



House of the Federation

SENATE OF PAKISTAN

REPORT NO. 23

REPORT OF THE STANDING COMMITTEE ON HUMAN RIGHTS

ON

*“The Transgender Persons (Protection of Rights)
(Amendment) 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 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. 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 QuratulAinMarri	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. As per the Statement of Objects and Reasons 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 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

5. As per the stance taken by the Ministry of Human Rights, the aforesaid Bill alongwith 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 Khunsa Persons (Protection of Rights) Bill, 2022” introduced by Senator Mushtaq Ahmed, in the Senate sitting held on 3rd October, 2022.
- iv. The Transgender Persons (Protection of Rights) (Amendment) Bill, 2022” introduced by Senator Mohsin Aziz, in the Senate sitting held on 3rd October, 2022.
- 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.

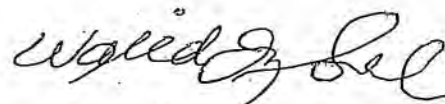
7. The Committee extensively deliberated upon all the Bills and also invited concerned stakeholders to give their input. In pursuance of Ruling of the Hon’ble Chairman Senate of Pakistan dated 03-10-2022, Senator Walid Iqbal, Chairman Standing Committee on Human Rights, had also written letters to all 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 Senators Molvi Faiz Muhammad and Kamran Murtaza 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 Transgender Persons (Protection of Rights) (Amendment) 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

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 short and long titles, Act XIII of 2018.- In the Transgender Persons (Protection of Rights) Act (XIII of 2018), hereinafter referred to as the said Act, in short and long titles, for the words "transgender persons" wherever occurring, the words "intersex persons" shall be substituted.

3. Amendment of section 2, Act XIII of 2018. - In the said Act, in section 2,-

(i) for the words "transgender persons", wherever occurring, the words "intersex persons" shall be substituted.

(ii) sub-section (e) shall be omitted.

(iii) for sub-section (f), the following shall be substituted namely,-

"intersex identity" means identity of an intersex person be made on the basis of physical appearance, genital features or congenital ambiguities, however, in case of dispute over the gender of said person, a notified medical board shall determine the gender identity of an intersex person."

(iv) after sub-section (h), the following sub-section shall be inserted namely,-

"(hh) "medical board" means a duly notified "Medical Board" of doctors by the Government who are experts in the intersex identity."

(v) sub-section (n) shall be omitted.

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

(i) for sub-section (1), the following shall be substituted namely,-

"An intersex person shall have a right to be recognized on the basis of physical appearance, genital features, congenital ambiguities or by a duly notified medical doctor."

(ii) for sub-section (2), the following shall be substituted namely,-

"A person recognized as intersex under sub-section (1) shall have a right to get himself or herself registered on the basis of physical appearance, genital

features, congenital ambiguities or by a duly notified medical doctor with all government departments including, but not limited to, NADRA.”

(iii) for sub-section (3), the following shall be substituted namely:-

“Every intersex person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to let himself or herself registered on the basis of physical appearance, genital features, congenital ambiguities or by a duly notified medical doctor with NADRA on the CNIC, CRC, driving license and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000) or any other relevant laws.”

(iv) for sub-section (4), the following shall be substituted namely:-

“An intersex person to whom CNIC has already been issued by the NADRA shall not be allowed to change the name and gender according to his or her self-perceived identity, but in accordance with physical appearance, genital features, congenital ambiguities or by a duly notified medical doctor on the CNIC, CRC, driving license and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000).”

5. **Amendment of section 4, Act XIII of 2018.** - In the said Act, for section 4, the following shall be substituted namely:-

“No person shall discriminate against an intersex person on any of the following grounds, namely:-

(a) the denial or discontinuation of education in educational institutions and services thereof;

(b) the denial of, or termination from, employment or occupation;

(c) the denial or discontinuation of healthcare services;

(d) the denial or discontinuation in 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;

(e) the denial or discontinuation with regard to, right to movement, safe travel and use of public facilities of transportation;

(f) the denial or discontinuation with regard to, the right to reside, sale, purchase, rent or otherwise occupy or inherit a movable and immovable property;

(g) the denial or discontinuation with regard to, the opportunity to stand for or hold public or private office; or

(h) the denial of access to, removal from government or private establishment, organizations, institutions, departments, centers in whose care, custody or employment of an intersex person may be.”

6. **Amendment of section 5, Act XIII of 2018.** - In the said Act, section 5 shall be omitted.

7. **Amendment of section 6, Act XIII of 2018.** - In the said Act, section 6 shall be omitted.

8. **Amendment of section 7, Act XIII of 2018.** - In the said Act, in section 7:

(i) sub-section (1) shall be omitted.

- (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

appearance, genital features, congenital ambiguities or by a duly notified medical board already mentioned in CNIC.”

12. **Amendment of section 11, Act XIII of 2018.** – In the said Act, in section 11:
 - (i) for the words, “transgender persons”, the words “intersex persons” shall be substituted;
 - (ii) words “and gender expression” shall be omitted.
13. **Amendment of section 12, Act XIII of 2018.** – In the said Act, in section 12, for the words, “transgender persons”, wherever occurring, the words “intersex persons” shall be substituted.
14. **Amendment of section 13, Act XIII of 2018.** – In the said Act, in section 13:
 - (i) for the words, “transgender persons”, wherever occurring, the words “intersex persons” shall be substituted;
 - (ii) words “and gender expression” shall be omitted.
15. **Amendment of section 14, Act XIII of 2018.** – In the said Act, in section 14:
 - (i) for the words, “transgender persons”, wherever occurring, the words “intersex persons” shall be substituted;
 - (ii) words “ or gender expression” shall be omitted.
16. **Amendment of section 15, Act XIII of 2018.** – In the said Act, in section 15:
 - (i) for the words, “transgender person”, the words “intersex person” shall be substituted;
 - (ii) words “ or gender expression” shall be omitted.
17. **Amendment of section 16, Act XIII of 2018.** – In the said Act, in section 16:
 - (i) for the words, “transgender person”, wherever occurring, the words “intersex person” shall be substituted;
 - (ii) words “ or gender expression” shall be omitted.
18. **Amendment of section 17, Act XIII of 2018.** – In the said Act, in section 17:
 - (i) for the word, “transgender person”, the words “intersex person” shall be substituted;
 - (ii) At the end of section 17, the following proviso shall be inserted:

“provided that in such occasion, the intersex person already determined on the basis of physical appearance, genital features, congenital ambiguities or by a report of duly notified medical board may file a complaint before the 1st Judicial Magistrate having territorial jurisdiction.”
19. **Amendment of section 18, Act XIII of 2018.** – In the said Act, in section 18, for the words “transgender person”, the words “intersex person” shall be substituted.”
20. **Amendment of section 19, Act XIII of 2018.** – In the said Act, section 19 shall be omitted.

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 GHAFOR HAIDERI
SENATOR ATTA-UR-REHMAN
SENATOR MOLVI FAIZ MUHAMMAD
SENATOR KAMRAN MURTAZA
MEMBERS-IN-CHARGE