



NUQTAH Journal of Theological Studies

Editor: Dr. Shumaila Majeed
(Bi-Annual)

Languages: Urdu, Arabic and English
pISSN: 2790-5330 eISSN: 2790-5349
<https://nuqtahjts.com/index.php/njts>

Published By:

Resurgence Academic and Research
Institute, Sialkot (51310), Pakistan.
Email: editor@nuqtahjts.com

Sex Reassignment: Islamic Perspective and Legal Frame Work of Pakistan

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Published online: 02 Oct 2023



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Sex Reassignment: Islamic Perspective and Legal Frame Work of Pakistan

Abstract:

This paper examines the Islamic perspective on sex reassignment and gender identity issues. It presents arguments both for and against sex reassignment procedures from an Islamic law standpoint. The methodology involves analyzing verses from the Quran, hadiths (sayings of Prophet Muhammad), and fatwas (religious rulings) from Islamic jurists and institutions. The paper explains the concept of sex reassignment surgery and the rationale sought by individuals undergoing such procedures. It discusses notions of gender identity and disorders of sex development (DSD). Key arguments against sex reassignment highlighted in the paper include: it goes against accepting Allah's creation, it tampers with divine creation which is prohibited, it can promote immorality in society, and inherits issues arise after changing gender identity. Arguments presented in favor include: psychological pressure on the individual, the principle of necessity permits prohibitions, it does not involve adopting the likeness of the opposite gender, and it is a treatment allowed in Islam for the sick. The paper analyzes fatwas from institutions in Saudi Arabia, Egypt, and Pakistan declaring sex reassignment impermissible for *Mukhannath* (transsexual) but allowable for *Khuntha* (intersex) to correct ambiguity. It also examines relevant court cases and laws in Pakistan concerning transsexual rights. The key findings suggest sex reassignment is prohibited in Islam except for intersex individuals, and Pakistan laws contradict Shariah principles according to Federal Shariat Court. Psychological treatment is recommended over surgery. The paper concludes Islam prohibits attempts to transition genders except for aligning intersex physiology.

Keywords: Sex Reassignment, Transgender, Intersex, *Mukhannath*, *Khuntha*, Islamic Law

Introduction:

Allah, the Almighty, created man and sent him to this world as His representative. He planned humans in the most ideal way, adorned with physical, mental, and spiritual abilities, which they utilize to achieve countless accomplishments. Be that as it may, Satan enticed people, steering them off track from not only their obligations but also making them captives to their cravings. As a result, some people have undergone a gender transformation, a process that has led to the enactment of laws regarding human rights, and there are ongoing efforts to promote this phenomenon.

As per the report, in the United States of America alone, there has been an increase of in excess of twenty percent in gender transformation compared with earlier years.¹ In a similar vein, the trend of gender transformation is also growing in the United Kingdom and all over the world, where instead of identifying as a boy or girl, more than fifty percent of young people are choosing non-binary identities. Authorities in Britain have relegated liability regarding this issue to social media, while some social experts uncover that British society is witnessing a rising number of youngsters taking part in veered-off conduct and substance abuse, including liquor consumption, producing a generation that has serious intricacies in their DNA. As a result, children get an understanding of sex-related matters and all the essential aspects of their identity by the age of ten or eleven. Despite the fact that they may be perfect boys or girls, they tragically experience an alarming trend of feeling uncertain about their gender identity and wish to change it. According to some medical experts in the United States, recognizing oneself as transgender or experiencing gender dysphoria is considered a psychological disorder. Instead of encouraging gender transformation in children experiencing identity questions, it is important to provide them with proper psychiatric treatment. Gender-changing operations on children may be viewed as unethical and equivalent to "child mutilation," warranting immediate prohibition.

The Health Department approved gender transformation applications for 40 girls in 2009, according to information from the Telegraph. However, in 2017,

this number expanded to more than 1,806, which increased to 4000 next year, and it continues to grow each year. ²

In the following pages, the meaning of gender transformation and arguments for and against the issue will be presented. Furthermore, Fiqh academic institutions have been cited to examine the legal and moral aspects of gender transition in Pakistan.

Concept of Gender Transformation:

Sexual characteristics, also known as male or female characteristics, are the process of identifying as male or female based on physical traits. Individuals with masculine traits are referred to as men, while those with feminine traits are referred to as women. Surgical procedures that modify a man's outer reproductive organs and characteristics to those of a woman, or vice versa, can result in gender transformation.

In other words, a man who has complete male organs and no deficiencies but wishes to undergo gender transformation would have his genitalia and testes removed through surgery and replaced with a female vagina. When hormones that are associated with females are injected into the body, they can cause a change in voice, mannerism, and breast development, giving a person the appearance of being more feminine. Similarly, if a woman wishes to undergo gender transformation, surgery would involve removing her breasts and closing the vaginal opening, and through advanced technology, an artificial male organ would be installed in place of the vagina, allowing sexual intercourse but preventing the ejaculation of male semen and the possibility of pregnancy. It also entails administering male hormones, resulting in a more masculine voice, mannerisms, and the growth of facial hair.

The process of transforming a boy into a girl is relatively simple, but a transformation from a girl to a boy implies three considerations.

Firstly, there is a psychological problem that not only affects the patient but also impacts their family and related individuals. Secondly, gender transformation

does not always lead to changes in hormones, which is the second problem with hormonal changes. There are significant differences between male and female hormones, and gender transformation does not always result in changes in hormones. That is why the patient has to undergo a medical examination phase. Thirdly, the most critical phase is plastic surgery.³

What is Gender Identity?

People's gender identity may differ from the gender assigned to them at birth, and it includes individuals belonging to the following categories:

Transgender:

Individuals who have experienced living with more than one gender. This can also include people who identify as two-spirit or who live outside the categories of "man" or "woman."

Gender Diverse:

Individuals who were assigned a gender at birth, but seek or undergo medical treatments to align their bodies with their inner perception of themselves. This may include hormone therapy, gender-affirming surgeries, or other interventions.

Both Genders:

Individuals whose physical characteristics at birth or during puberty make it difficult to easily categorize them as "male" or "female." The term "intersex" replaces the inappropriate term "hermaphrodite."

Cross-dresser:

A person who wears clothing is typically associated with the opposite gender for emotional and psychological satisfaction.

Trans:

An umbrella term used to encompass a wide range of identities that do not necessarily conform to societal norms of being "male" or "female."⁴

Arguments in Favor of Sexual Transformation:

1. The person seeking gender transformation often feels compelled and may even face psychological pressure, sometimes to the extent of considering suicide. Therefore, they should be seen as vulnerable and deserving of compassion.
2. Even if it is a matter of necessity, the act of gender transformation should be considered permissible because the rule is: *الضَّرُورَاتُ تُبِيحُ الْمَحْظُورَاتِ* (Necessities permit the prohibited)⁵
3. Gender transformation does not involve adopting the likeness of the opposite gender. Instead, it pertains to adopting similarities in clothing, adornment, behavior, and mannerisms.
4. Gender transformation is not a change in Allah's creation; rather, it is a change in the patient's condition.
5. Human gender encompasses both outward and inward aspects, not just external genitalia.
6. Considering the objectives and reasons of *Shariah*, this act should also be deemed permissible because *Shariah* allows medical treatment for the sick.⁶

Arguments against Sex Transformation:

At another place, it is said: Male and female are two separate genders as per scheme of their creation. Allah says:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً⁷

"O mankind! Fear your Lord who created you from a single soul and created from it its mate and dispersed from both of them many men and women."

Another place Allah says:

لِلَّهِ مُلْكُ السَّمَوَاتِ وَالْأَرْضِ يَخْلُقُ مَا يَشَاءُ يَهَبُ لِمَنْ يَشَاءُ إِنَاءً وَمِنْ يَشَاءُ الذُّكُورَ⁸

"To Allah belongs the dominion of the heavens and the earth. He creates what He wills. He bestows female offspring upon whom He wills and bestows male offspring upon whom He wills."

Therefore, the transformation of sex through surgery or medicine is prohibited based on the following arguments:

1. Accepting and being grateful for Allah's creation is the foremost duty of a Muslim; otherwise, not only ingratitude but also an objection to Allah becomes an issue, which may lead to disbelief. Thus, the Hadith says, "Whoever is not pleased with my decree and does not show patience on My trials should seek some other Rabb (Lord) besides Me."⁹
2. Gender transformation is an explicit deviation from Allah's creation, which is prohibited according to the *Qur'an* and Hadith. The *Qur'an* says, "And I will surely lead them astray and arouse in them [sinful] desires, and command them so they will slit the ears of cattle, and I will surely command them so they will change the creation of Allah."¹⁰

It is reported by Abdullah bin Mas'ud, that "Allah has cursed those who practice tattooing, those who get themselves tattooed, those who pluck their eyebrows, and those who get their eyebrows plucked for cosmetic purposes and alter the creation of Allah."¹¹

Imam Tabari, regarding the Hadith of *Abdullah bin Mas'ud*, states that it is evidence that it is not permissible to change anything in Allah's creation, which He has created with excess or deficiency, whether it is for improving the beauty of a spouse or for any other reason.¹²

3. In Islamic law, gender transformation, along with adopting similarities with the opposite gender, is considered a grave sin and is forbidden. The Prophet (S.A.W) cursed men who take on the appearance of women and women who take on the appearance of men, and he commanded them to expel them from their homes.¹³

Mullah Ali Qari writes the explanation of this Hadith as follows:

"The Prophet (S.A.W) cursed effeminate men, meaning those who resemble women in their clothing, adornment, dyeing their hands with henna, their voice, appearance, speech, and all other movements and habits. This action is considered a change in Allah's creation, and that is why it is forbidden."¹⁴

4. Transformation of gender is like the mutilation of the body which is forbidden:
"The Prophet, (S.A.W), did not approve of carving (tattooing) and mutilation."¹⁵
5. Gender transformation is a dangerous means to spread vice on Earth and annihilate the human race, which is undoubtedly forbidden. Allah commands, "And when he goes away, he strives throughout the land to cause corruption therein and destroy crops and animals. And Allah does not like corruption."¹⁶
6. Intimate and indecent interactions between a male doctor and a non-mahram patient are extremely indecent.
7. For a man to remove his genitalia or for a woman to remove her private parts and breasts is to deprive themselves of an essential human characteristic. The Prophet (S.A.W) said, "He is not one of us who castrates himself or is castrated."¹⁷
8. In the current situation, gender transformation attempts are forbidden, and promoting such acts is also highly forbidden. There is no legitimate religious or worldly need for gender transformation. However, if according to medical professionals, the mental condition of the patient becomes life-threatening, appropriate psychiatric treatment should be pursued.
9. The gender transformation achieved through surgery does not alter one's true gender before the surgery. A person who was counted as a particular gender before the medical procedure will remain the same gender after the procedure.
10. Despite the hypothetical gender transformation, the religious and worldly obligations and laws that applied to the individual before the transformation will remain the same. However, there is a strong concern about the potential social turmoil caused by such individuals; therefore, *Shariah*-based restrictions should be imposed on them. In any case, a fake or artificial man cannot validly marry a woman, nor can a fake or artificial woman validly marry a man.¹⁸

Reassignment of Gender Through Medical Treatment:

The jurists have stated regarding a person in whom the characteristics of both male and female are combined: One should observe which set of characteristics is more dominant. If the male characteristics are more dominant, it is permissible to alleviate the confusion of being a woman through medical treatment, even if it involves surgical means or the use of hormones, as this condition is considered a kind of illness. The purpose of treatment is to provide healing from the ailment and to manifest the person's true gender, not to alter Allah's creation. Therefore, such treatment is permissible."¹⁹

Dr. *Muhammad Khalid Al-Mansour* has permitted to consider the mentioned situations as permissible, provided the following evidence:

1. In this situation, they will be counted among the conditions for which *Shariah* has allowed permissible medications and treatment through surgery.
2. Under this circumstance, undergoing such an operation is as permissible as undergoing surgery and operation when necessary.
3. In this case, such an operation is not considered a change in Allah's creation; rather, it is permissible based on necessity and need. Therefore, exceptions should be made for situations that are prohibited due to changing Allah's creation.
4. In such a case, maintaining their original state would cause great distress and hardship for both individuals. Islam has come to make things easier, remove hardship, and ease difficulties. The principle is "Harm shall be removed" (*La Dharar wa la Dhirar*)²⁰ and "Difficulty calls for facilitation" (*Al-Mashqah Tajlib at-Taysir*).²¹
5. Under this circumstance, undergoing the operation is neither deceitful nor a change in Allah's creation; it is not an imitation. The purpose of this kind of operation is to help the person align with their original nature, and this is religiously permissible. Hence, there is no ugliness or evil involved in such an operation.²²

Arguments for Allowing Gender Transformation:

- (1) **The first argument** is based on the idea that a person transitions out of his own volition and reaches a point of internal pressure where he feels compelled to do so. It is argued that if gender transformation is allowed on this basis, it could become a justification for various crimes. For example, a murderer, thief, or any other criminal could claim that they were forced and under internal pressure to commit those acts.
- (2) The principle "Necessities make the forbidden permissible"²³ does not justify gender transformation and is not supported by Islamic jurisprudence. Allowing such transformations does not alleviate human desires, sexual distress, and anxiety; instead, it may exacerbate them. Some individuals who undergo gender transformation continue to experience even greater sexual distress and mental anguish. Even if one accepts the notion of necessity, it does not mean that anything prohibited becomes permissible. Necessity here refers to a situation where a prohibited thing becomes essential, not merely desired. *Allama Subki* has explicitly stated, "Necessities make the forbidden permissible under the condition that it does not cause damage to that extent."²⁴ And from the aforementioned discussion, it is evident that tampering with divine creation and imitating another gender are grave sins, cursed in the *Qur'an* and Hadith. Therefore, it is not correct to issue a ruling of permissibility for such actions. Moreover, just as the principle "necessities permit prohibitions"²⁵ exists, the opposite principle also applies: "Harm is not removed by a similar harm."²⁶ If one harm is eliminated while another harm arises, then the latter harm should not be inflicted. Through gender transition, apparent compensation for the psychological and emotional suffering, and the internal conflicts are sought, but the consequences of this act, including other damages and deficiencies that may emerge, are difficult to anticipate. The extent of these damages is not limited to an individual; rather, they affect the whole society, as it impacts a person's health and well-being throughout life.
- (3) **The third argument** is also invalid. Claiming that respect for "gender similarity" is similar to dressing, adornments, behavior, and conversation is unfounded. The respected jurists have explicitly explained that

"*Tashabbuh*" refers to adopting similarities with one gender that are specific to that gender. For example, the prohibition of concealing a man's grave during the burial is due to the similarity with women, and vice versa. It is evident that the prohibition of gender similarity is not limited to these four things²⁷ rather, it is absolute concerning women's resemblance. As narrated by *Al-Bukhari*: "May Allah curse those men who resemble women and those women who resemble men."²⁸

- (4) To claim that gender transformation does not alter Allah's creation but only changes a person's health condition is a highly illogical argument, even with the slightest intellectual capacity. Anyone with a little understanding can comprehend that when specific attributes and responsibilities unique to men and women are swapped, it undoubtedly constitutes a change in Allah's creation. Allah has assigned distinct duties and responsibilities to men and women separately. If a man transforms into a woman or vice versa, it goes against the divine creation and is therefore prohibited and unlawful.
- (5) **The fifth argument** is that a person's gender identity is not merely determined by their outward appearance but also by their inner self. Thus, determining and defining gender is dependent on both external and internal aspects. This notion is also prohibited, both religiously and logically. If we were to accept that gender is determined based on feelings, would it be correct to apply the rules and regulations of a "monkey" or a "mouse" to someone who feels like one? Similarly, if someone is born in a state of being deaf and mute, we have no right to pass judgment on their gender unless it is determined through their feelings and natural inclinations. Consequently, if feelings and emotions become the criteria for determining and defining gender, it would lead to corrupt and invalid situations. There are various legitimate ways to treat psychological disorders through which one can address and correct genuine feelings and emotions.
- (6) **The final argument** is that a person who seeks gender transformation is psychologically disturbed, and the scope of treatment and remedy has been widely discussed in *Shariah*. The response to this argument is that if we were to accept a state that conflicts with psychological treatment and is associated with religious and worldly harms as permissible, then one could

justify adultery or alcoholism for a mentally ill person. So, adultery and drinking should also be permitted for their treatment. To allow such practices would be absurd.²⁹

The Fatwas and Decisions of Fiqh Academies on Sex change Surgery:

A Fatwa is defined as a formal legal opinion given by an expert in Islamic law. There are fatwas from different Islamic countries that give rulings regarding sex change surgery or gender reconstruction surgery with regard to both the khuntha and the mukhannath (the transsexual). These fatwas generally agree that gender reconstruction surgery for the khuntha is permissible in Islam but prohibited in the case of the mukhannath.

The fatwa (religious verdict) from *Darul Uloom Karachi* has clarified various scenarios and rulings related to gender transformation. The scenarios and rulings are as follows:

- (1) If a man has some feminine characteristics, and through an operation, these are eliminated, and he becomes entirely male, or if a woman has some masculine characteristics, and through an operation, these are eliminated, and she becomes entirely female.
- (2) If a man has some feminine characteristics, and through an operation, these are eliminated, and he becomes entirely female, or if a woman has some masculine characteristics, and through an operation, these are eliminated, and she becomes entirely male.
- (3) If the person has equal characteristics of both genders and, through an operation, becomes entirely of one gender or the predominant gender, then gender transformation in these situations is correct or not?
- (4) After gender transformation, the related rules will change or not change?
- (5) If a seeming hermaphrodite becomes a single gender through transformation, then they will be counted as the gender they have become.
- (6) Is performing such an operation permissible for a doctor, or will it be considered altering Allah's creation?

1. If a man has some feminine physical characteristics and wants to eliminate them to become a complete man, similarly, if a woman has some masculine physical characteristics and wants to eliminate them to become a complete woman, whether, through surgery or medication, it is permissible according to Islamic law. Having feminine characteristics in a man or masculine characteristics in a woman is considered a flaw, and removing such flaws is allowed in Islam.
2. If a man has predominant masculine characteristics but also some feminine physical traits, he may remove the feminine traits and complete his transformation into a woman; likewise, if a woman has predominant feminine characteristics but also some masculine physical traits, she may remove the masculine traits and complete her transformation into a man. However, doing so through surgery or medication is prohibited according to Islamic law, as these situations involve "altering Allah's creation," which is considered impermissible and forbidden.
3. If a person possesses both male and female equal physical traits, it is permissible to make one gender dominant over the other. Having both sets of characteristics simultaneously is considered a flaw.
4. The rules applicable after gender transformation will be determined by the gender that becomes evident predominately after the flaw has been removed, provided that the transformation is willingly and not due to hermaphroditism (*khuntha*).
5. The person will be counted as belonging to the gender that becomes evident predominately after the flaw is removed. In such a case, hermaphroditism will no longer be an issue.
6. In the above-mentioned scenarios, performing treatment or surgery is permissible for doctors in permissible situations. However, in impermissible situations, performing treatment or surgery is not allowed and is considered a severe sin.³⁰

Fatwa from Saudia Arabia:

Sex change surgery is forbidden and considered a crime under the Holy Quran and the Prophet's sayings. In cases of complications, eunuch/intersex needs to take treatment to treat their ambiguity.³¹

Fatwa From Malaysia:

The Fatwa Committee of the National Council of Islamic Religious Affairs in Malaysia has issued religious rulings and guidelines regarding genital correction surgery for individuals with Disorders of Sex Development (DSD) because it is a disability and it is treatable .³²

Fatwa from Egypt:

A change of sex in a feminine or masculine with no physical disease in his/her body is a religious doctrinal crime and is considered a change in the Almighty's creation. Surgery must be correctly examined and assigned to the dominant gender with DSD.³³

Khomeini's Fatwa

In the Shia school of ijtehad, Khomeini gave a fatwa in favor of transgenders. According to that, "it seems that Sex-Reassignment-Surgery (SRS) for Ftm/MtF is not banned (haram) in Islam. Moreover, it is not illegal for Intersex to take surgery.³⁴

The Fiqh Council of North America, 21 June 2022

Islam prohibits all attempts to transition from one gender to another. The only possible exception is when an intersex person, someone born with ambiguous physical characteristics, undergoes surgery to align their physiology more closely with the gender they identify with or are determined to belong to, as decided in consultation with medical experts.³⁵

The decision of the Islamic Jurisprudence Academy in Makkah:

Modern medical science has made it possible to completely change human organs. However, some doctors are misusing this capability to change the gender of individuals, which is not permissible under Islamic law. This is because gender transformation involves altering Allah's creation, and it falls

under the domain of satanic actions. The *Qur'an* alludes to this in the verse: "And I will command them so they will surely change Allah's creation."³⁶ However, if an individual possesses both male and female characteristics, then it should be determined which set of characteristics is dominant. If the male characteristics are dominant, then it is permissible to correct the misunderstanding of being a woman through medical treatment, and if the female characteristics are dominant, then it is permissible to correct the misunderstanding of being a man through medical treatment. This correction can be achieved through surgical means or hormonal changes, as it is a medical condition and not a change in Allah's creation. Therefore, treating this condition through medical means is permissible.³⁷

The Decisions of the Islamic Ideological Council and of Pakistan:

The Islamic Ideological Council is a constitutional body in Pakistan that provides recommendations, guidelines, and advice on matters related to Islamic law and principles. ' The council says transgender law is 'not in line with Shariah. Section 2(f) contains the definition of "gender identity," Section 2(n)(iii), Section 3, and Section 7 of "The Transgender Persons (Protection of Rights) Act, 2018" as against the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet. The Council says the act may lead to "new social problems" in Pakistan. The statement on the bill comes a day after the Senate chairman said the committee formed to consider the act would consult religious scholars, CII, if need be. The council strongly advised against unnecessarily politicizing the issue and stressed that in case of any controversy, the government was resolved to take the course of consultation. On September 27, 2022, strongly advising against unnecessarily politicizing the issue, he stressed that in case of any controversy, the government was resolved to take the course of the consultation.³⁸

Legal framework of Pakistan and verdicts of apex courts:

1. In Pakistan, the outcome of the ongoing discussions on gender change has resulted in several cases being presented in different High Courts of the Pakistan. Although there was no specific law on gender change in Pakistan before 2018, the National Assembly approved the Transgender Persons (Protection of Rights) Act in 2018 with majority support.
2. According to this act, every individual in Pakistan has the right to choose their gender after reaching the age of eighteen (18).³⁹ According to this, the petitioner's lawyer requests a gender reassignment, but the judges ask for reports from the health authorities and relevant institutions so that they can make a decision more easily based on the information provided in the reports. Below are a few cases from the courts:
3. On August 28, 2020, *Saba*, a transgender person, filed a request for gender change with Justice *Jawad Hassan* of the Lahore High Court. Justice *Jawad* raised the point of how the court can permit someone to undergo a gender change and under what law. The lawyer representing the transgender individual stated that during childhood, male characteristics were evident in *Saba*, and for this reason, she identified herself as a male. The lawyer requested permission for *Saba* to undergo gender change. The court requested a report from the health department regarding the operation of the transformation. Justice *Jawad Hassan* issued a written interim order on *Saba's* request, stating that gender change is a sensitive matter and that the application has been filed under Article 199 of the Constitution. As per the applicant's claim, the Transgender Persons Act allows for gender change.⁴⁰
4. A 27-year-old transgender individual, facing difficulties due to legal obstacles, approached the Islamabad High Court with an appeal to seek relief. At the age of 13, the individual started feeling changes in gender identity, and doctors were consulted, who advised gender reassignment surgery. However, after the surgery, the individual faced mental distress. The court suspended the expenses for gender reassignment surgery, but legal hurdles still exist for changing names and genders on educational

certificates and other documents. Therefore, the court ordered all relevant departments, including the Ministry of Interior, Health, Education, and NADRA Chairman, to form a committee along with medical reports. Justice *Mian Gul Hassan* and Justice *Aurangazib* set the hearing date for the case until March 8th.⁴¹

5. In the Rawalpindi bench of the Lahore High Court, Justice *Siddiqui Ali Khan* conducted the hearing for another case. A person named *Akash Ali*, who identifies as a male, stated that he is leading a married life. On the other hand, his daughter *Neha* also shared the same perspective, claiming to be *Akash's* wife and living a married life. The court ordered *Asma Bibi (Akash Ali)* to undergo a medical test for gender determination and set up a 4-member medical board in MS DHQ Rawalpindi. The court postponed the hearing until July 20, indicating that the next hearing will be conducted after the gender identification test.⁴²
6. On June 25, 2020, the Division Bench of Peshawar High Court, consisting of Justice *Qaiser Rashid* and Justice *Naeem Anwar*, conducted a hearing on a petition for gender reassignment filed by a woman. The woman's lawyer argued that it was her legal right to undergo any operation as per the prevailing laws. They stated that it is her client's prerogative to make any decision, and the law facilitates rather than obstructs people's rights.
7. The lawyer mentioned that recently, Parliament has passed a law concerning the protection of transgender individuals, and the woman wishes to undergo gender reassignment under Section 2 of the same law, claiming that it is the treatment for her gender dysphoria. After thoroughly considering all aspects of the case, the court ordered the Hayatabad Medical Complex to provide facilities for the woman's gender reassignment. The court instructed the hospital to present a report within three months, detailing the facilities available for gender reassignment, legal and medical aspects of the case, complications of the operation, and potential risks to the woman's life. Justice *Qaiser Rashid* remarked that the law approved by Parliament protects such individuals, but instead of the court, the woman should approach a hospital. The petitioner's lawyer informed the court that after

gender reassignment, issues related to the name, gender, and inheritance might arise, and they may have to refer back to the court for those matters.⁴³

8. In a separate case, the Chief Justice of Lahore High Court, Mr. Justice *Syed Mansoor Ali Shah*, rejected a petition filed by *Shama Bibi* for her daughter's gender reassignment. *Shama Bibi's* daughter, *Ayesha Shafiq*, is twenty-four years old and faces medical issues. The doctors have recommended gender reassignment, but due to the absence of a law regarding gender reassignment, they are unable to operate. Therefore, the court issued orders to formulate directives related to gender reassignments. The Deputy Attorney General informed the court that the petition is not maintainable due to the absence of laws concerning gender reassignment, and hence it should be rejected.⁴⁴

Constitution of Pakistan:

Even in the constitution of Pakistan, no distinction has been made between gender and sex. Chapter No. Two of the Constitution of Pakistan: Article Nos. 25, 26 and 27 of the Fundamental Rights in the laws guaranteeing gender discrimination are only for the two genders of men. It is mentioned in the constitution, gender and sex have been used interchangeably.⁴⁵

Supreme Court of Pakistan Rulings:

In 2009 and 2012, the Supreme Court of Pakistan issued two significant decisions concerning transgender people's rights. A 3-member bench of the Supreme Court of Pakistan, comprising Chief Justice Iftikhar Muhammad Chaudhry, Justice Jawad S. Khawaja, and Justice Khilji Arif, gave this decision. This law was made after the Supreme Court's judgment on September 25, 2012, which said that the guidelines given for the protection of transgender people were based on physical disorders rather than mental feelings, and they were hereditary. Rights directed. The court directed NADRA to record male or female gender based on a medical test in the gender box, which was ignored in the law passed by the government in 2018. Transgender people have all the rights guaranteed by the constitution; transgender people can lead a normal life like other members of society.

These rulings were notable because they recognized the community's problem and spoke out against the prejudice that transgender people encounter. Due to this ruling, transgender people were denied national documentation, leaving them unable to enjoy their fundamental civil rights as Pakistani citizens. The discriminatory approach was based on societal stereotypes; nonetheless, the National Database and Registration Authority (NADRA) held the official view that because numerous transgender people's paternity was disputed, they might not be awarded state identification cards. According to the Pak-SC, transgender people are the third gender class and are 'equal' voters. As a result, they were guaranteed all of their constitutional rights, if not all of them. The Court also advised NADRA to ensure provision of national identity cards to those who needed them. As a result, they were guaranteed all of their constitutional rights, if not all of them. The Pak-SC further recommended that NADRA guarantee that transgender people receive national identity cards so that they are aware of their gender identity.' Despite the fact that society's inherent biases were at the foundation of prejudice, NADRA said that many transgender people could not obtain national identity cards because their parentage was unknown. Transgender people, according to the Pak-SC, belong to the third gender category and are 'equal' citizens of Pakistan. As a result, they now have full access to all of their fundamental rights. The Court also ordered NADRA to guarantee that transgender people receive national identity cards that incorporate information about their gender identity.¹⁴⁶

Federal Shariat Court of Pakistan:

[The FSC](#), speaking through Mr. Justice Dr. Syed Muhammad Anwar in a 108-page judgment, struck down Section 2(f) (defining gender identity as an innermost feeling); Section 2(n)(iii); Section 3 (defining and recognizing transgenders and other genders); and Section 7 (providing inheritance rights to all genders) for violating the core tenets of the Holy Qur'an.

The Federal Shariat Court of Pakistan declared in judgment PLD 2023 FSC 301 that Section 2(f) contains the definition of "gender identity," Section 2(n)(iii), Section 3, and Section 7 of "The Transgender Persons (Protection of Rights)

Act, 2018” 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. Hence, the Shariah Petitions challenging the Transgender Persons (Protection of Rights) Act, 2018 are accepted in view of the above terms. Consequently, the provisions of the Transgender Persons (Protection of Rights) Rules, 2020, relating to the above-mentioned sections of the impugned Act, 2018, which have been declared against the injunctions of Islam, basic norms, and values of the Islamic society, shall also cease to have legal effect.

The court has ruled that transgender individuals cannot switch their gender. At the request challenging the rights of transgender persons under the Transgender Protection Act 2018, the acting Chief Justice of the Federal Shariat Court of Pakistan, *Syed Muhammad Anwar*, and Justice *Khadim Hussain* issued the decision. The ruling of the Federal Shariat Court of Pakistan stated that transgender individuals cannot be identified as male or female. The court also stressed that the government has an obligation to grant all rights, according to the 1973 constitution of Pakistan, to transgender people because Islam guarantees them all fundamental human rights. Many religious practices are gender-specific.

The Federal Shariat Court of Pakistan held in its decision that a person's biological sex determines their gender. Gender-specific religious practices, such as prayers, fasting, and pilgrimage, do not determine a person's gender based on their feelings. The Federal Shariat Court of Pakistan has declared Sections 2 and 3 of the Transgender Act incompatible with the teachings of Islam.

The Federal Shariat Court of Pakistan has ruled that the entire Section 2 of the Transgender Persons (Protection of Rights) Act, 2018, does not conflict with Shariah; transgender individuals are entitled to all fundamental rights enshrined in the Constitution of Pakistan, 1973. The court's decision states that the gender determination of transgender people will be based on physical characteristics. When male characteristics are predominant, the person is considered a trans male (*Khawaja Sara*), while if female characteristics are predominant, the person will be considered a trans woman (*Khawaja Sara*). The Federal Shariat

Court of Pakistan has stated in its judgment PLD 2023 FSC 301 that *Shariah* law does not allow anyone to change sex because of impotence. A person can keep the gender they were born with. The court emphasized that labeling someone as male or female based on external genitalia is not valid; transgender status cannot be determined solely by physical characteristics or self-identification. Section 7 of the Transgender Persons (Protection of Rights) Act, 2018, has also been found incompatible with Islam and *Shariah* by the court's decision. The court clarified that gender in Section 7 cannot be determined based on personal preferences, and inheritance shares cannot be allocated according to personal preferences. The court clarified that inheritance shares can only be allocated on the basis of biological gender, and if a person identifies as transgender (*Khawaja Sara*) contrary to their biological sex, it would be considered un-Islamic.

The *Shariah* Court invalidated Section 2 of The Transgender Persons (Protection of Rights) Act, 2018 and also declared the rules made under the Act as non-Islamic. The court stated that judgments deemed un-Islamic do not have any legal validity.⁴⁷

Conclusion:

Allah has created everything in pairs, i.e., male and female, and if a double gender is born, then it is called a disease or disability, which can be cured by medical treatment. About Transgender All over the world, i.e., the representatives of Islamic states, there is a unanimous opinion or verdict that since there is no third gender in the Qur'an, changing it is forbidden; rather, it is a serious crime and can only be corrected, just like disability or a disease. It is done in Islamic states, especially in Pakistan. It is not allowed to do anything against Sharia Law because it is an Islamic state, so gender change cannot be allowed at all, but gender correction should be done on the instructions of a medical doctor. In countries that have changed their laws to allow transsexuals, the problem has grown to such an extent that Sweden and other European countries that have been doing particularly well for the transgender community have seen a shocking increase in suicide rates, and crimes and morals have been

destroyed. But in Muslim countries except Turkey and two or three other countries, this process and practice have been declared unnatural, un-Islamic, un-Sharia, unethical, illegal, and unconstitutional because 10% of those undergoing sex change surgery are also facing various psychological, social, and other problems. The proof of this is that the Transgender Protection Act of 2018 was declared by the Islamic Ideology Council of Pakistan to be unislamic. After that, it was declared by the Federal Sharia Court of Pakistan unislamic as well. The court found sections 2, 3, and 7 of the Act unlawful in its judgment.

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