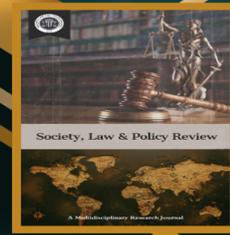


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## A Review and Critical Analysis of Transgender Persons Act 2018; Is Pakistan Consciously Protecting LGBTQ Movement?

Ashna Rehman<sup>1</sup>

Ahmad Maqbool<sup>2</sup>

<sup>1</sup>Lecturer, Department of Law, The Islamia University of Bahawalpur, Pakistan. E-Mail: [Ashnarehman4@gmail.com](mailto:Ashnarehman4@gmail.com)

<sup>2</sup>Advocate Lahore High Court, Lahore, Pakistan. E-Mail: [ammych001@gmail.com](mailto:ammych001@gmail.com)

### ABSTRACT

Rallies in solidarity with women experiencing various sorts of violent assault in Pakistan's underprivileged areas have increased dramatically. Such demonstrations are known as "Aurat Marches," and they began with the widely famous slogan "Mera jism meri marzi." At first glance, the tagline stressed the significance of female consent. However, different people interpreted the slogan differently, and some supporters of the campaign understood freedom in such a way that they defended LGBTQ people in the process. As a result, amid a critical women's rights movement, the agenda being defended has already shifted from a fight for women's empowerment to an endeavor to legitimize LGBTQ people. Even though the lines are so clear, the semantic obfuscation contained in the Transgender Protection Act 2018 has already offered a noticeable attempt to conceal the LGBTQ in the name of preserving the rights of transgenders. The goal of this study is to look into the relationship between homosexuality, LGBT, and the Transgender Protection Act of 2018. The author used cross-sectional analysis to determine that, according to sections 2 and 3 of the statute above, anyone can pick any gender based on their feelings, with no legal or medical checks and balances required. The issue must be effectively addressed before its adverse medical, psychological, and social effects pose irreversible damage to the community. However, the author does not shy away from discussing the different obstacles that the transgender community faces and seeks to propose solutions for their social and economic well-being.



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**Corresponding Author's Email:** [ammych001@gmail.com](mailto:ammych001@gmail.com)

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## 1. **Introduction:**

To provide legal recognition and to prohibit discrimination and harassment of Transgenders, The Transgender Persons Act was enforced in Pakistan on 8th May 2018. Undoubtedly, the presence of transsexuals cannot be denied, such individuals exist and have real issues including physical and biological anomalies. In contrast, LGBT has more to do with cognitive abilities and psychological preferences. The utility of such a law in such a pattern that it provides cover to the proscribed LGBTQ is utterly unjustified, illegal, and unnatural. The legalization of Homosexuality and the critical analysis of the Transgender Persons Act is a burning issue and need of time. Although a lot of work was done on Transgender protections and rights, not much work was done on the analysis of the act, which legalized Homosexuality under the nose of Govt. Although a petition was already filed in the Federal Sharia Court. The Islamic Republic of Pakistan's Constitution of 1973 guarantees equal rights and protections to all citizens.

Article 25 guarantees equality before the law and equal protection under the law, as well as the prohibition of discrimination based solely on gender. Article 35 urges that the state preserve marriage, family, mother, and child. These Articles are sufficient to ensure gender equality and safeguard all genders.

Gender Identity is defined in this act, Transgender Persons Act, 2018, as a “person's innermost and individual sense of self as male, female, or a blend of both or neither that can correspond or not, to the sex assigned at birth.” It also says that: “Everyone is permitted to self-identify their gender without external authorization.” Anyone can go to NADRA and claim to be feeling feminine, so NADRA is bound to declare him as female. After a few months, the same person might not feel feminine anymore and start feeling like a male or vice versa, no identification, and no checks and balances are required which is the root cause of the promotion of homosexuality. Before this Act, the Guru of a particular locality verifies and declares whether a subject person of his locality is Transgender or not, after NADRA acknowledges them as Transgender upon their application, and an X category card is given. Now according to this act no need for any medical examination, no guru’s verification is required for their identity whether they are biologically transgender or just faking their identity. Now any person (gay or lesbian) can be legalized to do any Homosexual Act which is strictly prohibited in an Islamic state. A “legal cover” is being provided to lesbians and gays who are not biologically or physically transgenic. According to Clare, Grzanka, & Wuest (2023), “There is still no gay gene found and, scientifically there is no single “gay gene” for being gay, and though genes seem to play a role in determining sexual orientation and same-sex behavior, it is small, complex, and anything but deterministic.”

This study was published in the journal "GLQ: A Journal of Lesbian and Gay Studies" to increase knowledge about a range of sexual orientations rather than labeling it as an “LGBT agenda,” and fostering understanding. The sexuality spectrum notion challenges the usual binary description of sexual identities as homosexual or heterosexual, providing a more multidimensional outlook. It emphasizes that people's sexual orientations are complex and difficult to identify. It gives a framework for discussing the complexities of sexuality, covering a wide range of possibilities, rather than confining individuals to

choose between gay, heterosexual, or bisexual identities. The idea of a sexuality spectrum also emphasizes the mobility of sexual identity and expression, recognizing that people can move along it. Extensive research has supported the view that broad terminology may be insufficient for some people, and that several individuals exhibit a broad spectrum of sexual orientations rather than one specific one. To some extent, the shift from fixed sexual categories to a more fluid sexuality spectrum is generational. Generation Z, in particular, is increasingly likely to identify with this spectrum. However, it is crucial to emphasize that the spectrum concept is not exclusive to youngsters and is not generally accepted by all members of this generation.

## **2. Methodology**

The present research is based on theoretical as well as empirical studies. The author selected the big cities of Pakistan i.e. (Islamabad, Karachi, and Lahore) to conduct this research. The author selected this interesting and hot issue because various debates are going on these days i.e. (sex versus gender, gender identity, sex is something else, gender is something else, everyone should have a choice to decide if whether he is male or female these things are being heard these days, rights moments, LGBTQ moments, feminism, etc). All over the world, it is being said that they should be recognized, and their rights should be acknowledged. So we must see what they are demanding, whether we should accept their demand, does their demand fits the standards of humanity, is beneficial for society, what will happen if we accept their demand, and what if we don't accept their demand, whether their demand is by the basic framework of constitution, is it by teachings of Islam (Quran and Sunnah) we will see all aspects what this scenario is...it is being spotted everywhere these days, in sports, stadiums, advertisements etc. This topic needs to be discussed legally, scientifically, sociologically as well as religiously. What is this? Is it a scientific phenomenon? Should we be supporting it or not? These are the key questions that the author has discussed in quite some detail in the paper.

## **4. Sexual Orientation Spectrum:**

The spectrum is not a single, straight line. Instead of a simple line with pure homosexuality on one end and pure heterosexuality on the other, there are over 200 different scales to classify and explain human sexuality.

Dr. Alfred Kinsey and his research colleagues published "Sexual Behavior in the Human Male" in 1948, the first major study to demonstrate that people did not fit solely into the gay and heterosexual categories. As noted by Kinsey, Pomeroy and Martin (2023), "Kinsey proposed a scale from zero to seven, with zero being exclusively heterosexual and seven being exclusively homosexual that ranges between, only heterosexual, mostly heterosexual, sometimes homosexual, mostly heterosexual, but more than sometimes homosexual, equally heterosexual and homosexual, mostly homosexual, but more than sometimes heterosexual and mostly homosexual."

Kinsey also included a new category, X, which represents those who have no socio-sexual interactions or activities. These models have been subjected to criticism and varied adjustments, but they demonstrate a range of opinions on sexual orientation. These models are tools for understanding human sexuality, and different people may find different models more helpful for expressing their sexual orientation. Other elements come into play in the setting of spectrum sexuality. Kink, fetish, and BDSM (bondage,

domination, sadism, and masochism) behaviors can also be classified along a spectrum that relates to intersectional sexual identities. These identities emerge from the junction of numerous aspects of human sexuality, illustrating the complexities and complexities of sexual orientation.

### 5. Interpretation of the Terms:

The author has deliberately included a section to clarify terms that may provide comprehension issues for some paper readers. The absence of these explanations could hinder the understanding of the subsequent discussion. The terms in question are as follows:

**Lesbian:** Typically denotes a woman with a romantic and/or sexual attraction to other women. Some non-binary individuals also align with this term.

**Gay:** In specific cultural contexts, it is used to describe men who are emotionally, romantically, or sexually attracted to other men. It's important to exercise caution when using this label since not all men engaging in same-gender sexual activities identify as gay.

**Bisexual or Bi:** Refers to an individual who experiences sexual, romantic, physical, and/or spiritual attraction to more than one gender, though not necessarily simultaneously, equally, or in the same manner.

**Transgender/Transsexuals:** Describes a person whose personal sense of gender identity does not align with the sex they were assigned at birth or conventional gender stereotypes. It's crucial to understand that sexual orientation is distinct from gender identity. Some transgender individuals may have physical or biological differences.

**Khawaja Sara:** In English, "Khawaja Sara" is equated with the term "Eunuch." This term encompasses various meanings, including:

**Eunuch:** Historically, it was used to refer to a castrated man who was responsible for overseeing a harem or served as a chamberlain in a palace. It also referred to a person, typically a male, who was castrated or lacked external genitals, resulting in a loss of virility or power.

### 6. Historical Background:

A historical investigation demonstrates that marriage is a sacred connection between a man and a woman established on enduring values to become life mates. It denotes a strong bond between a man and a woman, sharing mutual duties for the survival of the human species. Our Creator created the male and female bodies in such a way that their sexual union not only brings emotional and physical delight but also acts as a source of lineage (Bouhdiba, 2013). Marriage is an inherent and fundamental human need, guided by immutable natural laws, and homosexuality is viewed as an unconventional approach to sexual satisfaction.

Homosexuality has been present throughout history, as indicated by a site between Jordan and Palestine linked with their punishment during the time of Prophet Lut (Peace be upon him). Homosexuality is described as an unnatural act in the Holy Qur'an, and it is harshly condemned. It is worth noting that no major world religion supports same-sex marriage.

The current LGBTQ+ rights movement in the Western culture, and debates that have been arising in other parts of the world too, may be traced back to a critical moment in 1969 at a Manhattan club, where police actions against homosexuals sparked protests, marches, and demands for equal recognition, respect, and the ability to marry people of the same gender (Symonds, 2016). Currently, there are demands from various areas, including inside some Muslim countries, to recognize and accept homosexuality, which contradicts Islamic principles.

### **7. Effects of Legalizing Homosexuality:**

Same-sex marriage is not actual marriage; rather, it is a manufactured manner of obtaining temporary sexual gratification. It endangers the human race and breaches basic human rights. For a long time, gays and lesbians were unable to share mutual obligations. The goal of gay acts is simply the personal satisfaction of two people whose union is barren by nature. It is not only a breach of natural rules, but it is also an impediment to the spread of the human species. but as noted by Biswas, Harbin, Irvin, Johnston, Begum, Tiong and Smith (2021), “it is also the cause of many health hazards some of them are: Sexually Transmitted Infections (STIs), HIV/AIDS (Acquired immunodeficiency syndrome) previously known as GRID (gay-related immune deficiency), Hepatitis o Gastrointestinal Infections, Anal, Breast, and Ovarian Cancers, Asthma Obesity Stress and Early Deaths.”

In Pakistan, men are seven times more likely than women to be affected with HIV. HIV transmission mechanisms among Pakistanis include sexual contact, contaminated blood and blood products, injecting drug use, and mother-to-child transmission. Although the majority of HIV transmission occurs through risky heterosexual contact, homosexual and bisexual interaction are also important mechanisms of transmission. According to undisclosed reports, the prevalence of HIV among gay and bisexual Pakistani men is at an all-time high (Ahmed, Hashmi & Khan, 2019).

### **8. The Legal System of Pakistan:**

During the colonial era, the British government outlawed behaviors associated with the Lesbian, Gay, Bisexual, and Transgender (LGBT) population in the Indian Subcontinent, notably through Section 377 of the “Indian Penal Code” of 1860 (Priyam, 2020). When Pakistan gained independence in 1947, it enacted similar legislation concerning LGBT concerns, incorporating them into the Pakistan Penal Code. This code states that engaging in sexual intercourse “against the order of nature” with a male, female, or transgender is punishable by life imprisonment or imprisonment ranging from two to ten years, as well as the possibility of fines.

During the presidency of General Muhammad Zia-ul-Haq, Pakistan's sixth president, the prohibitions targeting the LGBT population began in the 1980s. Following the adoption of Sharia Law into the Pakistan Penal Code, the punishment for homosexual activities was increased to include the likelihood of life imprisonment or possibly execution by stoning (Ziring, 1988).

During General Pervez Musharraf's tenure, there was some limited tolerance for homosexuality in large cities like Lahore and Karachi, where hidden gay parties were held, but the situation transformed (Makhdoom, 2015). The Transgender Protection Act was passed in 2018, allowing transgender people, including lesbians and gays, special rights that were deemed incompatible with Islamic values. It is

critical to distinguish between homosexuality and transgender identity because they are distinct phenomena (Farhat, Abdullah, Hali, and Iftikhar, 2020). The feminist movement has recently gained traction in Pakistan. Women stepped out in big numbers to protest and organize rallies to demand their rightful place in society. The feminist movement recognizes the inseparable connection between the concept of gender equality, not only for women, but also for men and the downtrodden classes (like transgender community) of society (Razi et al, 2020).

Transgender people encounter tremendous issues that require open conversation and action. Society must address legitimate issues. Transgender people, like all people, have the right to be treated with dignity and respect in our communities.

## **9. Legal Framework**

The passing of the “Transgender Persons (Protection of Rights) Act” of 2018, is a monument to the Pakistani transgender communities' perseverance and tenacity. It also highlights the significant assistance and camaraderie given by numerous social and civil society groups at various points along the way (Redding, 2019).

Dr. Aslam Khaki petitioned the Supreme Court in 2009 in reaction to a well-reported incidence of police assault against a group of Khawaja Siras in Taxila, a region in the Rawalpindi province of Punjab, Pakistan. The Supreme Court ordered that provincial governments must take proactive measures to protect khawajasiras' fundamental citizenship rights. Moreover, this judgment prompted the National Database and Registration Authority (NADRA) to include options for the “sex” category that acknowledged the existence of transgender individuals. Most notably, it directed the Federal Government to formulate legislation that would provide specific rights and protections for the Khawaja Sira community.

In 2017, nearly eight years after this groundbreaking judgment, Senator Babar Awan introduced the Transgender Persons (Protection of Rights) Bill in the parliament. The tabling of this bill set in motion a comprehensive process, where various stakeholders, sometimes collaborating and sometimes in contention, contributed to shaping the final version of the legislation. Over nearly a year, Khawajasira and transgender activists, United Nations agencies such as the UNDP, the National Commission on Human Rights (NCHR), the Federal Ombudsman's taskforce on transgender individuals, non-governmental organizations dedicated to gender and sexuality issues, the Council for Islamic Ideology (CII), parliamentarians from various political affiliations, feminist groups, and civil society partners collaborated to draft legislation. The law was finally passed in May of 2018.

## **10. Salient Features**

There is no mandatory medical or diagnostic need under the “Transgender Persons (Protection of Rights) Act”, of 2018. This Act underlines that an individual's self-declaration of chosen gender identity to obtain gender recognition should not require validation by a medical expert, judge, or any other third party. Requiring someone seeking legal recognition of their self-identified gender to undergo treatment for ostensibly “medical reasons” or connecting it to a specific diagnosis, such as “gender dysphoria,” violates their right to protection against breaches of their dignity, as well as their physical and mental well-being,

as guaranteed by Article 7 of the ICCPR. It also contravenes the State's obligation to respect an individual's private life under Article 17 of the ICCPR, among other rights. Gender identity is a deeply personal matter, rooted in an individual's sincere conviction, and it should not be subject to arbitrary third-party scrutiny.

The Transgender Persons (Protection of Rights) Act is significant for recognizing preferred gender identification as an inherent right without imposing medical or diagnostic requirements. Section 3 of the law states that “a transgender person shall have the right to be recognized as per his or her self-perceived gender identity, as such, following the provisions of this Act.” It further affirms that transgender individuals have the right to register their "self-perceived gender identity with all government departments, including, but not limited to, NADRA (the National Database and Registration Authority).” Upon initial reading, these clauses may appear impressive. However, upon closer examination, they permit individuals, regardless of their gender, to freely select and switch between genders without any scrutiny. This is where the most significant flaw in this act resides. The author calls upon the government and lawmakers to reconsider these aspects of the legislation and formulate it in a way that offers more meaningful support to the authentic transgender community in Pakistan. For Example, the “Indian Transgender Persons (Protection of Rights) Act,” adopted in December 2019, requires transgender people to go through a district magistrate's certification process, which includes intrusive medical inspection (Bhattacharya et al, 2022)

### **11. Recommendations and Conclusion:**

To promote its betterment, society operates under a system of shared codes of conduct that are developed through consensus. It is difficult to integrate opposing ideas in society since having divergent opinions within the same group can cause confusion, especially when it comes to raising children. This might cause uncertainty in providing what is deemed best for their well-being, with individuals held accountable for their conduct in front of God. Many people do not dive deeper into thought when debating LGBTQ rights, thereby creating confusion among the youth, who may begin to perceive a clash between science and faith. Religion is occasionally studied through the lens of science in Western nations, and this analysis is used in arguments against religious beliefs. It is critical to understand that those who use science to criticize religion may change their minds about social construction (sociology), rejecting rigid devotion to science and modernism. They can demonstrate solidarity for both feminism and the LGBT community, even though these two notions may appear to be distinct from a scientific standpoint.

If the debate is about personal feelings, it's crucial to recognize that various people have different emotions and convictions. This can lead to a variety of perspectives, and more categories may arise in the future. While the author has no intention of demeaning or hurting anyone's sentiments, they hope to clarify their stance by stressing the scientific argument, which is frequently used by advocates of LGBTQ rights. The author claims that science cannot verify the existence of lesbians and gays, calling into question the notion of a "gay gene" or a natural proclivity for homosexuality. The author cites an example from a Scandinavian country where a claim was made that males and females have different chromosomal patterns, which, when viewed from a scientific perspective, contradicts the concept of sexual orientation being innate. The author also asserts that homosexuality is, from a scientific

standpoint, problematic for the human race and is linked to the spread of AIDS, previously known as GRID (Gay-Related Immune Deficiency Disease).

The concept of Legal Gender Recognition (LGR) is mentioned, which refers to the official recognition of a person's gender identity on public records and key documents, including names and gender markers. The author raises concerns about laws protecting the rights of transgender individuals, particularly regarding LGR, without medical requirements such as gender confirmation surgery or hormonal treatment. The author suggests that LGR processes should not be overly rapid and should respect the individual's right to self-determination. In the context of Pakistan, the researchers, writers, and thinkers are hereby invited to gauge the repercussions of legalizing homosexuality while going against the norms, usages, customs, and most importantly the religion of a community. Imitation of laws from foreign lands while disregarding and customs of the place where such laws are being intended may have far-reaching repercussions.

Social prejudice, physical abuse, financial struggles, and a lack of legal recognition describe the plight of transgender people in Pakistan. Transgender persons, also known as “hijras” or “Khawaja Siras,” experience marginalization, violence, and a lack of employment options, prompting some to resort to begging, dancing, or sex work for a living. Even though Pakistan passed the “Transgender Persons (Protection of Rights) Act”, of 2018, obstacles remain in its full implementation. Transgender communities often face discrimination in having healthcare services and have difficulty identifying documents that represent their gender identity. To attain more acceptance and inclusion, Pakistan should enforce present legal safeguards, create anti-discrimination legislation, expand healthcare access, promote education and professional opportunities, and increase public awareness. Transgender empowerment and inclusion in government are critical steps toward creating Pakistan a more equal and accepting environment for transgender persons. The dream for a prosperous Pakistan where people can flourish and achieve greatness regardless of their sect, ethnicity, and gender is still a goal yet to be fully realized.

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