

Khunsa Persons
(Protection of Rights)
Bill 2023

Report 2024-02



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Introduction

The right to protection against discrimination based on gender identity and biological sex characteristics is foundational to the enjoyment of civil, political, economic, social and cultural rights. Against the backdrop of escalating populism and heightened intolerance in Pakistan, especially following the conservative backlash against the progressive Transgender Persons (Protection of Rights) Act 2018, any legislative proposals that impose additional constraints to civil liberties, particularly for vulnerable gender-diverse communities, are cause for concern.

This report examines the Khunsa Persons (Protection of Rights) Bill 2023 vis-à-vis constitutional and international legal standards. Specifically, it addresses concerns related to potential violations of core human rights, emphasizing the impact of the bill on transgender persons' individual autonomy, privacy and liberty.¹

Broadly, the proposed law appears to discriminate indirectly against gender-diverse communities while purporting to protect their rights. There are also discernible indications that the bill may serve as a tool for advancing a religiously motivated political agenda. This raises pertinent questions regarding the bill's legitimacy.

This report contends that in its current form, the Khunsa Persons (Protection of Rights) Bill 2023 infringes on the right to life and liberty, as enshrined in Articles 4 and 9 of the Constitution of Pakistan. It also violates the constitutional provisions on equality (Article 25) and equality of opportunity (Article 27).

¹ For the purposes of this report, we have used the term 'transgender' to refer to all gender-diverse persons as defined in the Transgender Persons (Protection of Rights) Act 2018.

Legal background

In the landmark case *M. Aslam Khaki v SSP Rawalpindi*, the Supreme Court of Pakistan unequivocally recognized 'transgender persons' as a third gender and ordered the National Database and Registration Authority to include this option when issuing national identity cards to citizens.² However, despite the ruling, practical steps to dismantle entrenched gender stereotypes and address the exclusion and marginalization of transgender persons remained minimal.

In pursuit of the constitutional principles enshrined in Article 25 of the Constitution, which mandates equality before the law and equal protection for all citizens, the legislature enacted the Transgender Persons (Protection of Rights) Act in 2018. A pioneering legal development in Pakistan, this law explicitly recognizes individuals' right to self-perceived gender identity or 'gender sovereignty'. The Act also encompasses progressive provisions addressing discrimination and harassment, and safeguarding property and inheritance rights for transgender persons.

Despite these legislative strides, the Transgender Persons (Protection of Rights) Act 2018 faced scrutiny in the Senate of Pakistan due to rising intolerance as well as disinformation bolstered by the influence of religious-political agendas.³ Subsequently, legal challenges were mounted in the Federal Shariat Court, which declared Sections 2(1)(f), 2(1)(n)(iii), 3 and 7 of the Act contrary to Islamic principles in May 2023 and in so doing, revoked transgender persons' right to self-perceived gender identity, among other things. The judgment was subsequently challenged before the Shariat appellate bench of the Supreme Court in July 2023.⁴

² PLD 2013 SC 188.

³ Such disinformation included the entirely erroneous claim that the 2018 act had sanctioned gay marriage.

⁴ <https://www.dawn.com/news/1765308>

Earlier, six amendments were proposed to the Act and sent to the Senate Standing Committee on Human Rights, which consolidated these amendments in the form of a single bill in April 2023, much to the dismay of human rights observers and transgender rights activists. Subsequently, Senator Mushtaq Ahmed of the JJ introduced the Khunsa Persons (Protection of Rights) Bill 2023 on the floor of the house as a private member's bill.

Scope of the law and analysis

Several provisions introduced in the proposed law are incompatible not just with the Transgender Persons (Protection of Rights) Act 2018 but also with constitutional law and international human rights standards. If passed, the bill will curtail the constitutional rights of transgender persons and leave them even more vulnerable and marginalized.

Rejection of gender sovereignty

According to the bill's Statement of Objects and Reasons, gender identity and gender expression cannot be self-perceived (based on one's own belief). Instead, the bill asserts that gender identity or gender expression can only be based on the 'social norms and cultural expectations' associated with the sex that an individual was assigned at birth. This goes against the letter and spirit of the Transgender Persons (Protection of Rights) Act 2018, which protects the right to gender sovereignty.

Denial of individual autonomy to transgender persons

The bill intends to replace the term 'transgender' with *khunsa*⁵ [intersex], recognizing only certain intersex characteristics and resulting in three subclassifications: *khunsa* male, *khunsa* female and *khunsa mushkil*. In Section 3, the bill categorically declares that the identity of a *khunsa* person shall be recognized based on physical attributes, genital features and 'congenital ambiguities'. Previously, the term 'transgender' in the 2018 law included intersex persons, eunuchs, transgender men, transgender women, *khawaja sira* persons, and any person whose gender identity or gender

⁵ *Khunsa* is a term used by medieval Arab jurists to classify a set of non-normative bodies.

expression differed from the ‘social norms and cultural expectations’ associated with the sex they were assigned at birth.⁶

Since the expression *khunsa* is a subset of the transgender persons category, the bill denies full recognition to transgender persons, thereby curtailing their freedom of choice and right to liberty. The bill also mandates parents to consult a medical board in cases where they are not sure of their child’s sex. This defeats the progressive provisions of the 2018 act and usurps the right to individual autonomy—the foundation for other rights of transgender persons.

Medical boards to establish gender identity

Section 4 explains the powers and functions of the medical boards instituted to issue gender establishment certificates on carrying out a medical examination of intersex persons. These medical boards are also empowered to examine anyone ‘inflicted with gender dysphoria’. The board or its members can be expert witnesses and advise the federal and provincial governments.

The creation of such boards and the requirement of a physical examination to establish one’s legal gender identity⁷ are a direct assault on the liberty, privacy and dignity of transgender persons. The goal of legal gender recognition was achieved through the Transgender Persons (Protection of Rights) Act 2018, in accordance with *M. Aslam Khaki v SSP Rawalpindi*—which the proposed law contravenes. Indeed, a key objective of any law that claims to protect the rights of transgender persons is gender recognition without the need for a medical examination. Gender recognition processes (where necessary in the first instance) must also be simple and accessible if they are to uphold the rights of transgender people, including their right to self-identification.

Another concern stemming from the requirement of a medical examination is that this may compel some transgender and intersex persons to seek gender-affirming health services in the form of

⁶ https://senate.gov.pk/uploads/documents/1536559131_237.pdf

⁷ Legal gender recognition is the official recognition of a person’s gender identity, including gender markers and names in public registries and other government documents.

expensive or unsafe medical or surgical interventions⁸ as a prerequisite to legal recognition of their gender—in turn potentially causing lasting psychological or physiological damage. In the case of minors, their consent may not even be sought for such procedures. In many cases, transgender people do not even have access to their own medical records or original birth certificates. Such situations violate transgender and intersex persons' right to enjoy 'the highest attainable standard of physical and mental health' under Article 12 of the International Covenant on Economic, Social and Cultural Rights.

Prohibition of sex reassignment interventions

Section 14 of the proposed law prohibits sex reassignment surgery or any other treatment to change the genital features of any person based on any psychological disorder or gender dysphoria. The prohibition amounts to criminalizing gender variance and transgender identity by implying that gender dysphoria is 'curable' and does not warrant sex reassignment.

Gender-based violence

A notable omission in the proposed law is that it does not redefine rape and sexual assault in the context of transgender persons. At present, Section 375 of the Pakistan Penal Code defines rape in a manner that traditionally excludes transgender individuals, focusing primarily on cisgender women. Similarly, Section 377, which addresses 'unnatural offences', has historically criminalized consensual same-sex relations and been misused to target transgender persons, thereby perpetuating discrimination and violence against them.

Rights of transgender and intersex children

The bill does not refer to the healthcare rights of transgender and intersex children, thereby violating their rights under the Convention on the Rights of the Child, to which Pakistan is a state party. The UN Committee against Torture has also expressed concern over early unnecessary and irreversible sex-determining

⁸ <https://www.undp.org/sites/g/files/zskgke326/files/publications/Trans%20Health%20&%20Human%20Rights.pdf>

surgeries and their long-term impact, while the UN Committee on the Rights of the Child has said that such practices are discriminatory and constitute 'harmful practices'.⁹

⁹ https://www.ohchr.org/sites/default/files/Documents/Publications/Born_Free_and_Equal_WEB.pdf

International legal obligations

So long as people face criminalization, bias and violence based on their sexual orientation, gender identity or sex characteristics, we must redouble our efforts to end these violations

—United Nations Secretary-General Antonio Guterres¹⁰

Pakistan is a party to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention Against Torture. Any domestic laws that violate or undermine transgender persons' rights under international law must not be countenanced. These rights include the right to life, dignity, equality and non-discrimination, equal protection of the law, health, education, employment, bodily autonomy, physical and psychological integrity, the right of the child to preserve their identity, freedom from torture and ill-treatment, and access to justice and remedy

Additionally, in its periodic reports to the relevant treaty bodies, Pakistan has presented the Transgender Persons (Protection of Rights) Act 2018 as progressive legislation intended to achieve the goals of these treaties.¹¹ Defending the proposed bill—undoubtedly a regressive and violative law—in its stead will be difficult, if not impossible.

¹⁰ https://www.ohchr.org/sites/default/files/Documents/Publications/Born_Free_and_Equal_WEB.pdf

¹¹ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&CountryID=131 and https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FPAK%2F2&Lang=en

Recommendations

The Senate should not pass the proposed bill, given that it violates transgender persons' constitutional rights and international human rights law. If passed, the National Assembly should reject the bill.

Other recommendations include the following:

- The Supreme Court of Pakistan should adjudicate the case pertaining to the legality of certain key provisions of the Transgender Persons (Protection of Rights) Act 2018 as soon as possible.¹² This would put positive pressure on the Parliament to reject the proposed legislation.
- The state must prohibit and investigate all cases of cruel, inhuman and degrading treatment, including conversion therapies, forced or coerced sterilization, and unnecessary medical procedures performed on transgender and intersex children and adults without their consent. In this context, medical boards and powers of examination to issue 'gender establishment certificates' will not only violate the dignity and privacy of transgender and intersex persons, but may also be used to target these communities, compounding their vulnerability and marginalization.
- The state must repeal laws that criminalize expressions of gender identity as well as other laws used to harass, arbitrarily detain, prosecute and discriminate against all persons based on their actual or perceived gender identity or expression.

¹² The case was filed by former senator Farhatullah Babar and Sherkan Malik. See: <https://www.dawn.com/news/1765308>

Annex

INTRODUCED ON 07.08.2023

[TO BE INTRODUCED IN THE SENATE]
A
BILL

to provide for protection, relief and rehabilitation of the rights of khunsa (intersex) persons, and their welfare

WHEREAS it is expedient to provide for protection, relief and rehabilitation of the rights of khunsa (intersex) persons, and their welfare, and for matters connected therewith and incidental thereto;

It is hereby enacted as follows: -

**CHAPTER-I
PRELIMINARY**

1. Short title, extent and commencement. - (1) This Act may be called the Khunsa (Intersex) Persons (Protection of Rights) Act, 2023.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.- (1) In this Act, unless there is anything repugnant in the subject or context-

- (a) "Act" means the Khunsa (Intersex) Persons (Protection of Rights) Act, 2023;
- (b) "CNIC" means Computerized National Identity Card;
- (c) "Complainant" means the khunsa (intersex) person or the person afflicted with gender dysphoria, as the case may be, who has made a complaint on being aggrieved by an act of harassment;
- (d) "CRC" means Child Registration Certificate or B-Form;
- (e) "Government" means the Federal Government or any Provincial Government, as applicable;
- (F) "Harassment" includes sexual, physical, mental and psychological harassment which means any aggressive pressure or intimidation intended to coerce, unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes causing interference with living, mobility or work performance, or creating an intimidating, hostile or offensive work or living environment,

including the attempt to punish the complainant for refusal to comply with such requests or to bring forth the complaint.

(g) "Khunsa (Intersex) Person" is a person who is born with a mixture of male and female genital features or congenital ambiguities, and could be classified as khunsa male, khunsa female, or khunsa mushkil;

(h) "Medical Board" means a gender establishment medical board, as well as a board that may establish whether a person is afflicted with gender dysphoria, notified in respect of each division of Pakistan and the Islamabad Capital Territory, by approval of the Chief Minister (in the case of each province) and the Prime Minister (in the case of the Islamabad Capital Territory), and consisting of the following:—

(i)	One Neonatologist with the rank of Professor	Convenor;
(ii)	One Gynaecologist with the rank of Associate Professor	Member;
(iii)	One Plastic Surgeon with the rank of Associate Professor	Member;
(iv)	One Endocrinologist or Geneticist with the rank of Associate Professor	Member;
(v)	One Urologist with the rank of Associate Professor	Member;
(vi)	One Psychologist preferably holding a Ph.D. degree in his field	Member; and
(vii)	The Chief Medical Officer of the district concerned	Member/Secretary.

(i) "NADRA" means the National Database and Registration Authority;

(j) "Notification" means a notification published in the official Gazette;

(k) "PMDC" means The Pakistan Medical and Dental Council constituted under the PMDC Ordinance, 1962 (XXXII of 1962);

(l) "Prescribed" means prescribed by rules made by the Federal Government under this Act; and

(m) "Rules" means the rules made under this Act.

(2) A word or expression not defined in the Act shall have the same meaning as assigned to it in the Code of Criminal Procedure, 1898 (V of 1898), or the Pakistan Penal Code, 1860 (XLV of 1860).

CHAPTER II

RECOGNITION OF IDENTITY OF A KHUNSA (INTERSEX) PERSON

3. Recognition of identity of khunsa (intersex) person. - (1) A khunsa (intersex) person shall be recognized on the basis of his, her or its physical attributes, genital features or congenital ambiguities, as male, female or khunsa mushkil, respectively, upon certification by the medical board, in accordance with the provisions of this Act.
- (2) A person recognized as male, female or khunsa mushkil under sub-section (1) shall get himself, herself or itself registered as per the certification made by the medical board with all government departments including, but not limited to NADRA.
- (3) Every khunsa (intersex) person, being a citizen of Pakistan, who has attained the age of eighteen years shall get himself, herself or itself registered according to the certification made by the medical board with NADRA on the CNIC, CRC, Driving Licence and passport in accordance with the provisions of the NADRA Ordinance, 2000 or any other relevant laws.
- (4) A khunsa (intersex) person already issued CNIC by NADRA shall be allowed to change the name and correct the gender, according to the certification made by the medical board, on the CNIC, CRC, Driving Licence and Passport in accordance with the provisions of the NADRA Ordinance, 2000.
- (5) If a new born child has both male and female, or ambiguous genital features, such as their state is clearly difficult to determine by the parents or the medical practitioner or other person supervising the birth of such child, then it shall be the duty of the parents of such child to promptly refer the matter to the medical board for gender certification of such child in accordance with the Act.
4. Powers and Functions of the Medical Board. - (1) The medical board shall have the following powers and functions, namely:-
- (a) To examine khunsa (intersex) persons based on applications made under this Act, either directly by a khunsa (intersex) person or through any parent or next friend, for issuance of a gender establishment certificate;
 - (b) To examine persons claiming to be afflicted with gender dysphoria based on applications made under this Act, either directly by any such person or through any parent or next friend; for issuance of a certificate that the applicant is afflicted by such a condition;
 - (c) To act as expert witnesses for examination by judicial and administrative forums, such as NADRA; and
 - (d) To give advice to the Federal or Provincial Government, as the case may be, for matters concerning welfare and wellbeing of khunsa (intersex) persons as well as persons afflicted with gender dysphoria.
- (2) The manner of making, processing and deciding upon applications pursuant to this section 4 shall be as prescribed.
- (3) The medical board shall take its decisions, in respect of an application made pursuant to this section 4, within thirty days of receiving an application, with reasons to be recorded in writing and in accordance with prescribed tests, which shall, in the case of an application made under clause (a) of sub-section (1) of this section 4, include but not be limited to karyotype genetic test.

CHAPTER-III
PROHIBITION OF CERTAIN ACTS

5. Prohibition against discrimination etc. - (1) No person shall discriminate against a khunsa (intersex) person on any of the following grounds, namely:-

- (a) The denial of, or discontinuation of, or unfair treatment in, educational institutions and services thereof;
- (b) The unfair treatment in, or in relation to, employment, trade or occupation;
- (c) The denial of, or termination from, employment or occupation;
- (d) The denial of, or discontinuation of, or unfair treatment in healthcare services;
- (e) The denial of, or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment of use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of general public or customarily available to the public;
- (f) The denial of, or discontinuation of, or unfair treatment with regard to right to movement, safe travel, and use of public facilities of transportation;
- (g) The denial of, or discontinuation of, or unfair treatment with regard to the right to reside, sale/purchase, rent or otherwise occupy, inherit any movable and immovable property;
- (h) The denial of, or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; or
- (i) The denial of access to, removal from, or unfair treatment in, government or private establishment, organizations, institutions, departments, centres in whose care, custody or employment a khunsa (intersex) person may be.

(2) No khunsa (intersex) person shall be abandoned by his, her or its parents, at birth or up until the age of majority, and no such khunsa (intersex) person shall be removed from his, her or its parents' abode, forcibly or by consent, including through adoption or carrying by any guru or other leader of the khunsa (intersex) community, by whatever name called.

(3) No person shall employ, compel, use, or solicit the services of, any khunsa (intersex) person for begging, dancing or any form of degrading activity.

6. Prohibition against Harassment. - Harassment of khunsa (intersex) persons, as defined in this Act, both within and outside the home, based on their sex, is prohibited.

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CHAPTER-IV
OBLIGATIONS OF THE GOVERNMENT

7. Obligations of the Government. - The Government shall take steps to secure full and effective participation of khunsa (intersex) persons and their inclusion in society, namely:-

- (a) Establish Protection Centres and Safe Houses to ensure the rescue, protection and rehabilitation of khunsa (intersex) persons in addition to providing medical facilities, psychological care, counseling and adult education to khunsa (intersex) persons;
- (b) Establish separate prisons, jails, confinement cells, etc. for khunsa (intersex) persons involved in any kind of offence or offences;
- (c) Institute mechanisms for the periodic sensitization and awareness of the public servants, in particular, but not limited to, law enforcement agencies and medical institutions, relating to the issues involving khunsa (intersex) persons and the requirement of protection and relief of such persons;
- (d) Formulate special vocational training programmes to facilitate, promote and support livelihood for khunsa (intersex) persons;
- (e) Encourage khunsa (intersex) persons to start small businesses by providing incentives, easy loan schemes and grants; and
- (f) Take any other necessary measures to accomplish the objectives of this Act.

CHAPTER-V
PROTECTION OF RIGHTS OF KHUNSA (INTERSEX) PERSONS

8. Right to Inherit. - (1) There shall be no discrimination against khunsa (intersex) persons in acquiring the rightful share of property as prescribed under the law of inheritance.

(2) The share of (intersex) persons shall be determined as per the gender declared on CNIC or CRC, as the case may be, as certified by the medical board, where applicable, in accordance with the law of inheritance in Pakistan.

(3) The share of inheritance for khunsa (intersex) persons will, for the avoidance of doubt, be as follows, namely:-

- (a) For a Muslim khunsa (intersex) person, who is certified and registered as a male in terms of section 3 of the Act, the share of inheritance will be that of man, and in case of such a non-Muslim person, the share will be as prescribed by the applicable law of inheritance in Pakistan;
- (b) For a Muslim khunsa (intersex) person, who is certified and registered as a female in terms of section 3 of the Act, the share of inheritance will be that of woman, and in case of such a non-Muslim person, the share will be as prescribed by the applicable law of inheritance in Pakistan; and

- (c) For a khunsa (intersex) person who has both male and female or ambiguous characteristics, such as their state is difficult to determine, the share of inheritance will be that of the gender as certified and registered in terms of section 3 of the Act on the basis of predominant male or female characteristics, but if no clear certification is made as such, then the share in inheritance shall be determined, as in the case of a Muslim khunsa mushkil person, in accordance with the Sharia, and in respect of such a non-Muslim khunsa mushkil person, as prescribed by the applicable law of inheritance in Pakistan.

9. Right to Education.- (1) There shall be no discrimination against khunsa (intersex) persons in acquiring admission in any educational institutions, public or private, subject to fulfilment of the prescribed requirements.

(2) All educational institutions shall provide education and opportunities for sports, recreation and leisure activities without any discrimination, and on an equal basis with others.

(3) The Government shall take steps to provide free and compulsory education to khunsa (intersex) persons as guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan, 1973.

(4) It is unlawful for an institution whether private or public, to discriminate against a person on the ground of that person's sex, including but not limited to:

- (a) In determining who should be offered admission; or
- (b) In the terms or conditions on which admission is offered; or
- (c) By denying the person's access, or limiting the person's access, to opportunities, training or to any other positive externalities associated with the education; or
- (d) By denying access to appropriate student facilities based on a person's sex.

10. Right to employment.- (1) The Government must ensure the right to enter into any lawful profession or occupation, and to conduct any lawful trade or business for khunsa (intersex) persons as guaranteed under Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973.

(2) No establishment, institution, department, organization, shall discriminate against any khunsa (intersex) person in any matter relating to employment including, but not limited to, recruitment, promotion, appointment, transfer and other related issues.

(3) It shall be unlawful for an employer to discriminate against an employee on the ground of their sex:

- (a) In determining who should be offered employment; or
- (b) In the terms or conditions on which employment is offered; or
- (c) By denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
- (d) By dismissing the employee; or
- (e) By subjecting the employee to any other detriment.

11. **Right to vote.** - No khunsa (intersex) person shall be deprived of their right to cast a vote during national, provincial and/or local government elections.

Provided that the access to polling stations shall be determined according to the gender declared on the CNIC of a khunsa (intersex) person.

12. **Right to hold public office.** - There shall be no discrimination on the basis of sex, for khunsa (intersex) persons if they wish to contest election to hold public office.

13. **Right to health.** - The Government shall take the following measures to ensure non-discrimination in relation to khunsa (intersex) persons, namely: -

- (a) To review medical curriculum and improve research for doctors and nursing staff to address specific health issues of khunsa (intersex) persons in cooperation with PMDC;
- (b) To facilitate access by providing an enabling and safe environment for khunsa (intersex) persons in hospitals and other healthcare institutions and centers; and
- (c) To ensure khunsa (intersex) persons access to all necessary medical and psychological gender corrective treatment.

14. **Prohibition of Sex Re-Assignment Surgery.** - Any sex re-assignment surgery or any other treatment to change the genital features of a male or female person shall be prohibited on the basis of any psychological disorder or gender dysphoria.

15. **Right to assembly.** - (1) The Government must ensure the freedom of assembly for khunsa (intersex) persons in accordance with Article 16 of the Constitution of the Islamic Republic of Pakistan, 1973.

(2) The Government must take steps to ensure appropriate safety measures for khunsa (intersex) persons.

(3) No discrimination shall be made on the basis of person's sex, subject to reasonable restrictions imposed by law in the interest of public order.

16. **Right of access to public places.** - (1) No khunsa (intersex) person shall be denied access to public places, places of entertainment, or places intended for religious purpose, solely on the basis of their sex.

(2) The Government must ensure persons access to public places in view of Article 26 of the Constitution of the Islamic Republic of Pakistan, 1973.

(3) It shall be unlawful to prevent khunsa (intersex) persons to access facilities available for access of general public and public places mentioned in sub-section (1).

17. **Right to property.** - (1) No khunsa (intersex) person shall be denied right to purchase, sell, rent or lease property, household or tenancy on the basis of sex.

(2) It shall be unlawful to discriminate any khunsa (intersex) person with regards to renting, subletting or tenancy on the basis of their sex.

18. Guarantee of Fundamental Rights. - (1) In addition to rights mentioned in this chapter, fundamental rights mentioned in Chapter I, Part II of the Constitution of the Islamic Republic of Pakistan, 1973, shall be available unequivocally for every khunsa (intersex) person.

(2) It shall be the duty of the Government to ensure that the fundamental rights mentioned in sub-section (1) are protected and there shall be no discrimination for any person on the basis of sex.

19. Offences and Penalties.- Whoever violates the provisions of sub-sections (2) or (3) of section 5, or section 6 or section 14 of the Act, shall be punishable with imprisonment which may extend to five years or with fine which may extend to five hundred thousand rupees or with both.

CHAPTER-VI ENFORCEMENT MECHANISM

20. Enforcement Mechanism. - In addition to the remedies available under the Constitution of Islamic Republic of Pakistan, 1973, or the Pakistan Penal Code, 1860, or the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, the aggrieved khunsa (intersex) person shall have a right to move a complaint to the National Commission of Human Rights (NCHR), if any of the rights guaranteed herein are denied to him, her or it.

CHAPTER-VII MISCELLANEOUS

21. Power of the Federal Government to make rules. The Federal Government may, by notification, make rules for carrying out the purposes of this Act.

22. Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by publication in the official Gazette, make such order, give such directions, or make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:


Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

23. Repeal.- (1) Subject to section 6 of the General Clauses Act, 1897 (X of 1897), the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018), hereinafter referred to as the Repealed Act, shall stand repealed.

(2) Notwithstanding the repeal of the Repealed Act, except to the extent of inconsistencies with the Act, all decisions taken, acts done and steps taken in pursuance of the Repealed Act shall, as far as practicable, be deemed to have been validly done.

STATEMENT OF OBJECTS AND REASONS

- The Khunsa (Intersex) Persons (Protection of Rights) Act, 2023, is aimed at reforming and repealing the Transgender Persons (Protection of Rights) Act, 2018, for the reason that numerous provisions of the 2018 Act are repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah.
2. "Transgender" is an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to that typically associated with the sex to which they were assigned at birth. Furthermore, "gender identity" refers to a person's internal sense of being male, female or something else and "gender expression" refers to the way a person communicates gender identity to others through behaviour, clothing, hairstyles, voice or body characteristics.
 3. The 2018 Act *inter alia* enables any adult, acting alone, to declare, and get officially registered, his or her own gender on the basis of an internal sense of being male, female or something else and/or how he or she is perceived by others. By contrast, Islamic law recognizes gender solely on the basis of physical attributes, genital features or congenital ambiguities, which medical diagnosis/expertise can determine, and disallows any gender classification based on someone's internal sense or the perception of others. Accordingly, the scope of the Act of 2018 has to be narrowed down, to a significant extent, just to that subset of "transgender" persons as is recognized under Islamic law as "khunsa" (the English term "intersex" being closest to it in exact translation), which is the Bill's main object.
 4. Accordingly, in the case of khunsa (intersex) persons, the Bill aims to give effect to the Islamic law approach involving classification as khunsa (intersex) male, khunsa (intersex) female, and khunsa (intersex) mushkil, based on medical diagnosis/expertise, as well as khunsa (intersex) persons are to be treated in matters of official registration and enforcement of a variety of personal laws, including that of inheritance. The Bill not only keeps intact, in the case of khunsa (intersex) persons, those very rights and protections as are afforded to transgender persons under the 2018 Act, but also provides for certain additional rights and protections over and above the same, along with increasing the severity of punishment in cases involving maltreatment of khunsa (intersex) persons. In addition, the Bill nevertheless defines and recognizes "gender dysphoria" as a condition in the same terms and to the same extent as is done by the World Health Organization, and extends to persons afflicted with such condition several of the rights and protections as have been guaranteed therein to khunsa (intersex) persons.
 5. The Bill aims to achieve the above-mentioned objectives.


 (Senator Mushahiq Ahmad)



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