

# Protection of the Rights of Inter-Sex: A Legal Study of Reforms and Failures in Pakistan

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## Abstract

*In Pakistan, intersex is an abused and marginalized community. They are living with low socio-economic status in the community and their fundamental rights had been blatantly abused by the Government. In the landmark case, Dr. Muhammad Aslam Khaki and Others vs. S.S.P. (Operations) Rawalpindi and Others, the Supreme Court took a position to recognize and protect the rights of the third gender in Pakistan. The Supreme Court also acknowledged that the Federal and Provincial authorities are responsible for providing the rights to eunuchs. Article 25 of the Constitution of the Islamic Republic of Pakistan 1973 also provides equal protection and has been interpreted briefly by the Supreme Court of Pakistan while considering all the perspectives of vulnerability in Pakistan. Moreover, The Transgender Persons (Protection of Rights) Act of 2018 was enacted by the parliament in 2018 for the protection of the rights of intersex and transgender community. Further, the Act was criticized by majority people in Pakistan as it led towards the vulnerability of the intersex and it was also contradictory to the injunctions of Islam as laid down in the Holy Qur'an and Sunnah. Hence, a new was introduced in the Senate in 2022 and 2023 with the title, The Khunsa (Intersex) Persons (Protection of Rights) Act of 2023. This article will analyze the legal battle towards curtailing the issue of vulnerability of intersex as well as safeguarding their rights in Pakistan.*

**Keywords:** Intersex, transgender, fundamental rights, eunuch, Islam.

## Introduction

The story of marginalization and suppression of eunuch and hijra is deeply rooted to the narrative of colonial displacement. The inconsistency of the social roles of intersex which have been played by them in the pre-colonial India with the policies of criminalization of their activities gradually led towards the systematic exclusion of them from the domain of active cultural participation. If we look into the history, it paved a clear way to understand the process of their marginalization. A hijra named Bhoorah was found dead with her severed head in August 7<sup>th</sup> of 852 in the north Indian district of Mainpuri. This violent death of Bhoorah resulted into the extinction of their community under the British rulers of north India. Hijras had performed and asked for a congratulatory gift on the marriage or birth in the community. They were the part of discipleship lineages which was linked to the gurus/teachers and chelas/disciples. Bhoorah after attaining the status of guru was given two disciples and she was living with them. She also had a male lover named Ali Bukhsh who was a suspect of murder as she had left him for another man. In the subsequent murder trial, the judges criminalized

hijra community as beggars, cross-dressers and unnatural prostitutes even the victim of the crime was herself from the same community. One judge called them an ‘opprobrium’ upon colonial rule and other named their existence in the British government as ‘reproach’. Further, a law known as Criminal Tribes Act of 87 (CTA) was promulgated to maintain peace and order in the India and was mostly applied in North India. CTA

introduced criminalization on the basis of caste and religion that led to criminalize the eunuchs due to all behaviors considered suspicious like public dancing dressing in women's clothing etc., and were banned under the act. The term eunuch was referred to a catchall term to use for anyone who did not conform to traditional British ideals of masculinity including hijras, khwaja-siras and kotis. Moreover, the small literature on hijras does not help to understand the basis of their criminalization under the CTA. Some writers have explored the interactions of hijras with the state in colonial era. Laurence Preston has written on the topic of 'A Right to Exist: Eunuchs and the State in Nineteenth-Century India' with specifically referenced to the Bombay Presidency between 1830s and 1850s. While Anjali Arondenkar's writing, 'For the Record: On Sexuality and the Colonial Archive in India', has examined a case under section 377 of Indian Penal Code. However, the marginalization of hijras under the CTA have received attention in the result of publications of several anthropological, theatre and linguistic studies that worked on Hijra community in South Asia in the last two decades of contemporary era. These writers include Kira Hall, Gayatri Reddy, Adnan Hossain and Claire Pamment. This rich literature mentioned some briefs of colonial law and knowledge but it was unable to analyze the history of the community in depth. Although, certain rights and positions in the royal courts were granted to them in Maratha State in eighteenth century. But they were gradually deprived of all the rights and liberties enjoyed by them previously under the local dynasties, and this led towards the destabilization of their legal, social, cultural and political identity. Consequently, they have been denied to accrue rights of a citizen of the modern state.

### **Analysis of Indian and Pakistani judicial struggle**

Long vulnerable experiences of eunuch and hijra community somehow minimized when the Superior Courts in India and Pakistan have issued landmark judgments correspondingly in the case laws, National Legal Services Authority vs. Union of India and Muhammad Aslam Khaki and Others vs. S.S.P. (Operations) Rawalpindi and Others, by recognizing the gender of eunuchs as the third sex. The Supreme Court of India affirmed that all the fundamental rights granted by the Constitution of India are equally applicable to them and they possess the right of identification of their gender as male, female or the third gender. The Court specifically directed the authorities of the governmental departments to grant legal recognition to third gender and persons transitioning within male and female binary as well as to take proper measures in providing medical care and socio-economic rights in form of various social welfare schemes while treating them as socially and economically backward classes. Various historical texts as well as pre-colonial cultural and socio-political manuscripts were analyzed by the court to conclude that hijras had played a prominent role in the royal courts of the Islamic

world, especially in the Ottoman empires and the Mughal rule in the Medieval India. The court cited these findings from the book of Gayatri Reddy. The court also discussed the international norms and treaties and affirmed that India is particularly a signatory to Yogyakarta Principles. Certain articles of the Constitution of India were thoroughly discussed for the empowerment of the transgenders. The court held that gender identity lies at the core of one's personal identity, gender presentation and expression, and it will be protected under Article 9(-a) of the Constitution of India. The court further elaborated that the State is bound to recognize and protect their rights

In Pakistan, the third-gender is considered a marginalized community. They have ever faced violence and discrimination from the government and community. They have been excluded from political and economic systems of the country in the past. Different terms are traditionally used to refer to those people who do not conform to the cis-gender identity in Pakistan. The terms khawaja-sira, khusras, hijra, zenanas and eunuch have been usually used in the past. But, the terms transgender, transsexual and third gender have now been used in the recent few years. These people have been victims of public ridicule, discrimination, social exclusion, violence and harassment since the colonial era. For many years, intersex and eunuch have struggled a lot for legal recognition and social acceptance of their identity in Pakistan. This behavior was somehow changed when Dr. Aslam Khaki filed a Constitutional Petition no.43 of 2009 in the Supreme Court of Pakistan under Article 84(3) of the Constitution of Pakistan regarding the incident of police violence against a group of Khawaja-siras in the city of Taxila which is located in the district of Rawalpindi in the province of Punjab. He argued in the case for the legal recognition and equal treatment of the intersex people under the Constitution of Pakistan. The Supreme Court of Pakistan recognized the unique gender identity of eunuch (eunuch) individuals for the first time. The Supreme Court issued many orders in three years while mandating the government to recognize the gender identity of eunuch through legislation as well as to take action for the protection of their fundamental rights. One of these orders compelled various government authorities to originate guidelines for the issuance of National Identification Cards (NICs) to all individuals and to maintain a legal framework for their full and equal participation in society. The court directed the social welfare department to ensure inclusion and admission in educational institutions, and recommended to Federal as well as provincial governments to introduce policies for the encouragement of the employment opportunities for these people. The Court also noted the protection from harassment and vulnerability was the responsibility of the Federal and Provincial Governments and they both are equally responsible for the recognition of the rights of eunuch while providing them protection of life, property and dignity. The judgement paved a positive step towards equality of all citizens while creating the third gender category and directing to issue NICs to eunuchs.

## **Enactment of the Transgender Persons (Protection of Rights) Act of 2018**

In the result of recommendations by the Supreme Court of Pakistan to the government institutions, a new act, The Transgender Persons (Protection of Rights) Act of 2018, was passed by the Parliament of Pakistan in May 2018. It marked a significant milestone aimed at safeguarding the rights of sexual minorities in the country after a long history of vulnerable experiences and judicial efforts in the country. The Act explored the cultural, religious, and historic background of transgender community and provided the framework of the fundamental rights initially granted by the constitution of Pakistan of 1973. The Act ensured various rights: right to education, right to employment, right to vote, right to hold public office, right to health, right to assembly, right of access to public places, right to property and guarantee of fundamental rights. It also prohibited harassment against transgenders in public and at home due to their gender or sex identity. The term harassment was also specifically elaborated while including sexual, physical, mental and psychological harassment. Certain obligations of the government were formulated under the Act for the establishment of protection centers, safe houses, separate prisons, confinement cells, awareness schemes, formulation of vocational training programs and small business through providing easy loans and incentives. Section 7 elaborated the law of inheritance according to their gender mentioned on CNIC. However, the Act was highly criticized by the majority of people and was declared repugnant to the Islamic Injunctions of Qur'an, Sunnah and the Constitution of Pakistan. The International Commission of Jurists also hailed the Act as an example of "more progressive gender recognition laws not just in Asia, but also globally" in the briefing paper published by ICJ in March 2020. The Commission elaborated that the Indian Transgender Persons (Protection of Rights) of 2019 also requires that transgender people must go through a district magistrate to get certified transgender and this process is subjected to intrusive medical scrutiny but the Pakistani law has not made any such provision.

The Constitution of Pakistan declares that Islam is the state religion of Pakistan and no law shall be enacted in Pakistan which is repugnant or against the injunctions of Islam or principles of Islam laid down in the Holy Quran and Sunnah. In Pakistan, individuals perform acts or functions on the behalf of the authority or organ of the state. The Constitution of Pakistan also protects the rights of backward areas and classes. The state shall provide and promote the special care, educational and economic interest of the backward classes and areas including the third gender category. The state and government shall make provisions and laws for securing just and humane conditions of work, and prevent gambling, prostitution, and injurious drugs. The state shall be

Bound to serve the well-being of people related to creed, caste, race, and sex. The state is also bound to promote the unity and observance of the Islamic moral standard for Muslims and also protect the family and the marriage life.

Transgender means those persons who identified their identity and gender differently from their sex biologically. The Lexico defined “transgender means the denoting or relating to a person whose sense of personal identity does not correspondent with their birth sex”. The phenomena of transgender already existed in Roman and Greek Times. Later on, in the Middle Ages, this phenomenon has been attached in the nobility elite group.

### **Criticism on The Transgender Persons (Protection of Rights) Act of 2018:**

The Transgender person is defined in Section 2-(n) of the TPPR Act of 2018. According to Section 2-(n) of the TPPR Act of 2018 “the person who is (i) intersex (Khusra ) with a mixture of male and female genital features or congenital ambiguities; (ii) eunuch assigned male at birth, but undergoes genital excision or castration; or (iii) a transgender man, transgender woman, Khawajasira or any person whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth”.

According to the Islamic context, Section 2-(n)(i) definition is acceptable. Islam recognizes the third gender (intersex people) and provided them with the rights of normal men and women. Islam recognizes the fundamental rights, i.e., education, life, health, property, and security of intersex people. The TPPR Act of 2018 states that sex and gender both are perceived to be two different things. Sex is referred to as the biological anatomy of the human being but on the other side, gender is referred to the social. According to the TPPR Act of 2018, sex determines whether a person is male or female; and gender is related to the identity that how the person identifies himself or herself. In Pakistani society, the majority of people did not believe that any difference between sex and gender. The people only know about the intersex people (khunsa, Mukhannas, Khusra). But, now after the implementation of the TPPR Act of 2018, Pakistan officially recognizes that there are three genders. These include the males, females, and X gender. Today, there are several ambiguities are present whether the determination of X's gender is a psychological matter or a medical one.

Moreover, medical practitioners and researchers elaborate that Gender Dysphoria is a psychological issue. Gender identity is not a biological sex and is not related to the physical anatomy of a person. Gender dysphoria symptoms are generally related to the feelings, behavior, and psychology of that person. According to research, gender dysphoria is a treatable mental condition and a patient can be treated through Pharmacologic therapy and psychotherapy. The condition mentioned in section 2-(n)(ii)(iii) deals with gender dysphoria. Gender dysphoria has also a serious impact on the adult. In gender dysphoria condition, the gender is not aligned with the biological sex. The patient strongly dislikes the genitalia of the biological sex and have a strong desire to change it. Thus, transgender people suffer a lot and undergo very painful and complicated procedures like castration due to their mental conditions and behaviors. The intersex people are divided into four categories: “46 XX intersex, 46 XY intersex, true Gonadal Intersex and Complex, and undermine intersex”. In several cases, the intersex person could be treated through “sex reassignment surgeries”. Sometimes, at the time of birth a child seems like a perfect female or male but later on, might develop DSD (Disorder of Sexual Development).

The TPPR Bill of 208 was drafted by the Senate Committee on Human Rights. The Bill was passed by the Senate with an absolute majority. But, in Parliament, the leaders of JUIF had shown some reservations regarding the Bill of 208 and some clauses of the Bill were elaborated by JUIF as against the principles of the Holy Quran and Sunnah (injunctions of Islam). The Council of Islamic Ideology (CII) have also shown certain reservations regarding the Bill. But the Bill was presented in the National Assembly and was passed with the majority votes and it became the TPPR Act of 208. The TPPR Act of 208 faced high criticism from religious institutions, religious leaders, scholars and religious political parties. It was claimed that Section 2-(n) (ii) and (iii) are against the injunctions of Islam. Thus, the definition of Transgender has adverse impacts on the rights of society, community, individuals and intersex people. The TPPR Act of 208 includes intersex people and gender dysphoria in the definition of transgender. But the transgenders are not an intersex and neither they are elaborated as third gender in Islamic Jurisprudence. If the patients of gender dysphoria (transgenders) are included in the definition of transgender then homosexuality and same-sex issues will raise in the society. Thus, according to the Islamic point of view, the TPPR Act of 208 clearly contradicted the views of Islam and the rulings of Islam.

Further, Chapter II of the TPPR Act of 208 dealt with the recognition of the Identity of Transgender persons. Section 3 of the TPPR Act explained that “the transgender person shall have a right to be recognized as per his

or her self-perceived gender identity”. Section 3 clauses , provides legal cover to those people who wish to change their gender. This clause also protects those people who are physically perfect but want to recognize them as transgenders. After the enforcement of the Act many issues have arisen regarding the registration as in the case *Syed Amjad Hussain Shah vs. Ali Akash Alias Asima Bibi*, the father claimed under Section 49 of the Cr.P.C and stated that the school teacher had changed the name and gender from female to male by using the provision of the TPPR Act of 208. Thus, the aggrieved father claimed that he made a relationship with his adolescent daughter. This is officially a heterosexual union. But, from the Islamic perspective, it is a homosexual union and their relationship is illicit. In this case, the High Court (Rawalpindi Bench of Lahore High Court) avoided delving into Islamic views on same-sex marriage.

According to the Islamic point of view, the various religious political parties and scholars raised the issue that the TPPR Act of 208 contradicts Islamic principles. They claimed that Section 2(n)(ii)(iii) and 3 directly contradicts Islamic law and the adverse impact of both sections effect on the other provisions of law, for example, the inheritance provision. Two Petitions were filed in the Federal Shariat Court related to the TPPR Act of 208. Petitioners claimed that the legal recognition is provided to the gays and Lesbians rights in the name of Transgender’s rights in the Act. In the TPPR Act of 208, the requirement of the medical board administration for the recognition of the person as transgender is also absent. Furthermore, the TPPR Act provides an open way to every citizen for claiming a transgender identity. Thus, providing protection to lesbians and gays in the name of transgender is considered a serious blunder in the legislature of Pakistan. The TPPR Act provides a very broad definition of transgender persons. Subsequently, there is a need to develop differences between intersex people and LGBT people. Islam accepts the rights of intersex (khunsa) people, but lesbians and gays are not recognized by Islam.

### **Intersex:**

Section 2-(n)(i) deals with intersex people. The intersex also known as hermaphrodite and pseudo hermaphrodite. Hermaphrodite means the person who has both testicular and ovarian tissues. But on the other side, the Pseudo hermaphrodite means a person who has a mixture of female and male anatomy but has only ovaries or testis”. The Disorder Sexual Development (DSD) term is used for intersex variation. According to Research by Leonard Sex that the prevalence of intersex is very rare, i.e., only 0.08 per cent of human births.



### **Eunuch:**

Section 2-(n)(ii) of the TPPR Act of 208 deals with the Eunuch. According to the definition “Eunuch is the person who is assigned male gender at birth but he undergoes any genital excision or castration. This is the condition of gender dysphoria; in which a person experiences distress, and discomfort because of his mismatch between gender identity and biological sex. Gender dysphoria is a treatable mental condition. In many cases, it can be treated through pharmacologic therapy, hypnotherapy, and psychotherapy. They are feeling discomfort only when they are in the gender role of their preferred gender identity. They undergo very painful and complicated procedures, i.e., castration. They also face severe forms of psychological disorders. Mostly, run away from their homes and join gurus. They go through a transformation process where medical procedure (risky, unhygienic and painful), beggary, dance training, and sex work becomes their new life.

### **Transgenderbyself-perceivedgenderidentity:**

Section 2-(n)(iii) deals with this category. “The transgender woman, transman or any person whose gender identity or gender expression differs from the social norms and the cultural expectations based on the sex they were assigned at the time of their birth”. This definition offers the legal recognition of self-perceived gender identity as a matter of right without any medical recognition and diagnostic requirement. The issue of LGBT groups holds public attention in mass media, i.e., print and electronic media. Generally, in Pakistan the LGBT groupaminorityhasbeenconsideredas peoplewithabnormalsexualorientation.TheLGBT groupcontradicts the morals, traditions and religion of society. Transgender is related to the problem of gender identity. These people identify themselves differently from their sex biologically”. It is the condition which caused the incompatibility and dissatisfaction between their soul and body. For example, people who are biologically born male but they identified themselves as female.

The intersex and eunuchs have medical conditions either psychological or physical. The people belonging to intersex and eunuchs have all fundamental rights, i.e., dignity, life, school, education, health, movement, assembly and so on. The state should be bound to minimize their sufferings and provide the right to life and dignity like other human beings. The TPPR Act of 208 also provides useful measures, i.e., awareness, non-discrimination, vocational training and sensitization.

The third category of persons “self-perceived gender identity” is very complex and problematic. This clause of the TPPR Act of 208 allows any and every person to become transgender. The definition of a transgender person read with section 3 of the TPPR Act of 208, make it permissible for any person to pronounce and change his or her gender without any mental or physical condition. Thus, according to this definition (third category) if any man declares himself as female and then joins a female sports team. Further, he enters rest room of a female and other private area of women and even marries another man. If a female declares herself a man, then she is registered as a male under NADRA, and she gets a double inheritance and it is allowed for her to marry another woman. According to “Section 377 of the Pakistan Penal Code (PPC) of 860, homosexuality is an offence in Pakistan but the TPPR Act of 208 automatically allowed homosexuality”. The TPPR Act of 208 has provided protection to the Lesbian, gay, bisexual, transgender and LGBTQ campaign. The TPPR Act of 208 ignored the constitutional framework of Pakistan. The TPPR Act of 208 is the slogan for the gender-variant persons. The self-perceived gender identity and section 3 of the TPPR Act of 208 promote the concept of LGBT rights. The TPPR Act of 208 opens the gates of immorality and harmful practices, i.e., homosexuality in Islamic society.

Islam affirmed that humankind has been created into two kinds biologically and one relates to that identity as male or female. The Islamic Jurisprudence use the term “khunsa for the ambiguous genitals”. The term Mukhannas means the man that resembles a woman. The other term is Mutarajilat means the woman that resembles a man. The specific explanation related to intersex is not found in the Holy Quran as the primary source of Islamic law. But some specific explanation related to transgenders is found in the Sunnah. Ibn Abbas said that “the Prophet (PBUH) cursed men who resemble women and women who resemble men”. The Prophet (PBUH) said that “get them out of your house”. Abu Hurairah said that the “Prophet (PBUH) cursed men who dress up women’s clothing and women who dress up men’s clothing.”

In 200, the Supreme Court of Pakistan provided full recognition of the rights of the transgender community, i.e., ensuring free education. Medical allowances, job quotas etc. Article of the United Nations Universal Declaration on Human Rights (UN-UDHR) states that “all human beings are born free and equal in dignity and rights (UNGA-948)”. Articles 8 to 27 of the Constitution of Pakistan 1973 deal with fundamental rights. Almost all these rights are enshrined in the TPPR Act of 208 and provided to the transgender community. The President of the female rights of Pakistan (Almas Bobi) filed a Petition while claiming about humiliation of transgender people under Article 84 (3) of the Constitution of Pakistan in Supreme Court in 2009. In the 2009 Order, the Supreme Court gave decision for the preparation of the framework for the Federal and Provincial

Governments to recognize transgender rights as respectable citizens and to provide them equal rights to citizens.

In Pakistan, the TPPR Act of 2018 faced high criticism from religious parties, religious scholars and leaders. The Jamat e Islami filed a Petition against the TPPR Act of 2018 in the Federal Shariat Court of Pakistan. The Jamat e Islami proposed various amendments to the TPPR Act of 2018. The religious parties opposed the TPPR Act of 2018. The religious parties claimed that the TPPR Act of 2018 has been against the rulings of the Holy Quran and Sunnah. The Jamat e Islami filed a petition under the Constitution of Pakistan and claimed that according to the Constitution of Pakistan, no law shall be introduced that conflicts with shariah.

In the petition, senator Mushtaq Ahmed (JI) proposed basic three amendments to the transgender law. The amendments related to the inheritance rights of transgender, a medical board for Transgender applicants and a ban on sex change operations. The TPPR Act of 2018 provides the right to individuals that they can change their gender identity on the basis of “Self-perceived gender identity”. According to the report, more than 30,000 people have applied to NADRA to change their identity. The JI claimed that the TPPR Act of 2018 is contradictory with the hereditary Islamic principles. The TPPR Act of 2018 has been divided into three parts. The TPPR Act of 2018 can be approved after several amendment phases. According to Religious Scholars and parties, the law of Transgender provides legal protection for homosexuality in Pakistan. The TPPR Act of 2018 also protects LGBT Rights. Religious scholars claimed that there is a difference between the intersex and transgender people. According to Amnesty International Report, “Pakistan becomes the first Asian Country and one of the few in the world- to legally recognize the self-perceived gender identity”. The TPPR Act of 2018 allowed citizens to self-perceived identity gender identity and also banned discrimination in public places, workplaces, employment, public transport, hospitals, schools, and colleges. The TPPR Act of 2018 grants the right to self-perceived gender identity unconditionally.

### **Comparative Analysis of Transgender Rights and Legislation:**

The transgender community is present across the world. But this community is deprived of their basic rights. Argentina is the first country that enforced laws on transgender rights. In 2012, “the gender identity law making sex change surgery” was approved as a legal right. In 2000, the Council of Europe adopted a resolution. This resolution, calls on the member states to guarantee the rights of Transgender people. After four years, Denmark became the first European Country that allows people to apply for legal gender change. Denmark allowed

people to get new gender status. In 2006, Section 557 of the Affordable Care Act in the USA banned discrimination on gender identity. Germany also protected the rights of transgender people. In 1987, the Federal Social Court of Germany recognized the gender reassignment measure in the trans-sexuality case. In South Asian countries, Nepal, Bangladesh, Pakistan and India protect the rights of the transgender community. In 2003, Nepal recognized the rights of the Transgender community. In 2004 (India), in 2008 (Bangladesh) and in 2009 (Pakistan) provided protection for the rights of transgender people and the community.

The Transgender Rights Bill C-6 was enforced in 2017. The basic aim and purpose of Bill C-6 are to prevent and prohibit discrimination and violence against persons on the basis of gender identity and gender expression. Gender identity is defined as a person's sense of being a woman. Before the implementation of Bill

C-6, the transgender community of Canada faced marginalization, discrimination and societal prejudice as well as no legal protection was available to the transgender community. Bill C-6 amends the Canadian Human Rights Act 1985 and the Criminal Code 1985. The Canadian legislature also acknowledges that Trans and gender-diverse persons are marginalized and they face unique social challenges. But the Bill C-6 faced a huge level of criticism and has been controversial.

### **Petition in Federal Shariat Court “Hammad Hussain and others vs. Federation of Pakistan and others”:**

A petition challenging the Act was filed before the Federal Shariat Court of Pakistan to exercise judicial review according to the Quran and Sunnah. The petitioner claimed that the Act, while safeguarding the rights of transgender person, has provided a “legal cover” to homosexuality by differentiating between “sex” and “gender”. The judges of the Court considered this argument and decided in verdict that the Islamic teachings are based on biological identity/sex but the Act provided self or social construction of the gender of person. The Court also acknowledged that the third gender is used of “intersex persons” under Islamic law. It further held that the gender identity of transgenders, which is rooted in their self-perception and innermost feelings, is not recognized under Islamic law. They also elaborated that it leads to potential infringements and vulnerability of the rights of women due to the presence of biological males within religiously and socially secluded spaces of women. This also judgment contributes to contemporary debates surrounding law and gender, particularly in

the context of South Asia. Protection of socially marginalized communities like intersex or khunsa etc. are also discussed in the court. The Federal Shariat Court emphasized that Islam recognizes the legal status of intersex persons and affirms that State has to take affirmative actions to support intersex individuals. The Court further centered the talk to provide all fundamental rights guaranteed by the Constitution of Pakistan to the intersex people as they are most vulnerable community of the country. However, The Federal Shariat court has struck down provisions of the Transgender Persons Act of 2018.

### **The Khunsa Persons (Protection of Rights) Act of 2023**

In back drop of the legislative furor against the act of 2018, six amendment bills were submitted to the Senate Standing Committee on 4<sup>th</sup> April of 2023. These bills were consolidated with the name as the Khunsa Persons (Protection of Rights) Bill of 2023 (“the Bill”) while aiming to attain “consistency with the injunctions of Islam.” This bill was introduced in the Senate of Pakistan to protect the rights of khunsa (intersex people), while the Federal Shariat Court was deliberating on the petitions filed in the court against the Act of 2018. This bill proposed to replace the “self-perceived gender identity” with a term “Gender Re-assignment Medical Board” for the registration of a transgender person as a male or female and to make NIC. The Bill replaced the word Transgender with intersex (Khunsa) and recognized only certain intersex characteristics that can be divided into the binary of male or female. It also criminalizes gender-affirming healthcare, with a five-year jail term or a fine of PKR 5,00,00, or both, for medical professionals. However, the bill has not been properly passed by the parliament. Hence, the fate of the bill remains uncertain as it does not have the support of most political parties. The judgment of the Federal Shariat Court has triggered a crucial debate regarding the balancing of gender rights as well as interpretational authority of Islam within the constitutional structure of the Islamic republic of Pakistan.

### **Conclusion**

Hence, it is concluded that the TPPR Act of 2018 is vague and ambiguous. The term transgender is a broad term and it has been divided into many categories i.e., Trans female, Trans male, intersex Trans etc. further, some provisions of the Act are also not clear. The Act also not prohibited castration and unnecessary medical procedures performed on people. Article 227 of the Constitution of Pakistan provides a provision regarding the annulment of any provision which contradicts with the injunctions of Islam. While, the act has many provisions

which are clearly in contradiction to the Islamic Law. It shows that while drafting the Act of 208, clear thought was not provided towards Injunctions of Islam. The Act of 208 is declared the most progressive gender recognition law not only in Asia but also globally (International Commission of Jurists). Moreover, Federal Shariat Court also struck down the provisions of TPPA of 208 as they are repugnant to Islam and asked to protect the rights of intersex while elaborating the obligation of the State to protect the vulnerable class of intersex and woman in the society. However, bill with the name of the Khunsa Persons (Protection of Rights) Bill of 2023 has been presented in the Senate of Pakistan and the same has been passed by the committee on 4<sup>th</sup> March of 2023. The bill is still to be passed properly by the parliament.

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National Legal Services Authority vs. Union of India, 204 INSC 275. Article 4, 5, 6, 9(), 2 were specifically discussed by the court.

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Section 4, The Transgender Persons (Protection of Rights) Act of 2018.

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Section 6, The Transgender Persons (Protection of Rights) Act of 2018.

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