

TRANSGENDER RIGHTS AT AN IMPASSE - CONVERGENCE OF PAKISTANI JURISPRUDENCE, RELIGIOUS DOGMA, AND THE EXECUTION OF TRANSGENDER PERSONS ACT, 2018

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Abstract:

This research article discusses the issues that trans people in Pakistan go through. It argues with the Transgender Persons (Protection of Rights) Act, 2018, and discusses its mechanisms focusing on Sharia law, the Pakistani constitution, and social perception. They are the extremely sensitive topics of the discussion: the contradictory possibility of the issuing of "X" gender identity cards, the ignoring of the right to marriage, and the problematic issue of inheritance rights of Transgender.

Therefore, according to this study, the "X" gender classification goes against the Islamic teachings of Shariah law, fuels marginalization, and leads to a lot of confusion within legal issues including in marriage and inheritance. It focuses on the cultural and religious interferences that have hampered the enforcement of the Act, the legal reforms concerning Islamic Shari'ah, and the respect of basic human rights.

This research which is based on socio-legal analysis alongside a doctrinal approach has compared the practices across the globe with the suggested mode of implementing the contemporary human rights norms which are innovative from the Islamic law and provision of recommendations as to how to move closer to it. Some of them include; the removal of the "X" gender identity card, clear provisions for marriage under Islamic law, improved punitive measures on families that disown their transgender children, and most importantly public awareness campaigns to promote change.

Keywords: Transgender, Inheritance, Marriage, X-Card, Transgender Persons (Protection of Rights) Act, 2018

INTRODUCTION:

The word 'trans' is largely a Latin word, the meaning of which is 'across, beyond, or on another side'. The word 'gender' is an extension of the Latin term 'genus', a term that can mean 'sort' or 'class'. According to the available data, the term 'transgender' was coined by a Psychiatrist John F. Oliven of Columbia University in his book 'Transgenderism = Transsexualism. Sexual Hygiene and Pathology' in 1965.ⁱ Those individuals, with attributes that cannot be placed either as male or female are known as 'Khuntha', or 'intersex'. The phenomenon has been known both to medical science and Islamic culture for which it has been offered a framework based on mercy, justice, and the law.ⁱⁱ

Intersex is a physiological state characterized by the presence of discrepancies relative to conventional androgen or estrogen-associated anatomical sex. This condition differs from transsexuality, in that it is rooted in anatomical and physiological markers at or near the time of birth, rather than the individual's gender identity.ⁱⁱⁱ

Culturally, the intersexed are known to exist in the Islamic world since early ages and certain rules recommended for their reintegration into society have been given based on Sharia laws. Although



the legal status of intersex people was defined in Islamic jurisprudence, society treats intersex people as outcasts, paying no attention to them or giving no legal status. Most suffer social rejection or literal banishment because of ignorance and cultural practices that go against such commands of the Quran that instruct to keep human beings' dignity. Allah says in the Qur'an in Surah Al-Isra, Chapter 17, Verse 70:

"Indeed, We have dignified the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures."^{iv}

Some people posit that by identifying people as "X" it erases them from the Islamic binary gender system of male and female. Male and female genders are recognized in Islam and endowed with distinct regulations; hermaphrodites (*khuntha*) are also known). For example, critics have said that the 'X' gender categorization brings confusion against clear teachings of religion in a way. It is true that the production of "X" gender identity cards which I have outlined above now seeks to empower those who are grievously in need of such services but it unfortunately exposes the transgender persons to social. The opponents continue the message that classification at best puts them apart from the rest of society, maintaining the culture of their otherness and not guaranteeing them equality. The "X" category might entangle certain issues regarding inheritance, marriage, and every other right that a third gender might have since the Shari'ah or Islamic law only allows for man and woman. There is a possibility that the categorization makes such individuals more isolated because their societal role is not well assimilated into social standards. Sex change certificates are official documents that officially recognize the members of the transsexual community, and include them in censuses and legislation. Outcomes resulting from recognition include: privileges and rights which may include the benefits of special welfare state programs and special safeguards of the law.^v

Although the "X" category has been criticized; however, it has opened up new discussions, extended legal changes, and created an increased awareness of gender identity. In as much as the issuance of "X" gender identity cards may be a noble effort aimed at granting the LGBT community and others like-minded the opportunity to be included within the various state legal systems, this area requires heightened attention to be paid to the need to consult with legal, religious and other human rights professionals before arriving at new policies and laws which meet both cultural and ontological sensibilities of people. The approach corresponds to the international human rights promoting the recognition and legally sanctioned rights of non-binary and trans persons.^{vi}

The objective of this research is to clarify the problems faced by transgender persons and to put suggestions before the legislature and the government as they are citizens of Pakistan and Article 25 of the Constitution^{vii} of Pakistan deals with equality. According to Islam, there can only be male or female but X gender is a non-binary gender, and provisions of Transgender Persons (Protection of Rights) Act, 2018 are against the injunctions of Islam and the Constitution of the Islamic Republic of Pakistan.^{viii}

LITERATURE REVIEW:

Transgender consideration through history brings out facts and issues relating to socially acceptable behaviors, culture, and the law at different times and societies. Transgender identities have been found in historical cultures and for ages, they have had spanning functions. Sumerian priests of the goddess Inanna were effeminate or transsexual.^{ix} the Hijra, a third gender, is stipulated in the Mahabharata^x and belongs to Indian tradition.^{xi} In many Native American tribes, Two-Spirit people were respected as gender and physical-spiritual dimensions intermediaries.^{xii} In Medieval Europe people, particularly the medieval society, had a few misconceptions and lacked proper acceptance of the Transgender community. Although most Islamic societies these days strictly regulate female and male conduct, some of them accept individuals of the intersex or gender-variant category. When the new nation-states were forming, there was widespread and persistent prejudice against those now identified as transgender. Legal codes progressively an etiological features of sex diversity.^{xiii} Nevertheless, the females and males cross-dressed for safety or to dodge societal restrictions (for instance, women dressing like men to enrol in the military force).^{xiv} Female



domination was and is still evident in the social-cultural aspects, especially in South Asia and Africa where European imperialists superimposed a dual gender system where male and female are distinctly defined unlike in the past when people embraced the crisis of gender. While in the early 20th century gender became institutionalized, in the second half of the same century first steps toward trans activism were made. In Western medical systems, the identities were a pathology that led to the stigmatization of transgender people. However, it also led to the opportunities for the medical transition process. The first gender-affirming surgeries were carried out in the 1910s by a German sexologist by the name of Magnus Hirschfeld. It is missed that in 1950 he became the first American who received pop-media attention to sex reassignment surgery. The protests involving the transgender community happened in the 1966 Compton's Cafeteria Riot and the 1969 Stonewall Riots. Legal change in the second half of the twentieth century and increasing social tolerance. Sweden was the first country in the world to legalize sex change in 1979.^{xv} The Guidelines for Care Principles were established in 2010.^{xvi} Educational awareness or outreach improved through media, literature, and arts, and overall public awareness was developed apace. Despite the progress made, there are still obstacles to face. But some countries today have identified non-binary gender (for example, 'X' as markers on ID cards). Issues of transgender military service and/or access to health care have been extremely contentious. Social acceptance differs at large; they face discrimination, and violence and are denied their rights. Transgender rights history shows examples of social exclusion and of combating that exclusion. It is within this framework this journey can be understood as necessary for building societies that embrace all the must recognize the density and identity of people.^{xvii}

The rights of inheritance of transgender persons have been an issue of debate in the fields of Islamic and legal perspectives because of the balancing of classic stances of Sharia law with modern legislative trends^{xviii}. In Islam, inheritance is based on the principles deduced in the Qur'an (primarily in Surah al-Nisa; as elaborated in Hadith and the Islamic jurisprudence or Fiqh)^{xix}. The shares in Islamic inheritance are divided according to the gender of heirs. A male is entitled to double the share of a female according to the Qawwamah or the principle which ascribes to males the obligation to discharge the family's financial liabilities. The rights which a transgender individual may have about inheritance may depend on their biological sex (or in the case of an intersex individual, on their sanitary and medical sex) and on their capacity to perform societal roles hitherto assigned to males or females.^{xx} If a transgender person is deemed "Khunsa" (intersex) by Islamic scholars: Khunsa Mushkil: In case of ambiguous gender traits will be treated on a case-by-case basis to determine which physical traits (male or female) dominate and inheritance share. Most of the time evidence from physical and physiological characteristics is used to make the determination^{xxi}. The inheritance of wealth is determined in Sunni Muslim schools of thought (such as Hanafi, Shafi'i, Maliki, and Hanbali) based on biological sex. This may result in shares being withheld until an unfettering of ambiguity occurs, which typically involves medical or scholarly examination. There was much debate regarding the issue of inheritance rights for the transgender person which is covered under the Transgender Persons (Protection of Rights) Act, 2018. Under the Act, individuals can declare their gender as male, female, or a combination of the two on official documents, such as identity cards^{xxii}. This recognition plays a role in inheritance as indicated gender on documents could determine the share under Pakistani inheritance laws. According to many others, especially those who believe in constitutionally upheld Islamic principles in Pakistan, self-identification doesn't match Islamic principles and creates inconsistencies.

Article 227 of the Constitution^{xxiii} can be invoked by the judiciary when the affairs are discussed to check if that law is touching the community as the laws should be according to sharia. This is legally acceptable but not according to Islamic teachings, as it creates the possibility of ambiguity in the Sharia cases of inheritance between male and female siblings after someone's death, they say. Modern laws are about gender equality however, Islamic inheritance sees equity in terms of roles and responsibilities and that is why there are different interpretations of what constitutes justice. For inheritance cases that involve transgender persons, statutory law (based on the 2018 Act) overlaps Sharia law and this gives rise to ambiguity as no uniform precedent yet exists.



Right to Marriage in Islam and its Impossibility under the "X" Gender Identity Card

Islamic law generally defines marriage as a union between a man and a woman, where both roles are prescribed: In this traditional society, the man is the breadwinner, and the woman is the bearer of children and is responsible for the household's upbringing. The above gender-specific roles are anchored on a belief in the existence of a dichotomy of male and female, implying that they have different roles to play in family and social relations.

But in the case of intersex people, the individuals with genitals that do not correspond to male or female Islamic jurisprudence have problems here, as the gender system is binaries in Islam. In general, all Islamic scholars concur that such distribution or differentiation must be related to biological or anatomical sexual characteristics to ensure legal and social functions, including marriage. Islamic law permits marriage for all adults, regardless of their gender identity or biological sex, as long as they can fulfil the natural responsibilities of marriage: reproduction, fellowship, and help in sickness. The major problem facing intersex people in Islam is a matter of definition: what constitutes one's gender? The foundation on which Islamic law transacts marital relations is the division of people into two groups; male and female. When it came to intersex people, scholars in Islamic law would usually endeavour to establish their gender attribution by physical appearance. Islamic jurists mostly support a test to find out whether one is closer to the male or female type in terms of body structure, testis/ovaries, chromosomes or hormonal balance at least those of X and Y.^{xxiv} Depending on the medical findings, one may be given a male or female status, and depending on that status, he or she would be allowed or denied marriage. However, if for the reasons given above the intersex person is considered a man, then he would be free to marry a woman since Islamic law only allows male-female marriage. If that individual was classified as female, then the law would also allow him or her to marry a male. Because gender identity in Islamic Jurisprudence is associated with the sex characteristics of the body more or less by referring to genitalia and other related anatomical and Cromwell characteristics; intersexual have their gender assigned to them by Islamic jurists or doctors.

The male gender and female gender are the only ones known in Islam as these are naturally created by the Almighty God. Surah Al-Hujurat (49:13) is to testify that Allah made the two, male and female human beings for recognition and mutual relationship. Acknowledging another gender for things like marriage brings ethical and theological crisis that erases this binary structure. Verse 13 of Chapter 49 states:

"O humanity! Indeed, We created you from a male and a female."^{xxv}

The marriage rights of intersex people are comprehensively and, in a manner, considerate in Islamic jurists' law as elucidated in Shami Fatawa known as Radd al-Muhtar.^{xxvi} In essence, this text provides clear and distinct categorization of Khuntha Mushkil (ambiguous intersex persons) in relationship to physical characteristics. These rules help in determining whether such people can get married and if so, under what circumstances; The regulation of marriage in Islamic law as a pivot between religion and persons' rights.

Still, it should be noted that a Khuntha Ghair Mushkil is an unambiguous intersexual person—having both male and female organs but predominantly male organs—presumably can be considered male according to Sharia. If they show signs tied to dominance typical of males (e.g., urinating through the male genital, growing a beard, making love to women, or having male pattern wet dreams), they are male and are allowed to marry a lady.

On the other hand, if they are having genitals associated with a female (they urinate like a female, have developed breasts or have a period) they can marry a man. Based on these grounds, opposite gender transgender individuals (Khuntha Ghair Mushkil) may also marry each other. In the case of individuals who urinate from both organs, it will depend on which of the two opens first to release the urine. If both organs urinate concurrently, a resolution will be made on the basis of the organ which is producing more urine. However, if the urine is passed from both organs in equal proportion or there has been no identifiable cause, such a person will be identified as a Khuntha Mushkil or an ambiguous intersex person. In this scenario, Such an individual cannot marry either a male or the female. Marriage between two Khuntha Mushkil is unlawful. This is detailed in the Fatawa Shami:



The determination of sex is necessary in marriage. In case of Khuntha Mushkil - no marriage with a male or female is permissible, is valid.^{xxvii}

X-gender marriage under civil law contradicts the principles of Islamic marriage because it doesn't create a legal and mutually satisfactory heterosexual partnership. It remains possible for the unions to create prohibited relationships, for instance, same-sex marriages disguised under unions involving ambiguous genders.^{xxviii} One of these objectives is the lawful bearing and rearing of children. X-gender raises social issues on matters such as parental responsibilities, custody rights for children and lineage critical in Islamic law of marriage and divorce.

Transgender Persons (Protection of Rights) Act, 2018

The Transgender Persons (Protection of Rights) Act 2018 is legislation adopted by Pakistan to protect the rights of Trans. The Transgender Persons (Protection of Rights) Act 2018 is a significant law of Pakistan for the Protection, identification as well as integration of Transgender persons.^{xxix} The first one enshrines key individual freedoms, the second one 'bans' discrimination and the third one responds to problems that TS people experience in various domains of existence. The Act provides a broad definition of transgender individuals, including Persons with intersex characteristics (having both male and female genitalia).^{xxx}

The Act also covers the rights of Transgender persons in the aspect of Islamic inheritance laws. Inheritance rights are recognized by the Act but the framework for organizing shares does not clarify the situation for transsexualities which do not fall into the male-female binary.

The Act does not focus on the core social prejudices and discrimination since it is built on a progressive approach. Families particularly send back their trans individuals with what they fear most, rejection, and the left-out rightful inheritance due to religious or cultural beliefs. A strong legal framework for the protection of inheritance rights is lacking and implementation mechanisms for enforcement of these rights are grossly inadequate such that they will only access justice through lengthy and therefore expensive court proceedings. The Act grants transgender persons equal rights of inheritance as any other citizen of Pakistan but fails to explain how their shares will be calculated in the light of Shariat. Courts generally rely on Sharia stunning standards, which is contrary to the Act's more extensive provisions. There is a general deficiency of training for many judges, lawyers and enforcement officials concerning the Act. This entails that the law will be misinterpreted thus leading to biased decision making and delay in justice. A trans person suffers from rooted cultural prejudices; more so if he or she comes from a rural area or lives in a traditional society. This limits their capacity to challenge rights as provided for under the Act as well.^{xxxi}

Social and Religious Challenges

The 'Transgender Persons (Protection of Rights) Act, 2018'. Nonetheless, it faces major challenges from social stigmas and religious objections that form a basis for opposing or misunderstanding the provisions of the act. Transgender persons who were previously referred to as Khawaja Siras are still discriminated against; especially in rural and orthodox regions. People harshly punish them, and society rejects them and does not allow them to find a job, rent an apartment, or get an education.^{xxxii} Transgender people experience daily tantrums in public domains or areas, hence they feel the arts of disregarding their dignity to seek justice/human rights courts or any other legal or social aid. Families owing to cultural beliefs dump the transgender individuals and become financially dependent on other related but non-related structures within the transgender sector. Overall population especially police, employers, teachers, etc are often not aware of, what, rights transgender individuals have and what is protected under the law. There is hardly any public debate that encompasses the question of the rights and density of Transgender persons which in turn leads to ignorance and stereotypes. As we know it, schools and employers provide little to no protection and provide little to no support for minorities. Society restricts many people in this category from conducting their lives in such economic activities as begging or dancing thus perpetuating vices in society. Physical and Sexual Violence, Transgender persons are at especially high risk of being targeted by violence, including hate crimes. Police may not investigate such incidents or participate in them. While the Islamic jurisprudence recognizes the third gender



category called Kuntha, society has no or little regard for Transgender who have different gender identities not equal to their biological gender. Based on religion, people mostly argue that the appropriate religious order is interfered with by allowing those, who are more than one gender, to assume the most desirable gender in Islamic laws, especially those regarding marriage and inheritance. Transgender issues also continue to be criticized about marriage and Nikah, which is an Islamic marriage because religious leaders are always concerned about the identification of the male partner and the female partner. Transgender protections are particularly viewed by religious leaders and conservative communities as Gay-Transgender equals Western-imposed decadence or degeneration which continues to fuel the societal stigma against the transgender population. Unfortunately, the government failed to consult Islamic scholars in the formulation of the Act thus eliciting major resistance and loss of their trust from religious camps. Gender inequality increases their risks of being insecure economically, getting sick, and being violent. Society and religious organizations hinder the execution of legal rights belonging to transgender persons.

Around the world, nations such as Argentina and Norway promote liberal ideologies, and the idea of identity without legal or medical intervention.^{xxxiii} Some of these countries like Canada and South Africa fully enforce anti-discrimination laws on employment in education and healthcare through the support of society. On the other hand, Pakistan had structural issues, which hampers any efficient implementation of such provisions stated in the aforesaid 2018 Act. Likewise, inheritance regarding the issue of gender identity is uniform across most countries including the UK, but here in Pakistan, the conflict of Islamic laws creates an issue, and the rights provided under the law and the actual interpretation of the law are two different things. Marriage rights, also, are indicative of progress in other parts of the world where gender identity marriage is acknowledged. As far as "X" gender identity cards have been issued in Pakistan, marriage rights have become un-realizable under the Islamic laws that keep the gender system enduring in a male and female model only. Besides, countries which are more progressive than Pakistan, like New Zealand and Sweden, enforce the law through training of enforcement agencies, awareness programs and public policies all of which are sorely lacking in Pakistan. However, cultural taboos as well as religious discussions cause limitations that weaken the purpose of the legislation established by the 2018 Act.

In countries like KSA and Malaysia, the laws governing inheritance still follow the Islamic law of sharia where the shares are divided according to the sex that was ascribed at birth. In these countries, the existence of transgender people is not recognized and those who do transition are likely to be discriminated against or receive unfair treatment when it comes to wills and succession. Like in Egypt, inheritance distribution equality is linked to the birth gender with no law legalizing the rights of transsexuals though the courts consider the gender transition. On the other hand, Iran permits gender-affirming surgery after receiving approval from religious edicts or fatwa and provides a law that acknowledges persons' transformation. In Pakistan initially, The Transgender Persons (Protection of Rights) Act, of 2018 was supposed to ensure inheritance rights according to their opted gender identity.

Percentages vary in non-Muslim countries for gender identity and inheritance is given in a progressive legal and human rights status. Today, the methodologies of identity recognition in many countries are based upon self-identification, providing transgender people with equal rights, including inheritance rights.^{xxxiv}

Judicial Response to Transgender Rights in Pakistan:

Transgender and their rights have received some justice from Pakistan's judicial system but there has been both progress and some serious declines. First, the Transgender Persons (Protection of Rights) Act, of 2018 was a progressive endeavour to legislate for the inclusion of transgendered people to provide them inheritance, employment and health care rights.^{xxxv} However, the practical application of these provisions has not been all that smooth, since cultural and societal barriers have mired the application of the law in a lot of uncertainty. Although the Supreme Court of Pakistan has made several progressive decisions for the latter group. In 2012 Supreme Court also pronounced a landmark judgment about the right of equality for Transgender people in Pakistan same as enshrined in the Pakistani Constitution and the need for social acceptance and legal



protection for Transgender people. Additionally, social justice was given by the granting of gender-mainstreamed education, health, and the recognition of an officially recognized identified gender through ID cards, all ordered by the court for the government, to protect the rights of transgender under the law.^{xxxvi} These rulings show that the judiciary accepts the inherent rights of the transgender though the fate of their cases depends on religious and societal perceptions that may influence the belief of the judiciary.

In the year, 2017, the court made another decision on citizenship and the right to vote for the needy the representatives of the transgender people significantly contributed to the enhancement of the transgender people in the public and political fields of the country^{xxxvii}. The judgment contended that transgender people cannot be barred and should have the right a vote to enable them to play an integral part in the voting process, which added to their legal citizenship in Pakistan. However, transgender persons' right to these facilities is still restricted because of systematic and social barriers. However, only one of these aspects can be seen as a success, the full enforcement of the judgements remains a matter of concern. The legal rights that have been given to Transgender persons in Pakistan remain ill-afforded by society primarily owing to cultural and institutional negligence, and insufficient public education and enlightenment. Unfortunately, the more advanced these judicial decisions are, the more vulnerable the rights of the transgendered people remain due to the lack of effective institutional frameworks for enforcing these decisions. Furthermore, the court's decision in the Citizenship case and the Right to Vote for Transgender Persons in 2017 established certain rights of transnational people in public and political domains such judgment stated that transgender people cannot be further discriminated against and they have the same right to vote and also get involved in the electoral process as anyone else, this contributed to the legal integration of trans people in Pakistan. Still, these rights remain difficult for transgender persons to exercise because of existing systems and social barriers. Nonetheless, the main concern remains the practical enforcement of judicial decisions in question. The Pakistani transgender population struggles with determining their rights by legal structures afforded to them because of the cultural and Islamic backlash, failure within the legal system and judicial branch, and gross lack of education about their existence and understanding of their struggles.^{xxxviii}

Overview of X-Gender Designation in Pakistani Law

The recent classification of the third gender identity through the dawn of 'X' in a country like Pakistan through (Transgender Persons (Protection of Rights) Act, 2018) signifies a changing concept of gender which was not induced in the Shariah law system with a dual division of male and female.^{xxxix} As it was mentioned before the "X" category helps people state their gender besides male or female which cause a conflict with the Islamic legal framework where marriage is allowed only between man and woman.

However, an intersex person, who is deemed male or female in the medical context under Shariah law, can be married however; those deemed "X" under the modern gender system have a paradox. This is a problem because this third gender is not acknowledged within Islamic law, and thus they cannot marry another person because the union between an "X" gendered person and another person contradicts the Islamic teachings regarding marriage between male and female only.^{xl}

Throughout Islamic jurisprudence, male and female are the only identified categories of gender, and men and women have specific functions and rights which are described in the Quran and Hadith. This is a binary structure which forms the basis of Islamic social, legal, and familial structure including the laws of inheritance and marriage. In Islamic law, people with ambiguous biology (khuntha), are recognized and specific Jurists such as Imam Abu Hanifa have given specific rulings to determine the gender of khuntha either by dominance of male or female signs. Nevertheless, the omission of distinct genders and genders in the worldwide self-identification movement has created problems for Muslim countries' understanding of these spheres.^{xli}

Transgender Persons and Inheritance Rights

Islamic inheritance system is one of the most specific legal systems that stem from the revelations of the Quran and proclamations of the Prophet Sunna. Such principles include justice ('adl) and fair



sharing according to roles to be taken by male or female members in a family. Surah An-Nisa (4:11-12)^{xlii} prescriptions of parts of men's and women's heirs, which rewards the male heir with twice the portion of the female heir reflecting the cultural and customary responsibilities of the male heir economically in a home. These rulings are rigid and are seen as being from the spiritual realm, therefore begrudging very little leeway for arbitration by the scholars or by the jurists.^{xliii} But Islamic jurisprudence also recognizes khuntha mushkil (intersex where sex cannot be identified) for whom there are specific rules in detail on the division of inheritance.^{xliv} Gender identification bears enormous responsibility when it comes to defining one as an heir, and any confusion challenges the proper implementation of the Quran's laws.^{xlv}

Although the Transgender Persons (Protection of Rights) Act 2018 provides legal rights for the proper inheritance of land by Transgender persons, the implementation of these sections is very weak. Families often cut transgender individuals out of their rightful inheritance claim, stating that the identities are against the law and religious beliefs^{xlvi}. This situation is made worse by the stigma that comes with being a transsexual, most families then expel the transsexuals and since they cannot afford a lawyer therefore they do not seek justice. However, the identification marked with the "X" gender makes it even more difficult. This category does not fit current Islamic laws of inheritance since, for determining shares accurately, a subject must be classified into one of the two categories. Since there is doubtfulness about whether non-binary persons qualify as male, female or khuntha to warrant the application of the Quranic laws, this creates a lot of latitude for courts when trying to bless an inheritance.

The primary argument is based on the fact of recognition of self-identified gender. A claim of self-identification cannot negate biological characteristics deemed relevant in Islam especially due to the rationing of share proportions depending on gender.

RECOMMENDATIONS:

In Pakistan, the fight for Transgender rights' is still a challenging but important mission. Though passing the Transgender Persons (Protection of Rights) Act, of 2018, was historic in terms of celebrating and protecting the rights of the members of the trans gender, the Act itself cannot provide a broader understanding of socio-legal issues related to gender identity within a predominantly Islamic country. To ensure the holistic integration of transgender individuals into Pakistani society while respecting religious and cultural norms, the following reforms and measures are proposed:

1. Removal of the "X" Gender Identity Card: This sort of gender identity card with the "X" mark should be done away with as well because it is un-Islamic and opens up loopholes in Islamic laws and even in other civil legal areas such as marriage, inheritance among others. In its place, there ought to be a laid down set of guidelines in defining gender involving the medical and/or religious profession and process. This would also give societal acknowledgement to tranny's and make him or her easily be classified either as male or female.
2. Integration of Marriage Rights: These laws should be included in the act with clauses of marriage even though it means being very blunt with the guidelines set in conformity with the Islamic teachings. Later the use of gender determination for marriage purposes should be done by the doctor and religious leaders to classify someone as male or female. It would enable the trans people option to have a right to marry by Islamic law and thus decrease the discrimination rate hence enhancing social order.
3. Strengthened Penalties in Cases of Rejection of Transgender Kids: The law should toughen the consequences for such families, who decide to turn their backs on their Transgender children. This is why society campaigns should expound on the ethical and legal obligations that families should uphold for the trans genders' support. Also, welfare programs should be developed to support financially and emotionally the transgender persons who suffer from familial rejection.
4. Mass sensitisation of the Society on the rights of Transgender persons as enshrined under the constitution and Islamic teachings should be initiated across the country. Islamic thinkers, media,



educators, and policymakers should join forces to fight stereotypes and prejudice. Schools should incorporate tolerance through gender diversity modules for the coming generations.

5. Specific educational activities should be provided for Law enforcing agencies, judges and other state authorities that will facilitate the best and non-discriminatory implementation of the Act.

6. Changes to Clear the Confusions in Inheritance Laws: Such an expert committee involving doctors, Islamic scholars, and legal practitioners can assist in defining the rights of the transgender.

7. Economic Empowerment Programs: Instead of forcing those transgendered people into begging or dancing, the government should subsidize vocational training and employment programs for those people.

8. Rebuilding this relationship and making it stronger is one of the aspirations of this paper: Therefore when legislation is being done to ensure that the issues with transgender persons are addressed, the government should consider consultation with the Scholars. Certainly fatwas on the rights of transgender persons in society and by Islamic law will assist in changing the perception most especially from the religious side.

Conclusion:

Transgender protection and integration into society are still important in the country not only from the legal perspective but even from the social one as well. Therefore, the Transgender Persons (Protection of Rights) Act 2018 must be developed to fill gaps, in Islamic integration and be sensitive to the rights of transgender persons. With the change in the gender identity card system, the inclusion of marriage rights, stiffening penalties for disowning transbaby, and better enforcement mechanisms, it is possible for Pakistan to become a society more tolerant towards cultural and religious norms and rights of all citizens regarding the basic law of the land.

This shall be a balance achievable by the joint endeavour from the legislative arm of government, Islamic scholars, human rights activists and society in general. Thus, Pakistan should continue to let the communities fight for their rights and protect one of the most vulnerable groups that was on the border between tradition and progress.

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