

# Shariah Analysis Of Transgender Act 2018 And Its Possible Impact On Pakistan

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## Introduction

In 2018, a law was passed in Pakistan to protect the rights of intersex persons, in which it is allowed that a transgender person can present himself as a man or a woman and NADRA can change it according to the will of the people. It has been made mandatory to write the gender of the person, the question is whether this law is in accordance with the principles of Sharia. So, in this article, from the point of view of Shariah, it has been examined in detail that to what extent this law is in conflict with the principles of Shariah? A review of the Transgender Persons Protection of Rights Act, 2018 revealed the following issues:

\* The purpose of this act is to protect the rights of transgender but the title of the law is given as “Protection of Rights of Transgender Person”.

\* Section 2(e) of the Act defines gender expression and section 2(f) defines gender identity. \*  
Section 2e (e) of the Act defines gender expression and section 2(f) defines gender identity.

\* Section 2N of the Act defines and defines transgender, which includes any male or female person whose personal gender identity or gender identity has been changed, along with a person with accidental impotence, in addition to congenital malformation. Gender expression differs from his birth sex.

\* Under sub-clause No. 1 of Article No. 3 of the Act, transgender have been given the right to identify themselves in any gender according to their personal perception.

\* Under sub-clause no.2 of section no.3 of the Act, NADRA and all other government agencies were made bound to register the gender of the transgender as per his wish.

\* Sections 7 to 16 describe the rights of transgender, such as education and voting.

\*Section 17 prohibits and punishes transgender begging.

After this summary, now the aspects of the law which are not correct from the point of view of interpretation, legal and Shariah are examined

### **Shariah Mischief No. 1: Mistake in Name of Law:**

This act is named as "Transgender Persons (Protection of Rights)", it uses the English word transgender, so to understand this law, it is important to understand the meaning and meaning of transgender, transgender is a modern vague term. Literally, it is a combination of two English words "trans" and "gender", the literal meaning of "trans" is change and "gender" refers to gender for both male and female genders. In this way, the combination of these two words "Transgender" literally means Mutawat al-Juns in Arabic and gender changer in Urdu, i.e. one who becomes a boy from a boy or from a girl to a boy.

Transgender is defined as a person who disagrees with the gender they were identified with at birth. Therefore, the definition of transgender in the English dictionary is mentioned in the following words:

### **Definition of transgender:**

A person whose gender identity differs from the sex the person had or was identified as having at birth especially of relating to, or being a person whose gender identity is opposite the sex the person had or was identified as having at birth.[i]

The definition of transgender on the United Nations website is mentioned in the following words, see text:

Gender identity refers to a person's experience of their own gender. Transgender people have a gender identity that is different from the sex that they were assigned at birth. A transgender or trans person may identify as a man, woman, transman, transwoman, as a non-binary person, and with other terms such as hijra, third gender, two-spirit, travesti, fa'afafine, genderqueer, transpinoy, muxe, waria and meti.

Gender identity is different from sexual orientation. Trans people may have any sexual orientation, including heterosexual, homosexual, bisexual and asexual.[ii]

In the light of these definitions of transgender, two things are very clear:

First: that being transgender or not is related to a person's personal feelings and mental orientations about sex/gender, because a transgender person does not accept their birth gender based on their personal feelings and mental orientations, but He defines his gender as the opposite of his birth sex, it has nothing to do with having or not having sexual desire, so in the above text it is also mentioned that a transgender is homosexual, heterosexual, bisexual. One can be asexual and can be asexual.

Second: That being transgender is not even related to sexual organ disorders, so usually a transgender person does not have any kind of disorder or defect in their sexual organs, but in terms of physical structure, they are a perfect man or woman. And it also contains emotional and sexual desire.

Regarding transgender, these two things are different from Negro, which is an argument that transgender is not a synonym of Negro, but there is a difference between the two in terms of vocabulary and terminology, the definition of Negro below:

#### **Definition of Intersex Person:**

The Arabic word for "knuf" is a person who has some disturbance and defect in his genitals from the time of birth, so the definition of "knuf" on the website of the United Nations is mentioned in the following words:

#### **INTERSEX / SEX CHARACTERISTICS:**

Intersex people are born with physical or biological sex characteristics, such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns, which do not fit the typical definitions of male or female. These characteristics may be apparent at birth or emerge later in life, often at puberty. Intersex people can have any sexual orientation and gender identity.[iii]

The famous English dictionary, Merriam Webster, also mentions the same definition of slander, see the text:

#### **Definition of intersex/hermaphrodite:**

The condition (such as that occurring in congenital adrenal hyperplane or androgen insensitivity syndrome) of either having both male and female gonadal tissue in one individual or of having the gonads of one sex and external genitalia that is of the other sex or is ambiguous.[iv]

The result of the above two texts is that the person who has both male and female reproductive organs (Gonadal Tissue) or one sex has Gonadal Tissue and the other has External Tissues or the

other sex's Tissues are ambiguous, that person will be called a heterosexual. It is known that being an intersex person/hermaphrodite is a real physical and physical condition, in which there is a disturbance and defect in the reproductive organs of his birth, due to which his gender is not clear. According to Shari'a, only a person who has both male and female sexual organs and those who do not have these two organs is called a neuter, so Allama Haskafi, may God have mercy on him, has defined a neuter in the following words:

And it is Dhu-Fraj and Dhikr or Min-Ari from both of them, if the hair is from the male, then it is male, and if the hair is from Al-Fraj, then it is female, and if the hair is from both of them, then the ruling is for the former, and if it is Equator, then it is a problem, and it is not considered to be too much.

This definition has been mentioned by the jurists of the four schools of thought (Hanafiyyah, Malikiyyah, Shafiyyah and Hanabilah) in their books of jurisprudence. It has been defined in the statements of the three religions except Hanaf.

### **Summary of the difference between transgender and queer:**

From the definitions of transgender and heterosexual, it becomes very clear and obvious that transgender and heterosexual are not synonyms of each other, but each of them is a permanent term and the meaning and reference of each of them is also different from terminological point of view. An example of gender is a person who denies his birth gender on the basis of his personal feelings or psychological disorder or psychological desire, whether he is fully male or fully female in terms of physical structure. There is a birth defect in the physical structure (sexual organs etc.) and due to this, his gender is not clear.

### **Reasons why the title of transgender is not correct:**

When the difference between the meaning, meaning and context of transgender and transgender became clear from the details mentioned below, it revealed the following defects in the said law:

A: Interpreting the word "knul" as a transgender word is wrong in the dictionary, because the word "intersex" is used instead of "transgender" in English, transgender is not found in any dictionary. The rest of the details are behind.

B: Transgender is an unnatural and illegitimate term based on gender identity. Mentioning it in the law is equivalent to accepting and promoting this un-Islamic ideology. Therefore, in section 2e (e) of the law The definitions of Gender Expression and Article No. 2f (f) Gender Identity also point to this theory, more details of this theory are coming.

A: The purpose of this law is to protect the rights of the transgender, while by taking the title of transgender, people who are not medically and legally not included in the transgender, so the impression that it is completely wrong is wrong. The Act is designed to protect the rights of the victim.

### **Shariah Mischief No. 2: Mistake in justifying transgender:**

Under Section 2n (n) of the Act, the definition of "Transgender" in the eyes of the law has been defined and includes the following three categories of persons:

A: One who is congenitally neuter, i.e. having both male and female characteristics and ambiguous genitalia?

B: Who is a perfect male by birth, but later due to an accident, his male ability is lost or he becomes a testicle.

A: Transgender men and women, transgender people and anyone who feels their gender identity is different from the sex they were assigned at birth.

Whereas if the purpose of this law is to protect the rights of the victim, and the purpose of the statement in this place is also to determine the example of the victim, then including the persons mentioned in "b" and "c" in the example of the victim here is Shariah and medical in all respects. is wrong, because in order to be nullified according to Shariah and medically, it is necessary to have a defect in the physical structure, as the references of Arba'ah religions, United Nations and English dictionary have gone back, so adding three people in the example of transgender here is It is argued that the purpose of this law is to allow every member of the society (whether he is a perfect male or female or accidentally loses his sexual ability) to undergo sex reassignment and reassignment against his birth sex, while this is clearly stated. But it is against the specifications of Quran and Sunnah, so its further explanation is coming under Article No. 3.

Sharia Mischief No. 3: Giving transgenders the right to identify themselves according to their personal tendencies (Self Perceived Gender Identity:

According to sub-clause no.1 of section 3 of the law, the transgender person has been given the right to identify his/her gender with any gender according to his/her wish. It is based on non-Sharia and unnatural theory, which is in accordance with the United Nations law, but is against Islamic law and Sharia, because even here the word transgender has been used to include both normal men and women, so this application Therefore, the following two illegal and illegal things come out of the said section:

**A: Giving right to gender identity against real gender:**

A non-Sharia possibility is that according to this section, a man will be able to identify himself with a woman and a woman with a man, while this is against the teachings of the Qur'an and Sunnah, because according to Sharia, the gender of each individual is determined by Allah. It is a fixed decision of Allah, so in the Sahih hadith of Muslim Sharif, it is narrated that the Holy Prophet (peace and blessings of Allah be upon him) said that when forty-two days have passed on the sperm in the mother's womb, Allah sends an angel who looks after its shape, form, and organs. , makes flesh and bones, then that angel asks Allah Ta'ala that Yarab! Is it to be made masculine or feminine? So Allah Ta'ala decides whether it is male or female according to His Will. From the hadith, it is known that whether a person is a man or a woman is the decision of pure Allah Almighty, the criterion of recognition of which is the physical structure made in favor of humans, so whoever has the body parts of men, he will be considered a man according to Sharia. Whoever has female body parts will be considered as a Sharia woman, there is no interference of the will, intention and personal feelings and tendencies of any human being. In another hadith, the Holy Prophet (peace and blessings of Allah be upon him) cursed men who try to be like women in habits, etc., and cursed women who imitate men. See the text of the hadith:

Yazid told us, Hisham told us, on the authority of Yahya, on the authority of Ikramah, on the authority of Ibn Abbas:

It is known from this hadith that it is not permissible for the one whom Allah has made male to take the likeness of another sex, i.e. a woman, in the same way it is not permissible for the one whom Allah has made female to take the likeness of a man, when the other sex If resemblance is prohibited, identifying one's gender with another gender is first and foremost illegal and prohibited in Shari'ah.

### **B: Permission to change your gender:**

Another non-shariah possibility is that the way of gender change is created by this article, because when every person will have the legal right to choose and register his gender in all documents according to his desire, then he will have this He will also have the right to alter his physical appearance through surgery as per his legal papers and documents, for example, a perfect male can have his male body removed and become a female body or vice versa. Although changing one's sex is absolutely forbidden and illegal according to Sharia, so in the age of ignorance, people used to cut off the ears of animals, so Allah Almighty forbade in the Holy Qur'an to cut off the parts of animals and change them into creatures created by God. He declared this act as a satanic act and declared hell as the abode of the people who committed this crime; see the holy verse of the Qur'an:

{وَلَا ضَلَّاهُمْ وَلَا مَنَّاهُمْ وَلَا مَنَّاهُمْ فَلْيُبَيِّنَنَّ أَدَانَ الْأَنْعَامِ وَلَا مَرَّتَهُمْ فَلْيَغَيِّرَنَّ خَلْقَ اللَّهِ وَمَنْ يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِنْ دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرَانًا مُبِينًا (119) يَعْذُهُمْ وَيُمَيِّنُهُمْ وَمَا يَعْذُهُمُ الشَّيْطَانُ إِلَّا غُرُورًا (120) أُولَئِكَ مَاوَاهُمْ جَهَنَّمُ وَلَا يَجِدُونَ عَنْهَا مَحِيصًا } [v]

According to the interpretation of this blessed verse, Allama Fakhruddin Razi, Allama Qurtubi, Allama Alusi and all other commentators have declared it illegal and forbidden to change the attribute of creation in the creation of Allah Almighty. There is agreement on the sanctity of change, so in this law, allowing men and women to change their sex through surgery is against the order of the Qur'an and it is actually a tampering with the creation of nature, causing the distortion of the natural system, so Islam every It strictly forbids the act that causes distortion of the true nature, so committing suicide, cutting off one's limbs, transforming oneself into an animal or changing one's genitals is absolutely forbidden and prohibited, so Imam Bukhari may Allah have mercy on him, has narrated a hadith, in which Hazrat Abdullah Ibn Masoud (RA) said that Allah Ta'ala used a needle to knead the body, massage the body, pull out the hair on the forehead, and create a gap between her teeth for the sake of beauty. Vali cursed the women and stated that the reason for this was that they were created by Allah Ta'ala Then he said, "Why should I not curse him whom the Messenger of Allah, (PBUH) cursed"?

When these actions have been cursed by Allah and His Messenger (peace and blessings of Allah be upon him), changing the human sex is a great crime in relation to them, so it is very important to avoid it.

### **The term transgender is based on the theory of gender identity:**

The basis of the term transgender is the theory of gender identity. The literal meaning of "gender identity" is the identification and recognition of one's gender. Identifying your gender by examining your characteristics, this theory was presented by Robert J. Stoller, an English scientist in 1964. He said that gender identity is a personal characteristic of a person. , there is no interference with the external genitals, but it is related to a person's personal feelings, emotions, internal conditions, social behavior and manners. "Masculinity/Masculine social role" and femininity/feminine social role are defined as "Femininity/Feminine social role" and these things can be different in each person, so regardless of the external genitalia, every man evaluates the combination of all these things and defines his own can recognize gender. In Studies Gender, its description is as follows:

In gender studies, a distinction is made between gender and sex, sex means being male or female or intersex, while gender means man or woman. Woman), then the principle of gender identity in it is that if Mel (whose genitals are male) has masculine characteristics (Masculinity), and then he will be called male, if per man (whose genitals are male). If I have feminine qualities (Femininity), then she will be called Woman, while on the contrary, if Mel feels Femininity within herself, then she is called Transwoman and if per male within herself. If he feels masculinity, he is called transman; and transwoman are called transgender, i.e. a person who changes his birth sex. Being

emotional, having an aggressive attitude, having a tough body, having a competitive spirit, being strong and active etc., while feminine characteristics include femininity, passion Being sensitive, being innocent, being weak, being submissive, passive, etc. And these things are also related to the society and the environment, so the origin of the theory of gender identity is that every human being feels these male or female characteristics in themselves, based on the same feeling (Feeling) according to the theory of gender identity. Every man can determine and identify his gender.

Therefore, according to this theory, the law of the United Nations gives every person the right to determine his own sex/gender according to his feelings and inclinations, so see the text taken from the website of the United Nations:

### **Recognition of gender identity:**

Everyone has the right to be recognized as a person before the law. The United Nations has affirmed the right of trans persons to legal recognition of their gender identity and a change of gender in official documents, including birth certificates, without being subjected to onerous and abusive requirements. This right is violated in all regions. Many countries deny trans people any possibility of obtaining legal recognition of their gender identity. Many of those that do provide for legal recognition, force trans individuals to meet various conditions before their identity can be recognized – including sterilization, sex-assignment surgery or treatment, psychiatric diagnosis of gender identity disorder, divorce and confinement in psychiatric institutions. In most countries minors and no binary people have no access to recognition of their gender identity.[vi]

From the above description, the term transgender was coined for a person who differs from their birth gender based on their personal feelings and mental tendencies.

It should be remembered that although transgender is originally based on the idea of identifying one's gender based on personal feelings and tendencies, the real example of which is only a person who does not mentally accept his birth gender. But now in the West, the term has come to be used absolutely for anyone who denies their birth sex, whether it is because of personal feelings and tendencies based on this theory or because of a mere selfish desire. Or he may actually be suffering from a psychological disorder, which is medically known as Gender Dysphoria.

### **Ruling on granting the right to determine the sex of a male child:**

In this Article No. 3, Transgender (Intersex Person) has also been given the right to write any of his gender in the ID card and other documents according to his wish, while according to Islamic teachings, Intersex Person is absolutely prohibited. It is wrong and illegitimate to give authority, because the jurists of the Arba'ah religions, may Allah have mercy on him, have written this



principle in the light of the hadiths regarding the determination of the sex of the penis, that if he urinates through the zikr (penile) before puberty, then such a penis is a violation of the Shari'ah. In the eyes of Islam, a man is considered completely, and all Shari'ah rulings related to him will also be for men, and if he urinates through the fridge, then he is considered a complete woman, and all his rulings will be for women, if she If he urinates from both the ways, it will be considered difficult and according to the requirement of caution, some orders will be issued on him for men and some for women, such as sitting like a woman in prayer, not wearing silk cloth and jewelry, wearing silk in the state of Ihram. Wearing airy cloth and not opening the veil in front of a man or woman, not traveling alone without Muharram and not to be alone with a non-mahram man or woman, etc.

The jurists of the four Madhhabs may God have mercy on them, have also quoted the same interpretation of the Naqr, that is why Imam Ibn al-Mundhir and Imam Ibn Al-Qattan, may God have mercy on them, have quoted consensus on this issue. However, in that era, this decision of the jurists (may Allah have mercy on them) (determination of sex through urine) was merely a symbol, so Allama Aini, may Allah have mercy on him, has written that urine coming from one way indicates that he is the same. It is a real organ, it is known that making the mabal (urinary tract) as a criterion for gender determination was merely a symbol, therefore, after puberty, the jurists (may Allah have mercy on them) also considered other female and male signs such as the development of breasts etc. The determination of the genitals has been declared reliable in the determination of sex, as specified in Fatawi India, so now in the modern era of advanced science, the reality of the internal organs can also be known through ultrasound, X-ray and other tests. Therefore, help will be taken from these sources in determining the sex, so in deciding the sex of the fetus before and after puberty, the signs mentioned by the jurists, may Allah have mercy on them, i.e. the external sexual organs as well as the internal reproductive organs and hormones. Vichromosomes will also be taken into consideration and for this Shari'ah scholars and medical expert Dr. There should be a committee or a board consisting of night, after the decision of which the difficult problem should be allowed to determine and clarify their original gender. The above description was related to the determination of the sex of the male, as far as changing the sex is concerned, the male does not have the right to change his gender like ordinary people, and such male is also included in the promise related to gender change. However, if there is a man or a woman who has some ambiguity in his genitals and internal reproductive organs, then he should consult a specialist doctor and clarify his gender through tests etc. (exposing gender ambiguity) is permissible, it would not fall under the category of gender reassignment, as has been the case in the past.

In summary, the experts of Shari'ah and Medicine agree that regardless of whether a person is degenerate or another perfect person, in any case, the decision of sex determination and sex change based on the accidental external change in the human body or the mental feelings of the person is definitely not decided. Therefore, in this law, regardless of the signs described by the jurists, may

Allah have mercy on them, and regardless of the external and internal reproductive organs, every man and woman, including the male and female, can choose their gender under the vague term of transgender based on personal likes and dislikes and heart tendencies. Giving the authority to is a complete opposition and open rebellion to the rules of the Sharia, which has no place in the Qur'an and Sunnah, and there are both Shariah and moral problems in it, some of which are as follows:

\* According to this law, a man can go to all the places reserved for women, such as special wards in hospitals, women's sections in public places, by writing himself as a woman in the identity documents based on his feelings only. Special washrooms and working in institutions for women, etc., similarly, women will also have the legal authority to go to all men's places by changing their gender, which made obscenity and nudity common and within the realm of modesty for men and women. There will be endless distortions.

\* A woman will be legally entitled to take two shares in the inheritance equal to a man by registering herself as male, which will destroy the rights of other heirs, while in the blessed verse Al-Nisaa: 11], the boy's share is clearly stated to be twice ]  $\{لِلْأَكَرِّ مِثْلُ حَظِّ الْأُنثَىٰ\}$  of the Holy Quran that of the girl, in the same way a man will also have this authority.

\* In the most important matter like marriage, a man will be legally entitled to marry a man of the same sex by registering himself as a woman, and a woman will be legally entitled to marry a woman of the same sex by registering herself as a man. , rationally and morally cannot be justified in any way and it will open a terrible door of homosexuality, promiscuity, obscenity and nudity, which will be destructive to the family system.

\* Any member of the society can write himself against the gender and adopt his dress, appearance, lifestyle and lifestyle as that of the same gender, while in the blessed hadiths, a woman can be likened to men and a man can be likened to women. It is strictly forbidden to do this and the Holy Prophet (peace be upon him) has cursed those who do this in a sahih hadith:

In principle, this law is against both Sharia and the Constitution of Pakistan, because it is specified in the Constitution of Pakistan that no law in Pakistan shall be made against the Qur'an and Sunnah. Therefore, it is the responsibility of the government to immediately take action against the provisions of this law. Shariah should abolish all the provisions and re-legislate according to the principles of Shariah, for which consultation with expert scholars of Shariah, medical doctors and lawyers' experts in constitution and law should also be done. The suggestions are as follows:

1. The name of the Act should be changed to protect the rights of Intersex Person.

2. Elbow should be defined according to Shariah and medical principles based on external genitalia and internal reproductive system.
3. The right of gender selection should not be given to the in-laws, but a medical examination and a report by a panel of expert doctors should be made mandatory.
4. It is better to make it clear in the law that changing birth sex based on personal desire (whether to the extent of mere identification or actual change through surgery) shall be a criminal offense punishable by law.

**Note:** The recommendations of the Islamic Ideology Council regarding the Transgender Act have also come, so these recommendations can also be taken into consideration in the process of amending this Act.

[i]<https://www.merriam-webster.com/dictionary/transgender>.

[ii]UNFE.org.

[iii]<https://www.unfe.org/definitions/>

[iv]<https://www.merriam-webster.com/dictionary/intersexuality>

[v]القرآن الكريم [النساء: 119 - 121]:

[vi]UNFE.org

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