) It shall be unlawful to discriminate any Khunsa Person with regards to renting, subletting or tenancy on the basis of their sex.

18. 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 Khunsa 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.

19. Offences and Penalties.- (1) Whoever, employs, compels or uses any Khunsa 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

20. 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 Khunsa 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

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

be deemed to be the registrations, recognitions granted under this Act subject to not being in conflict with this Act and the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The Transgender Persons (Protection of Rights) Act, 2018 as enforced contradicts the Injunctions of Islam and the Constitution of Pakistan and the real picture of Khunsa Persons. The word transgender has been replaced with Khunsa and many other relevant corrections has been made, and to ensure that the concocted theories of gender being a non-binary be discouraged and the rights assured to Khunsa Persons be guaranteed in letter and spirit. The Incumbent Transgender Act is hereby repealed for the sole purpose to ensure that the Khunsa (Intersex) Persons get their due share of rights within the organized political society according to the teachings of Islam.

The Transgender Persons (Protection of Rights) Act, 2018 has effects that are repugnant to the Injunctions of Islam and the constitution of Pakistan as it has the following effects;

1. Legalization of homosexual marriages.
2. Repugnancy to Law of Inheritance In Quran.
3. Violation of dignity/modesty of Muslim Women.
4. Making the Recognition of Gender a Subjective matter.

Therefore, there is a need to bring such a law that is compliant with the teachings of Islam and to protect the fundamental rights of Khunsa Persons such as Inheritance, Education, Employment, Right to vote, Right to hold public office and health. Khunsa Persons are neglected and marginalized section of our society and their acceptance at home, community and state level is negligible. There is a need to respect and honor Khunsa persons and their rights must be protected at every level. They should not be deprived of their rights by considering them an alien or separate gender. Khunsa Persons are either male or female born with a mixture of male and female genital features or congenital ambiguities.

This Bill has been developed to achieve the aforesaid objectives.

SENATOR MUSHTAQ AHMAD
MEMBERS-IN-CHARGE