



DigitalRightsFoundation  
"KNOW YOUR RIGHTS"

# **Exploring Jurisprudence on Transgender Rights: A Comparative Study on Modern Islamic Frameworks, Equality, Privacy Rights and Gender-Based Violence**

July 17, 2023

## **About Us**

The Digital Rights Foundation ("DRF") is a non-governmental Organization established in 2013, working on the intersection of human rights with technology, focusing on freedom of expression, the right to privacy, and protections against online gender-based violence.

## INDEX

<b>Summary of 2023 FSC Judgement:</b> .....	2
Points to be determined.....	2
SYNOPSIS OF JUDGMENT.....	9
<b>Exploring Jurisprudence on Transgender Rights: A Comparative Study on Modern Islamic Frameworks, Equality, Right to Privacy and Gender-Based Violence.....</b>	<b>10</b>
1. Modern Islamic Jurisprudence.....	11
A. Fatwa of Ruhollah Khomeini, issued in 1987.....	11
B. Fatwa of Sheikh Al-Tantawi, issued on 8 June 1988.....	14
Legal Implications of the Fatwas and SRS Procedures.....	17
2. Article 25: Equality of Citizens.....	20
3. Right to Privacy in Pakistan: A Gender Perspective.....	22
Evolution of Right to Privacy:.....	22
Pakistan’s Right to Privacy and International Commitments.....	27
4. Legal protections for marginalized communities:.....	29
<b>Conclusion:</b> .....	<b>32</b>

**SUMMARY:**

**Hammad Hussain, and others**  
**versus**  
**Federation of Pakistan, and others<sup>1</sup>**

**Federal Shariat Court**

**DATED: 19.05.2023**

- The authoring judge, Dr. Syed Muhammad Anwer, decided on all 12 Shariat Petitions through a single judgment.
- The petitioners challenged various sections of the Transgender Persons (Protection of Rights) Act, 2018 [hereinafter referred as “Impugned Act”], provisions of the Transgender Persons (Protection of Rights) Rules, 2020 and National Database and Regulation 13(1) of the Registration Authority (Application for National Identity Card) Regulation, 2002.
- **Caveat:** This section summarizes the judgement of the Federal Shariat Court and does not reflect the opinions of the Digital Rights Foundation.

**Points to be determined**

**Point 1: Whether the five terms Intersex (Khusra), Eunuch, Transgender Man, Transgender Woman, and KhawajaSira, which are included in the definition of “transgender person” in Section 2(n) of the impugned Act are identical and similar, hence they are included in the definition of one term or are they different?**

- Section 2(n) of the Impugned Act defines five terms under one umbrella: 'transgender person.'

---

<sup>1</sup> SHARIAT PETITION NOs.5 & 6 OF 2020, SHARIAT PETITION NOs.5 & 6 OF 2021, SHARIAT PETITION NOs.2, 3, 6, 7, 14, 18 & 20 OF 2022, SHARIAT PETITION NO.1 OF 2023.

- **Difference between “Intersex” and “Transgender Person”**

- The judgment states that the term ‘transgender person’ as defined in the Impugned Act, is flawed because it associates the gender identity of intersex individuals with the sex assigned to them at birth. On the other hand, ‘transgender’ describes individuals whose internal sense of being male or female does not align with the sex they were assigned at birth.
- The judgement cites Amnesty International to explain that “Being intersex has nothing to do with being transgender.” (pg. 67)
- The judgment also relied on Oxford University’s ‘Glossary of Trans and Intersex terms’ for the terms “transgender” and “intersex”:
  - “Intersex - A term used for a variety of conditions in which a person is born with reproductive or sexual anatomy that doesn’t fit the typical definitions of female or male. Intersex people are born with physical, hormonal or genetic features that are neither wholly female nor wholly male, or are a combination of female and male.”
  - “Transgender or trans — [adjective] Used as an umbrella term for people whose gender identity differs from what is typically associated with the sex they were assigned at birth.”
- It also states that it is a mistaken belief that the word ‘Transgender’ is an English translation of the Urdu word Khusra (خسرہ), this is not the case. The English word for Khusra is ‘intersex’ as mentioned in section 2(n)(i) of the law.
- The judgment also extrapolates that Islam is a pro-life religion, promotes the protection and promotion of:
  - life or Hifz al-nafs (حفظ النفس)
  - progeny or Hifz al-Nasl (حفظ النسل)

- ⊙ It, thus, concludes that medical procedures for intersex individuals are “permissible”: “on the basis of these two principles of Shariah, the medical treatment of intersex persons to treat any physical and biological infirmity in the sexual organs and reproductive system of intersex persons is not only permissible but desirable under Shariah Law according to the Islamic injunctions” (pg. 70).

- **Difference between “Eunuch” and “Transgender Person”**

- Section 2(n)(ii) of the Impugned Law talks about a eunuch person, which includes a person assigned as “male” at birth who undergoes excision or castration. The judgment states that such persons are referred to in Arabic by the term Khassi (خصى), which is also used in Urdu in the same meaning, whereas in Urdu, the terms “Khawaja Sira”, and “Aakhta” are used for castrated male persons. (pg. 71)
- The judgment states that the term “Khawaja Sira” in the Impugned Act is a redundant term as it has the same meaning as “Eunuch.”
- It is stated that Islamic injunctions do recognize the existence of:
  - Intersex person [2(n)(i)]
  - Eunuch [2(n)(ii)] or KhawajaSira [2(n)(iii)]
- However, the judges state that Section 2(n)(iii) of the impugned Act (which defines transgender and khawajasira) is against the injunctions of Islam.

**Point 2: Whether sex or gender provides the basis for the gender identity of a person as male or female in the light of the injunctions of Islam as laid down in the Holy Quran and Sunnah?**

- **Difference between “sex” and “gender”**

- The judgment takes a binary conception of gender and sex. It cites Webster College Dictionary’s 2010 definition of “sex” as either the female or male division of a species, as differentiated with reference to reproductive functions. (pg. 76) It goes on to define the term “sex” as physical differences between male or female people. “The sex assigned to a person at birth based on physiological characteristics, including their genitalia and chromosome composition.” (pg. 78) The term “sex” is translated in Urdu as Jins (جنس).
- The definition of gender taken in the judgment was as per Law Dictionary: “Gender: The defined difference between men and women based on culturally and socially constructed mores, politics, and affairs. Time and location give rise to a variety of local definitions. Contrasts to what is defined as the biological sex of a living creature.” Term gender is translated in Urdu as sinf (صنف).
- However the judgment says that as per its Islamic interpretation, the defining factor for the classification of human beings is “sex”, not “gender”.
- It was found that if any person has any ‘defect’ or ‘deficiency’, Islam does not consider such a human being as a person of some other sex or gender. (pg. 84)
  - Islam clearly refers to such a person as a member of either of two sexes, i.e. male or female.
  - Other persons are referred to as Khunsa in Arabic (closely translated to an intersex person in English)

- o Commenting on gender corrective surgeries, “Islam does not allow the voluntary change of sex by any male or female, either by way of medical or hormonal, etc. intervention.” (pg. 85)
  - It relied on an ah-Hadith that a female person can act and behave like a male (Mutarajilat Min al-Nisa), and a male can act and behave like a female (Mukhanaseena min al-rejal); however, both are cursed by Allah. (para. 74, pg. 89)
- The court concluded, that the gender of a person should conform to the sex of that person.
- According to the interpretations of the Holy Quran and Sunnah of the Holy Prophet ﷺ relied on by the judgment, it was posited that the sex (جنس) of any person has precedence over the gender (صنف) of any person. Therefore, any law that gives gender precedence over sex is illegal and void.

**Point 3: Whether the terms ‘gender identity’ as defined in section 2(f) and the term ‘gender expression’ as defined in section 2(e) of the Impugned Act and as they are used in different provisions of the Impugned Act are in accordance with injunctions of the Quran and Sunnah or not?**

- The Impugned Act makes “gender” the basis of “gender identity” and permits any person to identify himself or herself in accordance to his or her innermost and individual sense as either “transgender man” or transgender woman” in accordance with section 3 (n) (iii) of the impugned Act. (pg. 90)
- Section 2(f) of the Impugned Act makes it possible for a person to be identified as “male, female or a blend of both or neither; that can correspond or not to the sex assigned at birth.”

- o Gender is often seen as a social construct that can vary based on various factors and can be influenced by an individual or their societal surroundings.
  - o On the other hand, sex is determined by physiological characteristics and is associated with physical and biological functions.
  - o However, the judgment finds that in Islam, gender should align with one's biological sex, rather than the other way around.
- As per the judgment, in Islam, a person's self-perception that conflicts with their biological sex does not determine their gender identity. Instead, gender identity is based solely on a person's biological sex.
- The judges relied on the inference that numerous practices in Islam are based on the phenomenon of "sex" and not the basis of the "self-perceived gender" of a person, examples of which are mentioned on pages 91 and 92:
  - o Division and distribution of inheritance shares are based on the basis of the sex of the legal heirs of a deceased.
  - o Section 7(2) of the impugned Act is against the injunctions of Islam, which states that:
 

**"The share of Transgender Persons shall be determined as per the gender declared on CNIC in accordance with the law of inheritance in Pakistan."**
- The petitioners felt that intersex and eunuch people were at a disadvantage because of the CNIC marked "X" which means that they are unable to perform Umrah and Hajj.
- Further, the judges felt that the fact that the Impugned Act grants the right to transgender persons to change their names and their gender



in CNIC issued by NADRA to "X" gender infringes upon the rights of intersex persons. (pg. 93)

- In view of the above, it was concluded that according to injunctions of Islam, the gender identity of a person cannot be based on innermost feelings or as per self-perception of a person, which is other than the biological sex of that person as stated in Section 2(f) of the impugned Law while defining the "gender identity". (pg. 98)
- Similarly, the gender identity of a person cannot be based only on the basis of his or her attire or outer look or a person presents his or her gender expression as stated in Section 2(e) of the impugned Law.

**Point 4: Whether Islam permits medical treatment for those persons who suffer from physical infirmity in their reproductive system or in sexual organs related to their sex etc.?**

- As mentioned above, the judges stated that Islam being a pro-life religion, promotes protection and promotion of both life and progeny; thereby, permitting the medical treatment of intersex persons for any physical and biological infirmity in the sexual organs and reproductive system. (pg. 69)
- It was held that any treatment shall "be carried out in accordance with the governing principle that the gender of a person must conform to the sex of a person." (pg. 101)
- Additionally, the judges found that Shariah forbids gender reassignment. It took gender reassignment to mean "the transformation of a male into a female, or the transformation of a female into a male". (pg. 98)

- As an extension of this conclusion, the FSC held that if any one of the spouses transforms into the opposite sex/gender, the other has the right to dissolve the marriage. (pg. 99)

### SYNOPSIS OF JUDGMENT

- The inclusion of five terms under Section 2(n) of the Impugned Act is a source of confusion and conflation.
- The terms Intersex, Eunuch, and Khawaja Sira refer to biological variations in sex characteristics of a person that do not fit into male or female classification, while ‘transgender man’ and ‘transgender woman’, refer to individuals whose self-perceived gender identity differs from the sex they were assigned at birth or from the sex they have biologically.
- Islam recognizes intersex persons and eunuchs/ KhawajaSira.
- “Transgender male” and “transgender female” is against Islamic injunctions.
- Section 3 of the impugned Act allows a person to get his or her “gender identity” changed from his or her biological sex is thus also against Islamic injunctions.
- Section 7 of the impugned Act which talks about the “Right of inheritance” of “transgender person” is also against the injunctions of Islam as laid down in the Holy Quran and Sunnah.
- The bench declared **Section 2(f), Section 2(n)(iii), Section 3, and Section 7** of the Impugned Act as against the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet ﷺ and will **cease to have any legal effect immediately.**

# **Exploring Jurisprudence on Transgender Rights: A Comparative Study on Modern Islamic Frameworks, Equality, Right to Privacy and Gender-Based Violence**

*“Dignity means human worth: simply put, every person matters. No life is dispensable, disposable or demeanable. Every person has the right to live, and the right to live means right to live with dignity. A person should live as “person” and no less.”<sup>2</sup>*

The concept of dignity is central to the idea of human rights. It implies that every person has inherent worth and deserves respect, recognition, and protection from harm. However, dignity is often violated or denied for certain groups of people who are marginalized, discriminated against, or persecuted because of their identity, or expression. One such group is the transgender community, who face multiple challenges and barriers in accessing their rights and living with dignity.

Based on Digital Rights Foundation’s research and legal analysis, it is argued that the Impugned Act was passed solely to protect the rights of transgender persons and is silent on the issue of homosexuality and same-sex marriages, which are distinct from transgender identity and expression. It also contends that the Impugned Act should not be used to conflate or confuse transgender identity with homosexuality, as this would further marginalize and stigmatize the transgender community. The analysis is divided into four parts with first, analyzing the modern Islamic jurisprudence, the second studying Article 25(2) of the Constitution of Pakistan and its evolution, the third part exploring the concept of the right to dignity and its relation to privacy and transgender community, and the last part delves deeper in the phenomenon of gender-based violence for the vulnerable groups of the society.

---

<sup>2</sup>*Atif Zareef vs The State* (PLD 2021 Supreme Court 550), at para 11

## **1. Modern Islamic Jurisprudence.**

Modern-day issues require modern solutions that align with the changing dynamics of society. One such pressing issue is related to transgender individuals, which necessitates exploring modern Islamic jurisprudence in addressing concerns about the rights and identity of the transgender community. The historical precedents, such as those seen in Iran and Egypt, have set examples of how gender expression has received acceptability through *ijtihad*.

During the late 1980s, Ayatollah Ruhollah Khomeini (a grand Shia Ayatollah and the leader of the 1979 Iranian Revolution) in Iran and Sheikh al-Tantawi (Mufti of the Republic since 1986 and Sheikh of Al-Azhar 1996–2010) in Egypt issued religious rulings (fatwas) legalizing sex-reassignment surgery (SRS) within the state laws.<sup>3</sup> These fatwas sparked an Islamic debate on the rights of transgender people and expanded the scope of Islamic tolerance.

A summarized version of both fatwas is reproduced herein below:

### **A. Fatwa of Ruhollah Khomeini, issued in 1987**

For background, the issuance of this fatwa was attributed to the efforts of Maryam Molkara (an Iranian transgender individual). After years of correspondence, her efforts led to an in-person meeting with Ayatollah Khomeini in 1986 to discuss her case, ultimately resulting in the issuance of the following religious ruling (fatwa) on legalizing SRS in Iran.

---

<sup>3</sup>M. Alipour, “Islamic shari’a law, neotraditionalist Muslim scholars and transgender sex-reassignment surgery: A case study of Ayatollah Khomeini’s and Sheikh al-Tantawi’s fatwas” [2017] *International Journal of Transgenderism*. [hereinafter the “**M. Alipour (2017)**”]

*“In the Name of God. Sex-reassignment surgery is not prohibited in shari’a law if reliable medical doctors recommend it. Inshallah you will be safe and hopefully the people whom you had mentioned might take care of your situation.”<sup>4</sup>*

An image of the original fatwa is attached below;<sup>5</sup>



*[An undated fatwa, or religious edict, issued by Ayatollah Khomeini, legalizing SRS in Iran.]*

In addition to the above mentioned, please note that Ayatollah Ruhollah Khomeini also addressed the issue of sex-reassignment surgery long before 1964 in his book *Tahrir al-Wasilah* (Vol. 2, p. 626);<sup>6</sup>

*“It seems that the sex-reassignment surgery for male-to-female is not forbidden (haram) [in Islam] and vice versa, and it is also not forbidden for a khuntha (hermaphrodite/intersex) undergoing it to be attached to one of the sexes [female or male]; and [if one asks] is a woman/man obliged to undergo the sex-reassignment surgery if the woman finds in herself [sensual] desires similar to men’s desires or some evidence of masculinity in herself—or a man finds in himself [sensual] desires similar to the opposite sex or some evidence of femininity in himself? It seems that [in such a case] if a person*

<sup>4</sup>*Ibid*, at pg. 96 . Translation of the fatwa was mentioned by the author in this article.

<sup>5</sup> The original image of the fatwa is available at:

<https://iranhrdc.org/denied-identity-human-rights-abuses-against-irans-lgbt-community/>

<sup>6</sup> M. Alipour (2017), pg. 96; translation of the fatwa is by the author.

*really [physically] belongs to a [determined] sex, a sex-reassignment surgery is not an obligatory (wajib), but the person is still eligible to change her/his sex into the opposite gender."*

Further, the Iran Data Portal, an internet portal dedicated to providing social science data on Iran, contains a dedicated section focusing on *Laws and Regulations* on its website.<sup>7</sup> Within this section, a separate header pertaining to the *Khamenei (1989-)* is made, wherein the following question and answer passage is quoted, discussing medical matters pertaining to gender change;<sup>8</sup>

#### "MEDICAL ISSUES: GENDER CHANGE

*[Question 1279]: Some are apparently male but psychologically have the features of the female gender and have purely female tendencies, and if they do not change genders, there will be corruption. Is it permissible to treat them by performing a surgical procedure?*

*Answer: There is no trouble in a surgical procedure to discover and reveal their true gender, on the condition that this operation does not cause any forbidden activity or corrupt combination.*

*[Question 1280]: What is the judgment concerning performing a surgical procedure to turn a hermaphrodite into a woman or a man?*

*Answer: This operation has not problem per se, but it is obligatory that forbidden measures are refrained from.*

*Modified: 11 July 2013, 14:54"*<sup>9</sup>

---

<sup>7</sup> The Iran Social Science Data Portal, Available at: <https://irandataportal.syr.edu/>

<sup>8</sup> *Ibid*, Available at: <https://irandataportal.syr.edu/medical-issues-gender-change>

<sup>9</sup>*Ibid*

This extract serves as additional evidence that the inclusion of such content on the Iran Data Portal signifies that Iran has legal recognition of gender change procedures.

### **B. Fatwa of Sheikh Al-Tantawi, issued on 8 June 1988**

In the case of Sally Mursi, the Egyptian transgender woman requested Sheikh Al-Tantawi to issue fatwas legalizing SRS in Egypt. Through her struggles and activism, Sally started a societal dialogue on transgender rights within an Islamic framework, which eventually led to the issue of this significant religious ruling legalizing sex-reassignment surgery in Egypt.

Fatwa is reproduced below, which was translated by Skovgaard-Peterson;<sup>10</sup>

*"To the honored general secretary of the Doctors' General Syndicate. This is an answer to the Syndicate's letter number 483 of May 14, 1988, asking for the opinion of religion on the matter of a student of medicine at the al-Azhar university, who has been subjected to a surgical operation (removing his male organs) in order to turn him into a girl.*

*We find that cUsama ibn Sharik tells: "A bedouin came to the Prophet and said, 'O, Messenger of God, can you cure?' And He said, 'Yes, for God did not send a disease without sending a cure for it, knowing it from His knowledge...'" This [hadith] is told by Ahmad [ibn Hanbal]. There is another version: "Some bedouins said, 'O, Messenger of God, can you cure?'. And He said. 'Yes. God's servants can cure themselves, for God never gave a disease without providing a cure or a medicine for it, except for one disease.' They asked, 'O, Prophet of God, what disease is that?' He said, 'old age.'" This version is related by ibn Maja abu Da'ud, at-Tirmidhi, and others. ( Muntaqi l-Akhbar wa Sharhan*

---

<sup>10</sup>Jakob Skovgaard-Petersen, "Sex change in Cairo: Gender and Islamic law" [1995] Journal of the International Institute, 2(3). Available at <https://quod.lib.umich.edu/j/jii/4750978.0002.302?view=text;rgn=main>

*nayl al-Awtar*, v. 8, p. 200, and *Fath al-Bari bi Sharh Sahih al-Bukhari*, by *al-cAsqalani*[29], v. 9, p. 273, in the chapter on those who imitate women).

*As for the condemnation of those who by word and deed resemble women, it must be confined to one who does it deliberately ..., while one who is like this out of a natural disposition must be ordered to abandon it, even if this can only be achieved step by step. Should he then not comply, but persist [in his manners], the blame shall include him, as well—especially if he displays any pleasure in doing so.*

*The person who is by nature a hermaphrodite (mukhannath khalqi) is not to be blamed. This is based on [the consideration that] if he is not capable of abandoning the female, swinging his hips in walking and speaking in a feminine way, after having been subjected to treatment against it, [he is at least willing to accept that] it is still possible for him to abandon it, if only gradually. But if he gives up the cure with no good excuse, then he deserves blame.*

*Al-Tabari took it as an example that the Prophet ... did not forbid the hermaphrodite from entering the women's quarters until he heard him giving a description of the women in great detail. Then he prohibited it. This proves that no blame is on the hermaphrodite for simply being created that way.*

*That being so, the rulings derived from these and other noble hadiths on treatment grant permission to perform an operation changing a man into a woman, or vice versa, as long as a reliable doctor concludes that there are innate causes in the body itself, indicating a buried (matmura) female nature, or a covered (maghmura) male nature, because the operation will disclose these buried or covered organs, thereby curing a corporal disease which cannot be removed, except by this operation.*

*This is also dealt with in a hadith about cutting a vein, which is related through Jabir (a famous companion of the Prophet): "The Messenger of God sent a physician to abu ibn*



*Kacb (one follower of the Prophet). The physician cut a vein and burned it." This hadith is related by Ahmad [b. Hanbal] and Muslim. What supports this view is what al-Qastallani and al-Asqalani say in their commentaries on it: "This means that it is incumbent upon the hermaphrodite to remove the symptoms of femininity."*

*And this is further sustained by the author of Fath al-Bari, who says, "Having given him treatment in order to abandon it ..." is clear proof that the duty prescribed for the hermaphrodite can take the form of a treatment. The operation is such a treatment, perhaps even the best treatment. This operation cannot be granted at the mere wish to change sex with no clear and convincing corporal motives. In that case, it would fall under that noble Hadith which al-Bukhari relates through Anas: "The Messenger of God cursed the hermaphrodites among the men and the over-masculine women, saying 'expel them from their houses', whereupon the Prophet himself ... expelled one, and Umar expelled another one." This Hadith is related by Ahmad and alBukhari.*

*To sum up: It is permissible to perform the operation in order to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so on the grounds that it must be considered a treatment, when a trustworthy doctor advises it. It is, however, not permissible to do it at the mere wish to change sex from woman to man, or vice versa. Praise be to He who created, who is mighty and guiding. From what has been said the answer to what was in the question will be known. Praise be to God the most High."*<sup>11</sup>

Furthermore, in 2000, Hujatal Islam Mohammad Mehdi Kariminia (an Islamic cleric from Iran) expressed his belief that sex change surgery is a medical solution for individuals with Dujensi (two sexes) or Khunsa (intersex conditions).<sup>12</sup> Subsequently, in 2010, he expanded his arguments in his book titled "Sex Change from Law and Fiqh's

---

<sup>11</sup>*Ibid*

<sup>12</sup>Zara Saeidzadeh, "The Legality of Sex Change Surgery and Construction of Transsexual Identity in Contemporary Iran" [2014] Lund University. Available at: <https://lup.lub.lu.se/luur/download?func=downloadFile&recordOid=5045547&fileOid=8895301>, at pg.47

*Perspective*" in which he explained that a "transsexual" person experiences disparity between his/her body and soul, therefore, surgery is considered a means of aligning the body with the soul.<sup>13</sup>

In light of the above, it can be inferred that the issues faced by transgender Muslims have caused the issuance of fatwas related to SRS for transgender persons, which in turn, have expanded Islamic tolerance related to matters concerning the rights and identities of the transgenders. Fatwas by both Sunni and Shia religious leaders, such as Tantawi (Sunni) and Khomeini (Shia), have exemplified a tolerant attitude towards transgender individuals. These fatwas not only opened the door for discussions regarding Sharia laws and Islamic principles in such cases but also encouraged exploring and understanding of transgender issues from an Islamic perspective.

### **Legal Implications of the Fatwas and SRS Procedures**

In light of the above discussion, Iran can be taken as an example to consider the legalization of transgender identities based on the observed legal developments and procedures surrounding gender identity in the country. It has been noted that Khomeini's fatwa had a significant impact on the subsequent legal developments regarding transgender identities in Iran, showing that even within an Islamic framework, progress can be made toward recognizing transgender individuals.

The codification of sex reassignment within the legal framework of Iran is a significant development. The inclusion of "gender change" as a matter falling under the jurisdiction of the family court, as stated in clause 18 of Article 4 of the Iran Family Protection Act,<sup>14</sup>

---

<sup>13</sup>Afsaneh Najmabadi, "Professing Selves: Transsexuality and Same-Sex Desire in Contemporary Iran" [2014]. Duke University Press, 181.

<sup>14</sup>Out Right Action International, "Human Rights Report: Being Transgender in Iran" [2016] 8. Available at: <https://www.refworld.org/pdfid/58c2b6e44.pdf> [hereinafter as the "**Being Transgender in Iran (2016)**"]. Further information can be accessed from; <https://www.khabaronline.ir/news/168927/%D9%85%D8%AA%D9%86-%D9%84%D8%A7%DB%8C%D8>

shows a recognition of the complexities surrounding gender identity. Moreover, the legal procedure for SRS in Iran further demonstrates a structured approach to recognizing transgender identities. Specific procedures have been developed to be followed for the process of SRS, and obtaining ID cards. Regarding the SRS procedures, the report published by OutRight Action International on transgender experiences in Iran cites an advisory opinion from the Judiciary's Legal Department (Opinion number 4/8/92-1444/92/7).<sup>15</sup> This opinion sheds light on the legal steps that must follow when applying for gender confirmation surgery. The opinion states:

*“Before going through SRS and applying for a change of gender in identity cards, the applicant is first required to obtain court authorization... In considering the request, the court should refer the issue to the LMO (Legal Medicine Organization). Based on the opinion of the LMO, as well other circumstances, and after investigating the situation of the applicant, the court will issue the appropriate decision”*<sup>16</sup>

In addition to this, Iran not only allows SRS but also subsidizes it.<sup>17</sup> The government of Iran does offer limited financial support for gender reassignment surgery,<sup>18</sup> transition-related medical care,<sup>19</sup> and psychosocial counseling.<sup>20</sup> This initiative reflects a

---

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9745420/#B2>

<sup>15</sup>*Ibid*

<sup>16</sup>Being Transgender in Iran (2016), at pg. 08

<sup>17</sup> Neha Thirani Bagri, “Everyone treated me like a saint—In Iran, there’s only one way to survive as a transgender person” [2017] Quartz. Available at: <https://qz.com/889548/everyone-treated-me-like-a-saint-in-iran-theres-only-one-way-to-survive-as-a-transgender-person> [hereinafter as the “Neha Thirani Bagri (2017)”]

<sup>18</sup>Bijan Pirnia and Kambiz Pirnia, “Sex Reassignment Surgery in Iran, Re-Birth or Human Rights Violations against Transgender People? Iranian Journal of Public Health” [2021] Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9745420/#B2>

<sup>19</sup>Being Transgender in Iran (2016), pg. 13

<sup>20</sup>Neha Thirani Bagri (2017)

progressive approach that prioritizes equitable healthcare rights for transgender individuals.

Moving forward with the procedure of obtaining an ID card, the legal process was explained by Ghazal Zaferani (an Iranian lawyer who has represented trans clients in family court) in the following manner;<sup>21</sup>

*“First, the applicant should apply for an SRS permit from the local branch of the family court. After reviewing the application, the court refers him/her to the LMO so that they can examine the person and issue their medical opinion. If the LMO approves the individual’s need for SRS, the court will issue the permit so that she/he can start treatment and ultimately undergo surgery. Upon completion of the SRS, the applicant must submit the medical records and proof of the SRS to the court, along with a petition to the NOCR to amend the national ID to reflect his/her new name and gender. Based on these documents, the court then issues an order for the NOCR to update and reissue the trans person’s official records.”<sup>22</sup>*

Overall, developments in Iran’s legal framework and adoption of procedures regarding transgender identities (such as involvement of the family court in the decision-making process for a sex change to updating official records (national ID cards) following completion of SRS), indicate not only the government’s commitment to providing transgender people with proper recognition and documentation but also an establishment of a legal framework that harmonizes recognizing transgender well-being with religious principles.

In summary, Iran, an Islamic Republic, is a good example of how to uphold religious and cultural tolerance while still reaffirming the rights and identities of transgender

---

<sup>21</sup>Being Transgender in Iran (2016), at pg. 09

<sup>22</sup>*Ibid*

people. This could provide a model that can be implemented and used elsewhere, one can develop and has the potential to be accepted within an Islamic framework while also having the potential to recognize transgender individuals.

## 2. Article 25: *Equality of Citizens*

As seen above in the example of Iran, and how an Islamic state approached transgender rights within an Islamic framework, it becomes imperative to look at existing Pakistani laws. Safeguarding the fundamental rights of the citizens is a key function of the 1973 Constitution of the Islamic Republic of Pakistan. Law endeavors the most desirable way of life for society. Since society continuously evolves, the law must evolve simultaneously to address emerging problems. Succinctly, *Change is the only constant*. Allama Muhammad Iqbal has rightly captured this eternal truth in the following words:

ثبات ایک تغیر کو ہے زمانے میں<sup>23</sup>

It is pertinent to mention that change can be brought in by revolution and evolution. The law must be stable, and yet it cannot stand still.<sup>24</sup> This phenomenon can be seen through a change by evolution as it ensures stability.

The next question that comes to mind is, 'Who brings about this change?' One obvious answer is that our Constitution is kept alive by interpretation and formal amendments by the legislature.<sup>25</sup>

One example of this evolution has been the application of Article 25 (produced below) of the Constitution through efforts of the legislature and the judiciary.

---

<sup>23</sup>Allama Iqbal, Nazam *Sitara* Available at:<https://www.rekhta.org/nazms/sitaara-allama-iqbal-nazms-274>>

<sup>24</sup>Roscoe Pound, *Interpretation of Legal History*, 1923, at pg. 1

<sup>25</sup>Justice Fazal Karim, *Change is the Only Constant* (1st edn, PLH 2019)

## *25. Equality of citizens.*

*(1) All citizens are equal before law and are entitled to equal protection of law.*

*(2) There shall be no discrimination on the basis of sex<sup>26\*</sup>.*

*(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*

Although the Constitution of Pakistan does not specifically mention transgender rights or those groups of people who identify themselves as gender minorities, the application of Article 25 has played a key role in acknowledging and safeguarding their rights. The interpretation and the subsequent application of Article 25 have been crucial in recognizing and defending the rights of transgender people in Pakistan.<sup>27</sup> Despite the absence of explicit provisions pertaining to transgender rights or sexual minority groups in the Constitution of Pakistan, their rights can be protected in accordance with the Constitution's guiding principles of equality and non-discrimination, thereby allowing people to express their gender identification and enjoy equal legal protections regardless of the sex assigned to them at birth.

The Impugned Act was a step towards providing rights to transgender individuals to ensure that there is no discrimination on the basis of sex when accessing public places, employment, education, and inheritance. This was encompassed in section 4 of the Act, which provided protections for discrimination against transgender individuals, a problem that is prevalent in society. It is clear that the Act was passed to remedy problems faced by the community in society based on prejudices and gender discrimination.

---

<sup>26</sup> The word "alone" omitted by the Constitution (Eighteenth Amdt.) Act, 2010 (10 of 2010), s. 8.

<sup>27</sup> Dr. Muhammad Aslam Khaki v. S.S.P Operation Rawalpindi (PLD 2018 LHC 54)

### 3. Right to Privacy in Pakistan: A Gender Perspective

*“Privacy is not merely a personal predilection; it is an important functional requirement for the effective operation of social structure”<sup>28</sup>*

Individuals belonging to sexual and other minorities encounter distinctive difficulties in society, such as prejudice, marginalization, and infringement of their privacy rights. Therefore, it is suggested that the scope of the right to privacy should indisputably cover transgender persons, as it is vital to acknowledge and safeguard their rights and identities. Integrating trans persons within the ambit of the right to privacy is imperative for guaranteeing their full and equal realization of fundamental rights. In short, affirming and upholding the privacy rights of transpersons is not only a matter of basic human rights but also a measure of enhancing diversity, equity, social welfare, and protection from violence.

#### **Evolution of Right to Privacy:**

Even though the right to privacy is one of the fundamental human rights, it has different definitions, scope, and application in various jurisdictions. The country's history, cultural restraints, religious concepts, and constitutional framework play a crucial part in shaping and defining the right to privacy.

Historically, the right to privacy was born not of women, but of men.<sup>29</sup> Interpretation of the right to privacy has been abused over time to uphold the patriarchal system and impose gender roles, such as insulating private spaces such as the home from domestic

---

<sup>28</sup> Alan F. Westin, *Privacy And Freedom*, 25 WASH. & LEE L. REV. 166 (1968) <https://scholarlycommons.law.wlu.edu/wlulr/vol25/iss1/20>, accessed on 11 July 2023, at pg. 7

<sup>29</sup> Allen, Anita L. and Mack, Erin, *“How Privacy Got Its Gender”* (1991). Faculty Scholarship at Penn Carey Law. 1309, [https://scholarship.law.upenn.edu/faculty\\_scholarship/1309](https://scholarship.law.upenn.edu/faculty_scholarship/1309), accessed on 6 July 2023

violence protections.<sup>30</sup> However, now different jurisdictions have adopted progressive and unbiased interpretations to incorporate and acknowledge varied gender expression by rejecting interpretations that support inflexible gender expression and its determinants.

Recently the Supreme Court of Pakistan posited a landmark interpretation of the right to privacy, human dignity, and honor.<sup>31</sup> In this case, the Supreme Court while declaring the two-finger test unconstitutional, recognized that non-consensual medical examinations regarding sexual patterns can lead to a breach of the right to privacy and can affect human dignity. The Supreme Court observed that:<sup>32</sup>

*“Dragging the sexual history of the rape survivor into the case by making observations about her body including observations like “the vagina admits two fingers easily” or “old ruptured hymen” is an affront to the reputation and honour of the rape survivor and violates Article 4(2)(a) of the Constitution, which mandates that no action detrimental to the body and reputation of person shall be taken except in accordance with law. Similarly Article 14 of our Constitution mandates that dignity shall be inviolable, therefore, reporting sexual history of a rape survivor amounts to discrediting her independence, identity, autonomy and free choice thereby degrading her human worth.... Therefore, right to dignity is the crown of fundamental rights under our Constitution and stands at the top, drawing its strength from all the fundamental rights under our Constitution and yet standing alone and tall, making human worth and humanness of a person a far more fundamental a right than the others, an absolutely non-negotiable right.”<sup>33</sup>*

---

<sup>30</sup> Elizabeth M. Schneider, “The Violence of Privacy,” 23 Conn. L. Rev. 973 (1990-1991), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/conlr23&div=35&id=&page=>.

<sup>31</sup> P L D 2021 Supreme Court 550

<sup>32</sup> *Atif Zareef vs The State* (P L D 2021 Supreme Court 550) [“**Atif Zareef Case**”]

<sup>33</sup> *Atif Zareef Case*



Since the right to dignity is the crown of fundamental rights under our Constitution, it is imperative that sections of society and communities are given these rights. The significance of this right and others make it important that by granting dignity and/or privacy protections to transpersons, society validates their inherent value and confirms the importance of these rights. Courts have extensively covered Articles 9 and 14 of the Constitution of Pakistan in its jurisprudence. For the sake of elaboration, one could examine the Lahore High Court in the case of *Sadaf Aziz vs Federation of Pakistan*<sup>34</sup> wherein by citing precedents from other jurisdictions and the United Nations, declared the two-finger test to be unconstitutional, discriminatory and violates the right to life and right to privacy guaranteed by Articles 9 and 14 of the Constitution of Pakistan. The Lahore High Court observed that:<sup>35</sup>

*“Virginity testing is highly invasive, having no scientific or medical requirement, yet carried out in the name of medical protocols in sexual violence cases. It is a humiliating practice, which is used to cast suspicion on the victim, as opposed to focusing on the accused and the incident of sexual violence. This in effect amounts to gender based discrimination as it is neither a medical condition which requires treatment nor does it provide any clinical benefit to the victim..... When seen in the context of fundamental rights Article 9 of the Constitution provides for the right to life and liberty as per law and Article 14 of the Constitution provides for the fundamental rights of dignity of man. These rights ensure that life is to be lived with a dignified existence protecting one from degradation and ensuring accessibility to a decent physical, social and cultural environment. It also protects a person from structured stigmatizing as stereotype discrimination adversely impacts the dignity of a person. Furthermore, it*

---

<sup>34</sup> *Sadaf Aziz vs Federation of Pakistan* (2021 P Cr. L J 205) [“**Sadaf Aziz Case**”]

<sup>35</sup> *Sadaf Aziz Case*

*ensures that right to receive healthcare of a high standard and to the highest attainable standard of physical and mental health.*<sup>36</sup>

Pertaining to the above discussion, it is an established point of fact that the superior courts tend to interfere with established principles and subsequently interpret rights and laws purposively to accommodate the vulnerable strata of society, such as female rape victims in the above cases. Similarly, the contentious moot point of whether transgender people deserve the same rights such as the right to privacy or dignity - the essence of these above-cited judgments and their evolving ideologies may be used. For instance, the superior courts have suggested that women have a constitutional right to bodily privacy, health care, and right to dignity, honor, and bodily autonomy, meaning that protection under the right to privacy is not dependent on gender.<sup>37</sup> As discussed above, the rights of those who identify as *mukhannath* need to be addressed and the right to privacy, right to bodily autonomy, and dignified existence allows them to have the freedom to choose their own path in life. The state's role is to safeguard each individual's autonomy and decision-making capacity, not to dictate their choices.

The right to dignity is the foundation of the fundamental rights granted to every individual under Chapter 1 of the Constitution, and the right to privacy is derived from this right to dignity. Privacy protects a person from unwanted interference and allows them to live with dignity. Privacy also covers gender expression, which is an aspect of one's personal life choices and encompasses decisional privacy. The right to privacy and the protection of gender expression are essential to fundamental rights and are not confined to private spaces, instead, they accompany a person wherever they go.<sup>38</sup>

---

<sup>36</sup> *Sadaf Aziz Case*

<sup>37</sup> "Constitutional Privacy and the Fight Over Access to Sex-Segregated Spaces", 133 HARV. L. REV. 1684, Pg. 1700.

<sup>38</sup> In the landmark US case of *Katz v. United States*, 389 U.S. 347 (1967) it was held that the Fourth Amendment, that guarantees privacy, "protects people, not places."

Similarly, Article 9 guarantees the right to life and liberty and includes the right to a healthy life. Our Superior Courts have interpreted the right to life to include a number of natural and legal rights under the umbrella of Article 9 such as the right to a standard of living, adequate health,<sup>39</sup> well-being, and medical care.<sup>40</sup> The scope of the fundamental right to life was expanded by the August Supreme Court in the case of Shehla Zia:<sup>41</sup>

*"Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally.....right to life implies the right to food, water, decent environment, education, medical care and shelter, thus fundamental right cannot be snatched away or waived off pursuant to any agreement"*

According to studies, other sexes tend to have better access to health services as opposed to trans persons, and the overlap of various social identities reveals significant differences in health care experience.<sup>42</sup> The quality of life for transgender people can be significantly improved through transgender-inclusive healthcare.<sup>43</sup> However, many

---

<sup>39</sup> Messrs Getz Pharma (PVT) LTD. vs Federation of Pakistan, (PLD 2017 Sindh 157) [**Messrs Case**]

<sup>40</sup> Muhammad and Ahmad vs Government of Pakistan, (PLD 2007 Lahore 346) [**Muhammad Ahmad Case**]

<sup>41</sup> Shehla Zia and others vs. WAPDA (PLD 1994 SC 693)

<sup>42</sup> Ning Hsieh, Matt Ruther, "Despite Increased Insurance Coverage, Nonwhite Sexual Minorities Still Experience Disparities In Access To Care", Health Affairs, Vol 36, No. 10, October, 2017, accessed on 11 July 2023

<sup>43</sup> Transgender Healthcare, Consultation Document, Office of the Deputy Prime Minister, Ministry for Health, April 2018. Malta, accessed on 11 July 2023

trans persons end up avoiding health services or using them only sparingly due to fears of humiliation or discrimination, resulting in a negative impact on health outcomes. Transgender patients may experience privacy intrusions from intake forms that ask for legally identifying information such as name and gender marker, which do not apply to patients who identify as either male or female. It has been discovered that privacy experiences in healthcare settings affect how often people use health services, which has an impact on public health.<sup>44</sup> The harms suffered by individuals from gender-based privacy violations include mental health problems and even suicide.<sup>45</sup>

### **Pakistan's Right to Privacy and International Commitments**

Pakistan is a signatory to several international treaties which denounce practices that violates the right to privacy and human dignity. Under these international law obligations Pakistan is obligated to maintain its international commitments pursuant to Article 5,<sup>46</sup> 12,<sup>47</sup> and 25<sup>48</sup> of the Universal Declaration of Human Rights (UDHR), Article 7,<sup>49</sup> and Article 17<sup>50</sup> of International Covenant on Civil and Political Rights (ICCPR), and

---

<sup>44</sup> Zainab Durrani, "Data Privacy In Pakistan's Healthcare Sector," Digital Rights Foundation, 2022, <https://digitalrightsfoundation.pk/work/research/#:~:text=Data%20Privacy%20In%20Pakistan%27s%20Healthcare%20Sector>,

<sup>45</sup> OHCHR, "Gender issues arising in the digital era and their impacts on women, men and individuals of diverse sexual orientations gender identities, gender expressions and sex characteristics – A Report of Consultation by the SRP Thematic Taskforce 'Privacy and Personality'" 2019 HRC Annex 2 Gender Report, Pg 15, [https://www.ohchr.org/sites/default/files/Documents/Issues/Privacy/SR\\_Privacy/2019\\_HRC\\_Annex2\\_GenderReport.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Privacy/SR_Privacy/2019_HRC_Annex2_GenderReport.pdf), accessed on 11 July 2023

<sup>46</sup> Article 5, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, New York, ["UDHR"], [https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf), accessed 6 July 2023

<sup>47</sup> Article 12, *UDHR*

<sup>48</sup> Article 25, *UDHR*

<sup>49</sup> Article 7, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999,p.171, ["ICCPR"], <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>, accessed 6 July 2023

<sup>50</sup> Article 17, *ICCPR*

Article 16<sup>51</sup> of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is also against Article 12<sup>52</sup> of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Convention Against Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>53</sup> It is argued that the denial of rights of gender minorities violates the given international standards of the right to human dignity and honor, as also enshrined in Articles 4,<sup>54</sup> and 14<sup>55</sup> of the Constitution. It also violates the right to privacy and right to life<sup>56</sup> with respect to a right over own body,<sup>57</sup> and the right to a standard of living adequate health,<sup>58</sup> well-being, and medical care<sup>59</sup> recognized by the Superior Courts of Pakistan.

By granting privacy protections to transpersons, society validates their inherent value and respect and confirms their right to exist without undue interference or discrimination. Thus, the right to privacy should categorically include transpersons. Maintaining the right to privacy for transgender is a crucial element of fostering diversity, advancing dignity, and supporting the ideals of human rights for all individuals, irrespective of their gender identity.

---

<sup>51</sup> Article 16, UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, ["UNCAT"], <https://www.ohchr.org/sites/default/files/cat.pdf>, accessed on 06 July 2023

<sup>52</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, ["ICESCR"], [https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch\\_iv\\_03.pdf](https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf), accessed on 06 July 2023

<sup>53</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, ["CEDAW"], <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>, accessed 17 July 2023.

<sup>54</sup> Article 4, *Constitution of the Islamic Republic of Pakistan*, 10 April 1973, ["The Constitution"] [https://na.gov.pk/uploads/documents/1333523681\\_951.pdf](https://na.gov.pk/uploads/documents/1333523681_951.pdf), accessed on 6 July 2023

<sup>55</sup> Article 14, *The Constitution*

<sup>56</sup> Article 9, *The Constitution*

<sup>57</sup> *Sadaf Aziz Case*

<sup>58</sup> *Messrs Case*

<sup>59</sup> *Muhammad Ahmad Case*

#### 4. Legal protections for marginalized communities:

In our society, there are many obstacles in effectively preventing and responding to gender-based violence (hereinafter mentioned as “GBV”). These include misunderstandings about its causes and impact, inadequate or ineffective laws, and a lack of support and safety nets for victims and survivors. The absence of effective systems at the state and community levels presents significant challenges to addressing GBV in a comprehensive manner.<sup>60</sup> In terms of transgender persons, this void was finally addressed in 2013 in the case of *Dr. Muhammad Aslam Khaki v. S.S.P Operation Rawalpindi*,<sup>61</sup> wherein the Supreme Court of Pakistan held that transgender persons were entitled to all the fundamental rights enshrined in the Constitution and recognized the dignity of transgender persons and declared them as a third gender entitled for equal protection under Article 25 of the Constitution.<sup>62</sup> The court, in this judgment, acknowledged the distinct gender identity of transgender persons in Pakistan, but the same is attributed to their “gender disorder or disability.”<sup>63</sup> However, it must be noted that the term “gender identity disorder” is no longer considered a credible medical term or concept. Instead, the term “gender dysphoria” is used to describe the distress a person may experience due to a mismatch between their gender identity and their sex assigned at birth.<sup>64</sup> In light of this judgment and the other precedents, it may be pointed to the unique identity associated with gender disorders, it should also acknowledge gender dysphoria as a unique entity. The access to fundamental rights guaranteed by the Constitution would improve the lives of transgender persons and contribute to the overall betterment of society. The denial of their rights and protection would only lead

---

<sup>60</sup>UNFPA Pakistan. (n.d.). Gender-based violence, Available at: <https://pakistan.unfpa.org/en/topics/gender-based-violence-6>, accessed on 11 July 2023

<sup>61</sup> *Dr. Muhammad Aslam Khaki v. S.S.P Operation Rawalpindi* (PLD 2013 SC 188)

<sup>62</sup> PLD 2018 LHC 54, at para 7

<sup>63</sup> PLD 2013 SC 188

<sup>64</sup>NHS. Gender Dysphoria. Retrieved July 6, 2023, available at:[www.nhs.uk/conditions/gender-dysphoria/](http://www.nhs.uk/conditions/gender-dysphoria/)

to chaos and hinder social progress. Therefore, giving equal rights and protection to the transgender community benefits them and society alike.

Our legal system is not alien to the concept of gender identity, the Lahore High Court in the case of *Mian Asia v. Federation of Pakistan*<sup>65</sup> not only recognized the concept but also declared it as a fundamental part of a person's life, whether they identify as male, female, or transgender. The court declared that everyone has the basic right to be free from discrimination based on their gender identity.<sup>66</sup> The Court stressed the need for our society to change its attitude towards the transgender community and to acknowledge them as respected citizens with full rights, including access to education, property, and the ability to live in a dignified manner. The recognition of the rights of the marginalized transgender community is crucial as it is essential to protect their identity. Given the persistence of GBV against the community, despite the existence of various legal protections, it becomes pivotal for the state to establish a comprehensive legal framework to ensure the well-being of the marginalized transgender community. It is imperative to re-envision the existing jurisprudence to address contemporary issues, by incorporating new concepts like gender identity and others. By doing so, the legal system can effectively tackle the existing problems and ensure equal protection and rights for all individuals, irrespective of their gender identities.

According to the Human Rights Watch report of 2021, quoting the local human rights groups, it was found that at least 65 transgender women have been killed in Khyber Pakhtunkhwa province since 2015. There were also numerous other murder and assault cases reported throughout the country.<sup>67</sup> As per reports in 2023, transgender women in Pakistan, particularly in the Khyber-Pakhtunkhwa province, remained under threat of

---

<sup>65</sup> *Mian Asia v. Federation of Pakistan*, [PLD 2018 LHC 54]

<sup>66</sup> PLD 2018 LHC 54, at *para 11*

<sup>67</sup> Human Rights Watch. World Report 2021 - Pakistan. Retrieved July 6, 2023, from [www.hrw.org/world-report/2021/country-chapters/pakistan](http://www.hrw.org/world-report/2021/country-chapters/pakistan)

attack, and at least 7 transgender women were killed in the province in 2022.<sup>68</sup> The epidemic of crimes against the transgender community reinforces the need for the impugned Act that was passed for the very purposes of protecting the rights of this vulnerable community.

A significant barrier to recognizing transgender rights is the misconception that conflates transgender rights with women's safety concerns. The debate that granting rights to transgender persons will jeopardize women's safety and create societal chaos is unfounded. In reality, attacking transgender people does nothing to address the real issues faced by women.<sup>69</sup> Conversely, restricting the freedoms of transgender people aggravates the challenges faced by all women by reinforcing gender stereotypes. Notably, the progress in transgender rights has the potential to significantly contribute to the liberation of women, and by dismantling laws and policies that rely on gender stereotypes, we open up the possibility for each individual to shape their own life narrative regardless of gender. This inclusive approach empowers both women and transgenders to define their identities and determine their own path, fostering a society that values and respects the autonomy of everyone.

In light of the above, it can be concluded that to address the issue of “gender-based violence/discrimination,” the court must first recognize transgender persons as respected citizens with full rights and dispel the misconception that the recognition of transgender persons’ rights compromises women’s safety.

---

<sup>68</sup> Human Rights Watch. World Report 2023 - Pakistan. Available at: [www.hrw.org/world-report/2023/country-chapters/pakistan](https://www.hrw.org/world-report/2023/country-chapters/pakistan), accessed on July 6, 2023

<sup>69</sup> Ria Tabacco Mar, ‘Trans Rights Are Women’s Rights | ACLU’ (*American Civil Liberties Union*). Available at: <https://www.aclu.org/news/lgbtq-rights/trans-rights-are-womens-rights>.



## **Conclusion**

This legal analysis posits that the rights of transgender persons are compatible with Pakistan's constitutional and international commitments, and that the respected Federal Shariat Court must consider Islamic jurisprudence, constitutional rights and international precedent when adjudicating on the rights of a marginalized community. The Transgender Persons (Protection of Rights) Act, 2018 is a progressive step towards providing legal protections for transgender individuals in Pakistan.

The document compares the legal frameworks of other Muslim countries (Iran and Egypt) with Pakistan regarding the recognition and protection of transgender rights within an Islamic context. It shows how Iran has developed procedures and policies that affirm transgender identities and well-being, such as allowing SRS, updating official records, and involving family courts. It suggests that Iran's model could be implemented elsewhere to uphold religious and cultural tolerance while respecting transgender rights.

The document also discusses how Pakistan has used Article 25 of its Constitution, which prohibits discrimination based on sex, to defend the rights of transgender people, despite the lack of specific transgender-specific provisions. Further, it argues that the right to privacy is essential for fostering diversity and dignity for transgender people and that the court must recognize them as respected citizens with full rights and dispel the misconception that their rights compromise women's safety.