

“Transgender Act 2018: Aims, Objections and Perspective of Sharia”

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ABSTRACT

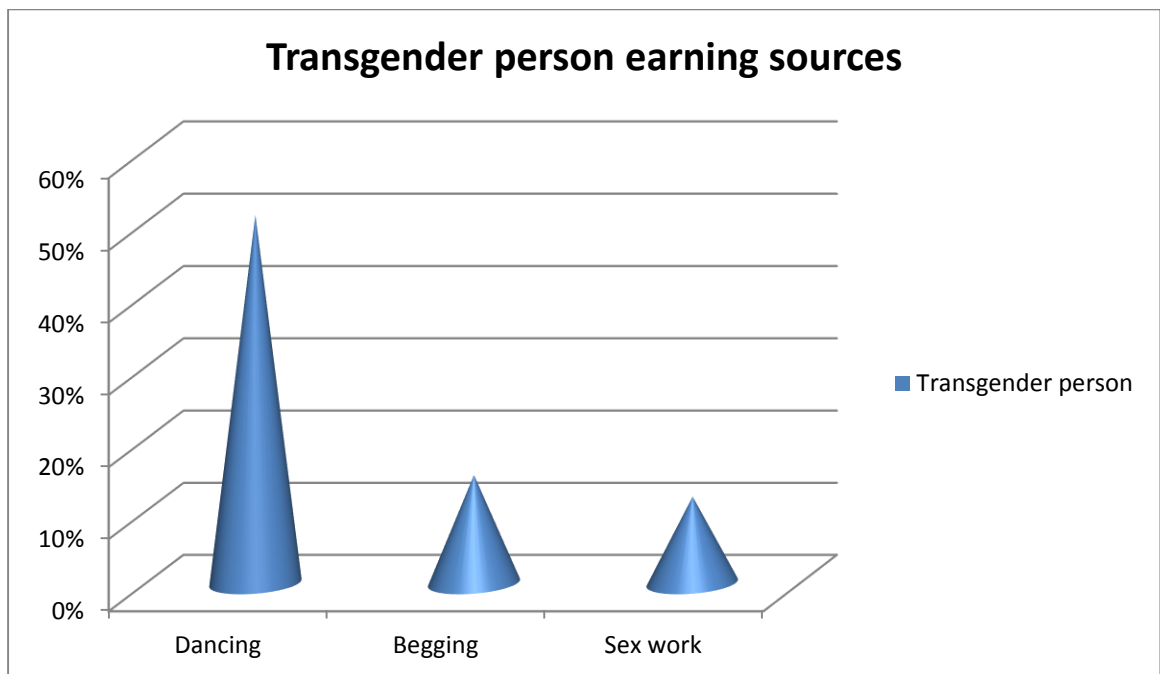
Transgender are facing discrimination and exclusion in all living dynamics. They are treated inequality in society, education, health care and even within their families as well. It is reported in many countries that they are beaten, harassed, tortured, sexually assaulted and killed. In many countries, intersex children are killed and human rights are violated. In Pakistan the Transgender Act 2018 rights are conducted for the transgender people on authoritative level. This research paper focuses on Transgender act 2018; its aims, objections and the perspective of Sharia. The qualitative and analytical methodology is adopted for this research paper. Pakistan seems to be one of the countries that affirm gender identity and self-recognition for transgender. Although this law affirms rights for them on educational and healthcare level but changing gender identity is considered against *Shariah*. This Act is challenged by many segments of the society because allegedly transgender act claiming that this law promotes homosexuality and same sex marriage which is contrary not only to Islam but also against the norms of the society which damages the family life and inheritance system. Islam is the religion promoting humanitarian rights equally. Moreover, transgender people are more needed to be protected and strengthen then their respect, equality and safety in existing society. This contradictions increases violence and ferocity within the society.

Keywords: *Transgender, Shariah, Objection, Identity, Legal*

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Introduction

Our societies tend to secure and lodge two sexes only male and female. The transgender persons are struggling from a long time to get protected socially, politically and legally within a society and identified as a distinct gender. Privation of legal fortification and recognition contributed to abutting many communal challenges and not retrieving even their necessary rights such as healthcare, education and employment moreover, they are facing abuses and violence. They are the most neglected gender of the community. In constitution of Islamic Republic of Pakistan 1973 Article 25, it is clearly demonstrated that there is no discernment on the basis of gender, everyone canned equally and have identical rights as a citizen of Pakistan. In 2012, the transgender people access same rights as other persons particularly rights of heritage and vote. In 2016 Muslim ecclesiastics declared that mischievous behavior with transgender people and thinking them as the lesser people is against the *Shariah laws*. But with all these legislative efforts there are issues and challenges facing by transgender persons in our societies. Transgender people are not possessed by their families. According to survey 42% of the transgender people are illiterate and make money by begging on streets, dancing on parties and by sexual relations in the given ratio:



For this reason in May 2018, in Parliament of Pakistan a bill was passed, that shows the legislative attentions for this third genderⁱ. The transgender act recognizes this third gender as a distinct identity, equal rights and provides legal protection. Later several right activists

claim that this act is nothing but promoting homosexuality in Pakistan that is against to the religion and also against to the values of the society. This article does not support Islamic laws in most of the statements.

The research taken before, regarding this topic, focuses on analysis of transgender act 2018 on psychological, sociological and legislative perspective. This paper illustrates the further objections and arguments on this act as well as most importantly the Sharia perspective. Aims of the research are as follows:

1. What is the aim of transgender act 2018?
2. What are the objections and arguments about this act in Pakistan?
3. What is the perspective of *Shariah* regarding transgender act?

Portrayal of Important Terminologies Used in the Transgender Act 2018

The Transgender Act 2018 generally explains the transgender person comprising an Intersex individual, Eunuch, khawaja Sara, and any person whose personality identity is diverse from social medians based on his sex at the time of birth or self-perceived gender character. This act gives right to the transgender persons to declare their identity on NADRA.

Intersex person

Intersex is a person who has uncertain and abstruse sexual genera biologically. It is harder to determine rather it's a male or female by birth. Intersex person has mixed species of both masculine and feminine. Naturally they have genital ailments.ⁱⁱ

Eunuch

In transgender act 2018 this term is defined as a person who by birth is male and has no genital syndromes but Goes through an orchiectomy and though incompetent of reproduction. He is not in a physical but psychological condition.

Transgender /Khawaja Sira:

Transgender are the persons according to the act, whom recognizes as different identity as compare to the overall standards of the society. This description gives the legal perception of self-professed gender individualityⁱⁱⁱ.

Transgender Act terminologies in comparison to the Shariah Expressions.

Sr.No	Shariah Definitions	Terminologies Used in Transgender Act
a)	<p><i>Mukhannath / Mukhans:</i> "يتفّك، إذا كان يتكسر في كلامه ومشيته. وثوب مفروك بالزّعفران وغيره، إذا صبغ صبغاً شديداً"^{iv} A male person resembles female in his way of walking and voice. His appearance and dress have Strong similitude with females. A man who was perceived as effeminate.</p>	<p align="center"><i>Intersex</i></p>
b)	<p><i>Khasis:</i> <i>The desexed male who got emasculated against their desire.</i></p>	<p align="center"><i>Eunuch</i></p>
c)	<p><i>Hijra:</i> <i>A person who by birth is male but when he grows up wants to show his personality as a female. He voluntarily goes through the process to cut the penis and testicles and accepts the female resemblances in long hair, jewelry and dressing.</i>^v</p>	<p align="center"><i>Transgender/Khawaja Sara</i></p>

1.2 Impression of transgender act 2018(An Overview)

This Transgender Act 2018 a bill passed by National Assembly is divided into seven chapters

Chapter	Details
1.	<p>First chapter includes definition of various terminologies used in the Act as: NADRA^{vi}, CNIC^{vii}, PMDC^{viii}, CRC^{ix}, ACT^x, Gender Identity, expression and harassment. This chapter also defines the term Transgender including three type of persons Intersex, Eunuch and Transgender man and woman.</p>

2.	In this chapter it is permitted to a transgender person above 18 years old to get registered on NADRA and acknowledged as his own avowed sex identity. He can change his name or gender according to his own determination and identify himself with CNIC, passport, CRC or driving licensee.
3.	Harassment and Discriminatory behaviors with the transgender persons in community systems as educational organizations, employment, healthcare facilities, accommodations and transportations are prohibited strictly.
4.	Government has taken obligatory measures to secure and give protection to the transgender persons; establish shelter houses and security centers separately, jails, penitentiaries and held special vocational training programs etc.
5.	In this chapter a detail list of rights for the transgender persons has been declared such as: Rights of Inheritance, Educational rights, Professional or Occupational rights, Admittance to polling stations, Rights at medical institutions, Assembly rights, Entertainment at public places and participation in religious gatherings. Moreover punishment of six months imprisonment or fifty thousand rupees or both has been declared for the person who uses transgender person for begging.
6.	The transgender person has right to complaint against anyone who denied his or her rights.
7.	Government has power to make rules and change it if it difficult to apply. ^{xi}

Objections on Transgender law

The Federal *Shariah* Court challenges this law contravenes Islamic principles. This act fails to assemble the Islamic legacy properly because of the following reasons:

- This act gives right to every citizen of the Pakistan to identify him/herself as a transgender personality or self-perceived gender Character.

- It emboldens homosexuality and same sex marriage that is strongly illicit in Islam.
- This act not only comprises for the transgender person but it includes lesbians and gays also^{xii}.
- The requirement of medical board endorsement for declaration of transgender person is not mentioned in Act.
- This slogan for the variant gender rights is actually disrupting the Pakistani societies, it opens gate for the immorality and harm Islamic practices. This act is an international satanic agenda of gays promoting in the western These Islamic Injunctions beseech the court and are the legal reasons to modify the transgender law.

Transgender activists argue that the people falsely understood the transgender terminologies and concepts used in the Act and link it with the homosexuality. This can be better understand if we see Iran a better example of Islamic country permitting lawful acknowledgement to the transgender persons for their gender identity. Meanwhile homosexuality is also strictly forbidden in Iran that it results into harshly punishments and considered as belligerent crime. Moreover an Islamic legislation or Fatwa also legitimated for the procedure of gender endorsement surgery and hormone auxiliary therapy.^{xiii}

On the other hand, Transgender Act 2018 is critiqued by many people arguing that it skirmishes Islamic laws. A person by his own desire and will can change his or her gender without going through any hindrances and so on. Moreover, according to some individuals it destroy our tradition and Islamic valuable family structure that is the western agenda to worsen Muslim community system. It promotes home sexuality and same sex marriages within family persons.

Self- Professed Gender Identification

Gender identity means a person's gender lexes and feelings based on the sex apportioned at the time of his birth is different from the social expectations and standards.

Transgender Act 2018 gives everyone free access to choose for himself or herself gender according to his own feelings and desire beyond the biological factors. This act gives importance to a person's will and innermost feelings. This right includes all the people Intersex, eunuch and transgender, giving them right to change their identity according to their own will. This act makes legal consideration of self- perception of sex identification. This right of legal

recognition of gender without any medical confirmations is a transparent and quick process which acknowledged on official documentations as drivers licenses and birth certificates etc. Main objective of this act is to give legal right to self-perceived gender identification. But the point of controversy is the transgender persons who have not any psychological disorder and physical illness. Gender dysphoria or mental disorders is the condition when a man's feelings of gender determination are depart from his biological sex. Due to this mental dysphoria their behavior and acts are different from the other people as they wear clothes and try to play with children opposite to their gender. They insist and desire to change their genitals. Most importantly the Academic research indicates that the transgender persons have non mental abnormalities as they have no physical defects of gender abnormalities. This is the reason that this act of protection remains the topic of controversy and debate.

Shariah Perspective and Transgender Act

Transgender Act (Protection of rights law) contradicts to the religion of Islam at the following points:

- ***Legitimize homosexuality and same sex marriage*** Islam is the universal creed. It has laws to perceive one's own identity. Islam is against to self-perceived gender identity that ones can change his or her identification without any psychological, physical abnormalities and medicals approval but according to his own desire and sexual attractions or emotional patterns. This thing promotes home sexuality and same sex marriage. As if one is naturally male according to his own will and concerns, he change his identity as female through NADRA card without any medical approvals. Then this card declared him as a female who is actually male and can married to a male by marriage rules and regulations. Similarly a person by birth is female but he declared herself as male through NADRA identification, now he will get married to an actual female. This marriage actually held between female and female that is strictly forbidden in Islam and it destroys the lineage and the whole hereditary system. It rescinds the family institutions of rearing and producing children which ends the whole community structure.

- *Islam* constitutes *Nikkah* commitment between opposite gender male and female *Nikkah* is a standardized and legal constitution for a strong and secure family system. Allah said in Quran:

فَأَنْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ^{xiv}

“...then marry the women that seem good to you:"

Nikkah in religion of *Islam* is a purified way to lead a virtuous life and a commitment between man and women to satisfy their erotic urges. It is strictly forbidden in *Islam* that a man to fulfill his sexual emotions get relations with a man or a women have sexual relations with a women.

- **Prohibition of effeminate males or gender similarities**

Islam is against the gender modification .A male based on his self-interests and emotions adopting the manners of female and those women who accept the resemblances with male is strictly forbidden in *Islam*. *Islam* perceived everyone's identity by discriminating between man and women in living manners. Holy Prophet (PBUH) cursed upon the effeminate male (those man who are in resemblance with woman) and the women who adopting the demeanors of male. As Holy Prophet (PBUH) said:

لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ، وَ الْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ^{xv}

- **Promote humiliation and Intermingling between genders**

Islam is the religion of piety, dignity and honor. Allah said in Quran:

- وَالَّذِينَ هُمْ لِأُفْرُوجِهِمْ حَافِظُونَ^{xvi}

“Who strictly guard their private parts”

Islam prohibits all ways that are the source of crowding of sexes, exposure and revealing of women to men because all these acts causes *fitnah*; evil consequences, indecency and arousing of wrong desires. Transgender Act 2018 promote mortification and assortment of man and woman. A man listed as woman in NADRA can involve in woman gatherings, take admission in woman institutes, hostels and washrooms etc. This Melange of man and woman increases immorality in the society, illicit erotic intercourse (*Zina*) in society and incessant plagues. While Allah said in Quran

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ^{xvii}

“The woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes”

- **Controverts *Maqasid Al Shariah***; Islamic laws objectives and goals intended the wellbeing and protection of mankind. These *Maqasid* are classified for the fortification of five fundamental values of mankind: life, religion, lineage, property and intellect. ^{xviii}But the transgender Act 2018 neglect all these objective of Islamic laws and lead to disruption and undesirable end. Transgender Act promotes homosexuality, inheritance problems and ignominy in society. It actually sustenance of western culture and ethos^{xix}.

Transgender Act and Right of Inheritance

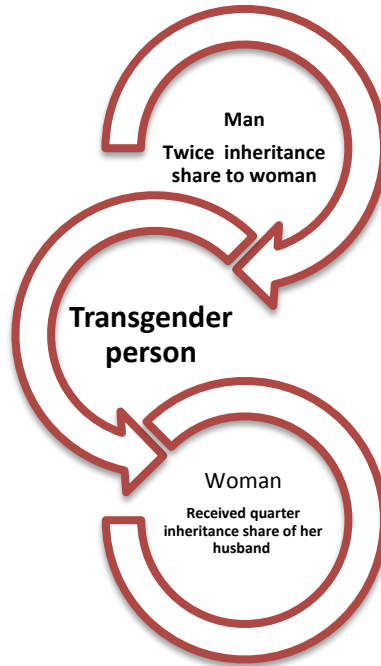
Transgender Act 2018 give the inheritance rights to the transgender persons according to the gender declared by NADRA. As NADRA is oblige to follow the self- alleged gender distinctiveness so in accordance to that inheritance rights will be given agreeing to the gender listed on CNIC. As If A woman declared herself by NADRA as a man then he received inheritance share of a man although he is actually a woman. Similarly if a man entitled himself as a woman through NADRA then he received inheritance share of a woman but actually she is a man. . This thing completely ruined the entire inheritary structure of Islam^{xx}

Religion of Islam reserved every person rights separately man , women and transgender persons. Allah said in Quran:

□ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ □ ^{xxi}

“For the male what is equal to the share of two females”

In Islam the transsexual persons will gains inheritance rights based on the organs they urinates. It means if a transgender person urinates like a man he will gain share of a man and on the other hand if a transgender person urinates like a woman he will gain portion of a woman.



In Contemporary world transgender Act:

Islam is an ample religion including rights for the transgender or Intersex people same like a normal man and woman .However self-proclamation gender recognition is strictly forbidden in Islam.

The act perceived self and gender in two different ways; sex is determine as biological anatomy of mankind and gender is referred to the social role of a person based on his sex. Currently it reveals that the Pakistani society does not aware of this difference between sex and gender instead they only know about the intersex person. But after this Act officially genders are classified into three categories Male, Female and ‘X’ gender. But there is a lot of abstruseness regarding the determination of X gender is rather a medical or psychological matter^{xxii}. This Act has make laws for the rights of transgender persons but not assets this matter on scientific, psychological and logical level of discourse. So this gender dysphoria remains unresolved.

The transgender persons are still phasing abusive treatment, self-harm and provocation in society. As the Act has not taken measures for the prohibition of redundant medical procedures, castration and ambiguous erotic characteristics performed on them.

This Transgender Act is just an effort for the giving protection, respect, safety and property. But the fact, pebbledash by the transgender person now days is of **Taboo**. They are still rejected

by the families, living in economic hardships, fear of violence, begging on streets, engaging in sex works and participating in dance parties. Most of the transgender persons disowned by the families still not registering themselves on NADRA fear of being declared as a family member or not assurance from their Gurus .It is required to take practical positive measures for the education of transgender persons separately and curriculum need to design for their study as well. So as to resolve the social. Political and economic issues of this community.

Conclusion

Islamic Republic Article 227 of Pakistan's constitution obligate that all edicts will be conceded in conformity with Islamic rulings. But this transgender article 2018 does not support the Islamic tenets in many statements.

Islam gives every gender separate dignity. It has standardized and distinct rules and regulations for each sex in every aspect of life. Islam is against the self- professed gender identification. Allah has created every human being by His own will as a man and woman .These opposite sexes is for further stimulation of human generation. While changing gender centered on the personal interests, attractions and desires of mankind is intrusive in God's will and ruined the whole family system of human beings as well. It promotes home sexuality, disgrace, same sex marriage and ignominy within the society.

Transgender Act 2018 is not actually for the rights of transgender people but actually it's a movement for a legal and political demonstration of self -professed sex identity. It *controverts Maqasid Al Shariah* and promotes mingling between man and women. It is strictly forbidden in Islam that a man adopt manners of female or woman like a male. Everyone has its own conducts of living life with prosperity and dignity affirmed in Quran and Sunnah.

Western Idea of freedom strongly impact on this Transgender Act 2018. Western thoughts are drafting Pakistani culture. That is the reason that the ideological and socio cultural fundamental essence¹ of Islam is strongly ignored. This Act open ways to perceive society by Tran's community according to their own psychological perceptions and thoughts rather than encompassing biological factors as well^{xxiii}.

Recommendations:

1. The terminologies used in Transgender Act 2018 requisite to be intensely study. Transgender is a wide term including Trans male, intersex or trans female etc. Moreover, it has a medical, psychological and scientific discourse as well. It need to modify and classified what exactly transgender person means and then legislation made.
2. To assist properly the transgender community legislature should need for some modifications regarding the inheritance rights as it not ascribe to the Islamic laws.
3. The transgender community is phasing structural inequalities with in the community. The state should need to take some practical actions for the endowment of the formal equality to the transgender people. For this purpose special institution for the education of transgender people need to make. So that they are able to attain education without fronting any discriminatory factors from the other population.
4. In Pakistan many efforts were taken for the provision of fundamental rights to the transgender persons. Now on the legislative level they are considered to be as third gender. But there are some lacking points and defectives. Some affirmative actions and positive measures need to be taken to justify this deficient. For instance for the transgender persons separate quotas a par from the population at social, economic and political level need to be held. So that they can be shown as the representatives of their community.
5. A proper medical team involving highly qualifies surgeons, medical officers etc need to be detained for the recognition of transgender person properly. Without the verdict and asserting of the team members, the transgender person will not officially get inventory on NADRA.
6. This transgender Act is strongly under the influence of western Conspiracy. Western movements and thoughts drafting the bill. That's the reason that the bill not address the actual problems facing by the transgender person in Pakistani societies as well as it contradicts the religious laws. It need to be amend supporting the Islamic religious community instead of western culture.
7. It is recommended to take actions on higher to reduce the fissure between Pakistan transgender judicial laws and Shariah perspective actively.

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- ^{vii} - Computerized National Identity Card
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