

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT 2018: A SHARIAH APPRAISAL OF SELF-PERCEIVED GENDER IDENTITY WITH SPECIFIC REFERENCE TO RIGHT OF INHERITANCE

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ABSTRACT

The transgender community is considered deprived of fundamental rights around the world. Pakistan, being an Islamic state, introduced an enactment to protect the rights of transgender people. The existing leading legislation has violated many Islamic injunctions in the name of transgender protection. The current study at hand aims to analyse the legislation titled Transgender Persons (Protection of Rights) Act 2018 in the context of Islamic injunctions. Firstly, this paper discusses the context of the legislation and analyses the sections of the Transgender Persons (Protection of Rights) Act 2018. The main purpose of the current research is to examine transgender legislation from the Islamic perspective with special reference to their right to inheritance. This paper also intends to explore the fundamental shariah principles for the perception of gender identity. This research focuses on the right of self-perceived gender identity and the right of inheritance in Islamic law and the legal system of Pakistan. This paper concludes that the existing legislation on transgender persons is not in accordance with the injunctions of Islam and needs some amendments.

Keywords: Transgender, gender identity, Pakistani Law, Islamic law, Pakistan.

INTRODUCTION

Transgender and Pakistan

Our society tends to accommodate two genders only. Any gender beyond male and female is not acceptable to many. Transgender persons have struggled over the ages to get themselves registered as a distinct gender. Social, political and legal battles have been borne by transgender persons to be recognized as a separate gender in society. The Supreme Court of Pakistan take cognizance of the rights of the transgender persons in 2013, when a petition¹ filed by Dr. Muhammad Aslam Khaki, a social activist, was taken up and decided in favor of the special community, vide this judgment, the Supreme Court required NADRA² to do arrangements to issue CNICs³ to the transgender persons. The Supreme

¹ *Dr. Muhammad Aslam Khaki v S.S.P. (Operations) Rawalpindi* reported as PLD 2013 SC 188

² National Database and Registration Authority

³ Computerized National Identity Cards

Court depreciated the infringement of rights of the transgender person and held that they are also entitled to hold the property, either moveable or immovable. Similarly, in 2014, the Supreme Court of India delivered a historic decision in which it acknowledged ‘transgender’ as a distinct gender or ‘third gender’.⁴ Yet the third gender has still not been able to gain much status in society.

Transgender persons are some of the most neglected segments of society. Neither the legislature nor the society has had any soft corner for them. Ironically, the third gender is not only being deprived of recognition and rights within developing societies but also in the more developed ones. Twenty European states still require gender sterilization.⁵ In Pakistan, there is a different situation for the transgender persons. While the third gender remains socially deprived, it has managed to gain some legislative attention.⁶ Allegedly, the 2017 census has not provided the true number of transgender persons in Pakistan. The *Khawaja Sara Society* claims that there are more than half a million transgender persons in Pakistan but the 2017 census recorded only 10,418.⁷

The constitution of Islamic Republic of Pakistan, 1973 provides equal fundamental rights to all. Pakistan is a welfare state and all the persons are guaranteed to be treated equally in the constitution of Islamic Republic of Pakistan. Article 25, of the constitution clearly put emphasis that there shall be no discrimination on the basis of sex. So, constitutionally speaking, transgender persons enjoys the equal legal and fundamental rights as enjoyed by male or female citizens of Pakistan.

While there may be huge criticism against our society’s treatment of the third gender, Pakistan should at least be given credit for being the pioneer in protecting the rights of the third gender through legislative development. In May 2018, the Parliament of Pakistan passed the Transgender Persons (Protection of Rights) Act 2018. The Bill was a unique piece of legislation and gained local and international recognition. The Transgender Persons (Protection of Rights) Act 2018 was passed by Pakistan's national assembly with the intention of protecting the rights of the transgender population and promoting their welfare. There are 11 rights included in this law, including the right to one's own gender identification and the right to inherit property. The purpose of this essay is to examine and evaluate the Shariah-based aspects of the rights to inheritance and self-perceived gender identity. Islam has established rules for how gender identity is seen, leaving no opportunity for the self-perception. Islamic law, on the other hand, does not acknowledge the share based on self-perceived gender identity. The first section of this article introduces transgender people in Pakistan and the Transgender Persons (Protection of) Act.

⁴ Judgment of the Indian Supreme Court in *National Legal Services Authority v. Union of India* (Writ Petition (civil) No. 604 of 2013)

⁵ Afrasiab Ahmed Rana, “Transgenders and Their Protection under Pakistani Law,” *Courting the Law* (Courting the Law, August 8, 2020), <https://courtingthelaw.com/2020/07/27/commentary/transgenders-and-their-protection-under-pakistani-law/>.

⁶ *Ibid*

⁷ “Transgender Community Rejects Census Figures,” *The Express Tribune*, August 27, 2017, <https://tribune.com.pk/story/1492120/transgender-community-rejects-census-figures>.

Pre-Modern Muslim Societies and Gender Ambiguity

There is no way to determine for sure when the transgender phenomena first emerged in history. Their existence may be traced in several global cultures, though.⁸ Masnun cited Greek and Roman history as examples of the transgender phenomena.⁹ Challenging issue of transgender community as third gender is still underdeveloped in Islamic theology. The traditional Islamic scholarship on gender is based on the basis of the binary logic with no space of a third gender. For example: SRS (transgender sex-reassignment surgery) is regarded as sinful (*harām*).¹⁰ Fortunately, by 1980s some modern scholars started jurisprudential studies on the gender identity issue and SRS.¹¹ Pre-modern era of Muslim world has gender ambiguity through figures such as *khāsī*, *hijra*, *mukhannath*, *mutarajjul*, *Khunthā* and *mamsūh*. A briefly outline is here:

1. *Khāsīs* (eunuchs) were castrated human males. They were individuals with male sex organs who developed into boys before being castrated, typically by removing the testicles. They were not transformed into women as a result of this surgery; instead, they were left in a social and legally ambiguous state where they belonged to neither gender.¹²
2. The term "hijras" refers to people who are born with male sex organs, are raised as boys, and then, as adults, change their gender identity. Many people in South Asian nations like Pakistan, India, and Bangladesh voluntarily have their testicles and penis removed during a ritual castration. They are viewed in their society as being of the "third gender," which is neither male nor female.¹³
3. *Mukhannaths* are effeminate men who choose to dress and act like women despite being physically male.¹⁴
4. Women who dress and speak like males are known as *mutarajjulas*.¹⁵
5. People who have ambiguous or both male and female sex organs or genitalia are known as *khunths* (intersexed individuals). Two different varieties of *Khunth* have been distinguished by Muslim jurists.¹⁶

Individuals classified as *al-khunth mushkil* (determinate/unambiguous intersex) are included in the first group of *khunth*. Muslim jurists assert that this first category has a "real gender or sex" that can be identified through bodily characteristics, particularly after puberty. People with physical characteristics that make it impossible to categorise them as either male or female, before or after puberty, are included in the second group of *khunth*, according to Muslim jurists. *Al-khunth mushkil* (ambiguous/indeterminate intersex) is the name given to this second group. The last group is known as *Mamsīs*, or those without

⁸ (Masnun, M. (2011). Waria dan Shalat Reinterpretasi Fikih Untuk Kaum Waria. *Musāwa Jurnal Studi Gender dan Islam*, 10(1), 123–134. <https://doi.org/10.14421/musawa.2011.101.123-134>

⁹ ISLAM AND TRANSGENDER (A Study of Hadith about Transgender) Muh. Bahrul Afif

¹⁰ Al-Jizānī, Muḥammad b. Hussain. 2006. *Fiqh al-Nawāzil*, Vol. 4. Dammām, Saudi Arabia: Dār Ibn al-Jūzī

¹¹ (Alipour, Mehrdad. "Transgender Identity, The Sex-Reassignment Surgery Fatwās and Islāmīc Theology of A Third Gender." *Religion and Gender* 7, no. 2 (2017): 164-179.)

¹² Marmon, Shaun. 1995. *Eunuchs and Sacred Boundaries in Islamic Society*, Oxford, UK: Oxford University Press.

¹³ Nanda, Serena. 1999. *Neither Man nor Woman; The Hijras of India*, Toronto, Canada: Wadsworth Publishing Company

¹⁴ (Rowson, Everett K. 1991. 'The Effeminate of Early Medina', *Journal of the American Oriental Society* 111:4, 671–693.

¹⁵ Bouhdiba, Abdelwahab. 2012. *Sexuality in Islam*, Translated by: Alan Sheridan. London, UK: Saqi Books.

¹⁶ Al-Sarakhsī, Muḥammad b. Aḥmad. 1993. *Al-Mabsūṭ*, Beirut, Libanon: Dār al-M'arifa. Vol. 30: 91–92)

either male or female genitalia. While most *Shi'a* scholars referred to this group as *mams*, others, including Ibn Idris classified them as *khunth mushkil*. To my knowledge, the name "mams" is never used in *Sunni* literature, and this particular group is always grouped under the umbrella term "*khunth*." ¹⁷Pre-modern Muslim jurists only examined the two groups known as *khunth* and *mams* out of the six possible groupings since, in their opinion, the other four are biologically ambiguous.¹⁸ While it seems that some *Sunni* scholars, such as al-Sarakhsi, were at least aware of individuals whose sex and gender could not be definitively determined and thus opened the discursive possibilities for recognising individuals who featured outside the gender binary, *Sunni* scholars generally preferred not to discuss *khunth mushkil* from a gender/sex categorical perspective and instead tended to label these groups as either male or female. *Shia* Scholars also spoke more tolerantly and even positively about the subject of *khunth* and *mams* as a third gender in subsequent centuries.

Terminological Impediment

It is unfortunate to reveal that traditional Muslim scholarship is not comfortable with contemporary terms of gender-oriented issues. In simple, the term "transgender" now refers to people whose gender identities do not match the sex they were assigned at birth.¹⁹ "Denoting or referring to a person whose sense of personal identification does not accord with their natal sex," is the definition of the word "transgender."²⁰It is also admitted that transgender and *khunth* is overlapping issues but hold distinct categories. Some modern scholars termed it as *al-khunthā al-naḥsīya* . Over the past thirty years, this phrase has become widely used in Arabic Islamic setting.²¹ The Islamic Fiqh Council of the Muslim World League stated in 1989 that traditional scholars have reservations about self-perceived identity since it is that of "wrongly interfering in God's creation." Gender-oriented issues are not as simple as traditional scholars think. These issues are affiliated with divine, social, legal, ethnic, and medical zones. No one specialist can put a one-sided opinion on this nature of the proposition. Moreover, it has several reasons of environment, as well as congenital (biological elements like genes and hormones). Hormonal imbalance is the cause of this illness.²² Human rights organizations spend huge money on the transgender community, but the benefits are leaking to some other mafias. LGBT and other

¹⁷ Al-Qazwīnī, ‘Abd al-Karīm b. Muḥammad. 1997. *Al-Sharh al-Kabīr*. ‘Ali Muḥammad ‘Awaḍ Wa ‘Ādil Aḥmad ‘Abd al-Mūjūd (eds.). Beirut, Libanon: Dār al-Kutub al-‘ilmīya.

¹⁸ Although some Muslim jurists currently try to apply more modern medical terms to determine the gender or sex of *khunthā* (Zainuddin and Abdullah Mahdy, 2017: 358), traditional scholars mostly identify *khunthā*'s gender or sex through biological signs such as by looking at which genitalia the *khunthā* urinates from or the one the urine initiates from or ends from (during childhood and before puberty) or by observing the facial hair and semen for males and the growth of breasts and menstruation for females (after puberty).

Sanders, Paula. "5. Gendering the Ungendered Body: Hermaphrodites in Medieval Islamic Law." In *Women in Middle Eastern History*, pp. 74-96. Yale University Press, 2008.

¹⁹ Beemyn and Rankin (2011: 6) describe the term transgender as 'all individuals whose gender histories cannot be described as simply male or female, even if they now identify and express themselves as strictly female or male.'

²⁰ 'Transgender | Definition of Transgender by Lexico', n.d.

²¹ Skovgaard-Petersen, Jakob. 1995. 'Sex Change in Cairo: Gender and Islamic Law', *The Journal of the International Institute* 2:3. Retrieved (November 2014) from: <http://quod.lib.umich.edu/j/jii/4750978.0002.302?view=text;rgn=main>.

²² *ibid*

such groups overrule the actual grieved community. Islamic jurisprudence is a wide range of Islamic law. DSD (a disorder of sex development) and such other medical issues to be treated like a disease.²³

Definition of the Transgender:

Definition of the Definition in the Act:

The Act has provided the threefold definition of a transgender person,

- a. Intersex;²⁴;
- b. Eunuch;²⁵ and
- c. Transgender male or transgender female; a person whose gender expression is different from general norms of gender identity in society.²⁶

a. Intersex:

Technically, an intersex whose sex is hard to be determined biologically due to ambiguous and uncertain genital features.²⁷ Intersex is defined in the act as a person having ambiguous or mixed genital features of a male and female.²⁸

b. Eunuch

The Act provided the second definition of “Eunuch” as a person who at the time of his birth was male but has undergone castration and now ceases to be a male.²⁹ In a literal sense, this type of person is termed as “transgender”.³⁰ It is asserted that this type of condition is psychological rather physical.³¹ These types of persons do not have any genital disorders.

c. Transgender/ *Khawja Sara*:

The act defines the third category as transgender, these are those persons whose identity differs from the general norms of society.³² This definition recognizes the legal status of the persons with self-perceived gender identity.

Shariah Perspective of the definitions:

In Islamic Law gender ambiguities have been identified and recognized as follows:

²³ Kuhnle U, Krahl W. The impact of culture on sex assignment and gender development in intersex patients. *Perspectives in Biology and Medicine*. 2002;45:85–103. doi: 10.1353/pbm.2002.0011.

²⁴ Section 2-n(i), The transgender persons (protection of rights) Act, 2018

²⁵ Section 2-n(ii), *ibid* Act

²⁶ Section 2-n(iii), *ibid* Act

²⁷ “Ambiguous (Uncertain) Genitalia,” *Ambiguous (Uncertain) Genitalia: Symptoms, Diagnosis & Treatment - Urology Care Foundation*, accessed June 17, 2022, [https://www.urologyhealth.org/urology-a-z/a_/ambiguous-\(uncertain\)-genitalia](https://www.urologyhealth.org/urology-a-z/a_/ambiguous-(uncertain)-genitalia).

²⁸ See *supra* note 8.

²⁹ See *supra* note 9.

³⁰ Syed Nadeem Farhat et al., “Transgender Law in Pakistan: Some Key Issues,” *Policy Perspectives* 17, no. 1 (2020): pp. 7-33, <https://doi.org/10.13169/polipers.17.1.0007>, 24.

³¹ *Ibid*

³² See *Supra* note 10.

a. *Khasis (Eunuch):*

Simply, the castrated males are *Khasis* (Eunuch).³³ They born and raised as male persons but later on castrated on one pretext or the others. They got castrated against their will.

b. *Hijra*

Such persons who born as male, develops organs as male, raises as boys but after becoming adult they assume their identity as female. They grow long hairs, put on jewelry and trying to grow female voice and style etc. Most of them undergo the castration voluntarily, they try to cut their testicles and penis etc.³⁴

c. *Mukhannath/ Mukhans*

The *mukhannath*, according to later Muslim lexicographers, mostly identify “as a man who resembles or imitates a woman in the languidness of his limbs or the softness of his voice”³⁵

It is such a male, who resembles the female by his appearance, and by the way of talking and general perception about them is that such person is male, is said to be a *Mukhnas*.

Those who are born with female resemblances and people perceive them so, and second, those who are not born with female resemblances but have made their resemblance with the female. Islam has not assigned any sin for the former type but the later type is cursed by the Holy Prophet (PBUH)³⁶ thus the same is prohibited in Islam.

d. *Mamsuhs*

Mamsuhs are persons who lack either male or female genitals. These types of transgender persons may also be known as *Khunsa Mushkil*.³⁷

e. *Khunthas:*

Khunthas (hermaphrodites/intersexes) are people who possess both male and female sex organs and genitals. *Khunsa* is a person who is having the characteristics of both male and female at the same time or a person who has neither feminine nor masculine characteristics.³⁸

1. Gender Identity:

Section 2(f) of the Act provides the definition of gender identity in the following words;

³³ Jeannette L Nolen, “Eunuch,” Encyclopædia Britannica (Encyclopædia Britannica, inc.), accessed June 19, 2022, <https://www.britannica.com/topic/eunuch>.

³⁴ M. Alipour, “Islamic Shari'a Law, Neotraditionalist Muslim Scholars and Transgender Sex-Reassignment Surgery: A Case Study of Ayatollah Khomeini's and Sheikh Al-Tantawi's Fatwas,” *International Journal of Transgenderism* 18, no. 1 (November 22, 2016): pp. 91-103, <https://doi.org/10.1080/15532739.2016.1250239>, 92.

³⁵ Everett K. Rowson, “The Effeminates of Early Medina,” *Journal of the American Oriental Society* 111, no. 4 (1991): pp. 671-693, <https://doi.org/10.2307/603399>. See also Julie Scott Meisami, *Encyclopedia of Arabic Literature* (London: Routledge, 2006), 548.

³⁶ See Sahih al-Bukhari, no. 873, p. 874

³⁷ Dost Muhammad Khan, Hafiz Salah ud Din Haqani, and Zia ur Rehman, “Khunsa (Khawaja Sara) Ka Ta`Aruf Awr Is k Shari Ahkam Awr in k Haqooq Ka k Ly Tajawiz,” *Pakistan Journal of Islamic Research* 9 (2012): pp. 195-217, 200.

³⁸ Ibid 196.

“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 is very much clear from this definition is that the act provides free access to all persons for choosing their own identity immaterial of their biological makeup. It allows the self-perceived gender identity upon an individual`s self-sense and innermost feelings.

The person has full right to recognition of his self-perceived gender identity.³⁹ A person with a self-perceived altered gender identity has also been recognized as a transgender person.⁴⁰ Such has all the right to get himself registered with all the state departments according to his own self-perceived gender identity.⁴¹ He is entitled to CNIC, a passport, and all other licenses and privileges for the gender of his choice.⁴²

Conversely, self-perceived gender identity is prohibited in Islamic Law. There are clear pieces of evidence from the text that such gender alteration is not permissible in Islam. Islam has codified the perception of identity. Gender identity shall be computed as per the criteria laid down in Islam.

It is reported that the Prophet of Allah (PBUH) when asked about the inheritance of a transgender, said that if he urinates as a male then he be given a share of a male and if he urinates as a female then the transgender be given share of a female. Hence, it is clear that if a person urinates from the penis, then he is a male and if the person urinates from the urethra, then he is a female.

Imam Bukhari has narrated that the Holy Prophet (PBUH) is reported to have been said that, in the following words;

حَدَّثَنَا مُعَاذُ بْنُ فَضَالَةَ ، حَدَّثَنَا هِشَامٌ ، عَنْ يَحْيَى ، عَنْ عِكْرَمَةَ ، عَنْ ابْنِ عَبَّاسٍ ، قَالَ : لَعَنَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُحْتَشِينَ مِنَ الرِّجَالِ وَالْمُتَرَجِّلَاتِ مِنَ النِّسَاءِ ، وَقَالَ أَخْرَجُوهُمْ مِنْ بُيُوتِكُمْ قَالَ : فَأَخْرَجَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فُلَانًا ، وَأَخْرَجَ عُمَرُ فُلَانًا .⁴³

Translation: “Narrated Ibn `Abbas: The Prophet cursed effeminate men (those men who are in the similitude (assume the manners of women) and those women who assume the manners of men, and he said, Turn them out of your houses. The Prophet turned out such-and-such man, and `Umar turned out such-and-such woman.”⁴⁴

It is evident from this tradition of the Holy Prophet (PBUH) that if someone assumes the manners of the other gender he is cursed by the Prophet (PBUH) and thus is not permitted in Islam, hence prohibited. Islam is Universal *Deen* (religion) and has taken into consideration all the possible outcomes of a legal rule. Shifting the recognition of one`s own identity to his own self-perception will create a number of psychological, social, and legal issues, which will be discussed infra in the foregoing paras.

³⁹ Section 3(1), The act

⁴⁰ See supra heading 3.1.1 (C). See also supra note 10.

⁴¹ Section 3(2), the act

⁴² Section 3(3), Ibid

⁴³ *Sahih al-Bukhari*, no. 5886

⁴⁴ Translation from “Sahih Bukhari 5886,” Muhammad.pk, April 13, 2021, <https://muhammad.pk/sahih-bukhari-5886/>.

Right of Inheritance:

The act has ensured that the transgender be given the right of inheritance as per the law of inheritance and has provided the right of inheritance for the transgender as per their gender in the CNIC.⁴⁵ Thus, it has permitted the right of inheritance as per the self-perceived gender identity of the transgender, as NADRA is bound to follow the self-perception of the person himself and not by another means.

The act has determined the share of the transgender person in section 7(3), which envisages as follows;

“... (3) The share of inheritance for transgender persons will be as follows:-

- (i) for transgender male, the share of inheritance will be that of man;*
- (ii) for transgender female, the share of inheritance will be that of woman;*
- (iii) for person who has both male and female or ambiguous characteristics, such as their state is difficult to determine upon birth, following shall apply:-*
 - a. upon reaching the age of eighteen years, if the person's self-perceived gender identity is transgender male- the share of inheritance will be that of male.*
 - b. upon reaching the age of eighteen years, if the person's self-perceived gender identity is transgender female- the share of inheritance will be that of woman;*
 - c. upon reaching the age of eighteen years. if the person's self-perceived gender identity is neither transgender man nor transgender woman, the share of inheritance will be an average of two separate distributions for a man and a woman; and*
 - d. below the age of eighteen years, the gender as determined by metrical officer on the basis of predominant male or female features.”*

It is noticeable from the above legislation that distribution of the inheritance is as follows;

- if the transgender is trans-male as per his own self-perceived gender identity, then he will be given the inheritance of a male person, say double then the female.
- if the transgender is trans-female as per his own self-perceived gender identity, then he will be given the inheritance of a female person, say half then the male.
- if the transgender, as per his own self-perceived gender identity, neither male nor female then he will be given the inheritance of average of the male and female.

Meaning thereby, that if the gender identity of the transgender is ambiguous then his share shall be mean of the distribution of male and female e.g if male has 2 shares and female

| Gender | Share |
|-----------------------------------|-------|
| Male | 1 |
| Female | ½ |
| Transgender with ambiguous gender | 2/3 |

has 1, then the transgender with ambiguous identity will have 1.5 share. The table infra

Table 1: Share of inheritance according to the Act.

⁴⁵ Section 7, the Act.

According to act, one will benefit from his self-perceived gender identity at time of the opening of the inheritance.

Conversely, Islam has provided another structure for the inheritance of the transgender. It is reported by *Ibn Adi* that as reported by *Hazrat Ibn e Abbas* (R.A) that the Holy Prophet (PBUH) when asked about the inheritance of the transgender, he said that the inheritance of transgender will be determined from the organ he urinates.⁴⁶ Meaning thereby that if the transgender urinates as a male then he will be given the share of a man and if he urinates as urinated by female then he will be given share of a woman. As far as third type of the transgender is concerned, the majority of the Muslim Jurists believes that if the gender of the transgender is not determinable then the share of the less determinant will be given to him. In simple words, if the share of the male issue is less than the transgender will be given share of a man and if the share of the female issue is less than the transgender will be given share of a woman.⁴⁷ For example, if the share of the male issue is 1 and share of female issue is 2 then the transgender will be given 1 share, on the other hand if the share of the male is 2 and share of the female is 1 than the transgender will be given 1 share. As discussed, Islam do not codify any share for the person of the self-perceived gender identity but has provided the share of the persons who have gender identities according to Islamic identifications.

Islamic jurisprudence holds that several parts of Islamic rituals, rights, or obligations are gender-specific. The *khunsa* are split into two subcategories by classical jurists: non-problematic and discernible (*khunsa ghayr mushkil*) and problematic and intractable (*khunsa mushkil*) This was done to incorporate the *khunsa* into the legal and social order.⁴⁸

- According to the Holy Quran and the Prophet's sayings, performing a sex change procedure [on a non-DSD person] is completely forbidden and is regarded as a crime.
- Individuals who possess both male and female organs need to undergo additional testing, and if the results are more in favour of a male gender, it is acceptable to treat the person medically (e.g., with hormones or surgery) in order to resolve the ambiguity and raise her as a boy, and vice versa.
- In order to keep the child's guardians informed, doctors must explain to them the findings of the medical examinations and whether the kid is a boy or a girl based on the evidence.
- The sociological and religious ramifications of gender assignment should be discussed with Muslim DSD patients and their families. The most recent fatwa from Malaysia has stated that gender-affirming surgery is permitted in certain DSD cases of CAH and AIS, and the fatwas from other nations also state that such patients may receive surgical treatment.⁴⁹

⁴⁶ Al Muhammad ibn al-Hasan al-Shaibaani, *al-Asl al-Marooif bi-l-Mabsoot* (Karachi, Pakistan: Idaarah alQuraan wa al-Uloom al-Islaamiyyah, n.d.), p. 193.

⁴⁷ Qadri Pasha, *Al-Ahkam Al Sharia Fi Ahwal Al-Shakhia* (Egypt, n.d.), 1895.

⁴⁸ Tak Z. Khuntha & Mukhanath Menurut Perspektif Islam [The Khunsa (DSD) and Mukhannath (effeminate male) according to the Islamic perspective] Kuala Lumpur: Jabatan Kemajuan Islam Malaysia; 1998

⁴⁹ www.e-Fatwa.gov.my

Conclusion:

Article 227 of the constitution of Islamic Republic of Pakistan provides that all the laws in Pakistan shall be enacted in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (PBUH). The right of self-perceived gender identity and the right of inheritance as per the self-perceived gender identity is not in accordance with Islamic Injunctions. There are still many issues to be answered when treating transgender persons as the third gender in Islam, even though this debate is continued within Muslim scholarship and has to be further investigated in future studies. The Transgender Persons (Protection of Rights) Act, 2018 provides full freedom to a person to choose the gender of his own choice according to his inner feelings but the same is not permissible in Islam. On the other, hand a transgender has been given a right to inherit as per his own self-perceived gender identity and the same is not permissible in Islam as well because the method of the to perceive gender identity is specified from the tradition in which the Holy Prophet (PBUH) was telling the method of distribution of inheritance. Otherwise too, if the same is made permissible it will create a socio-legal issue that the people will start to change their identities to gain more inheritance. Furthermore, the share of inheritance of a person with ambiguous gender identity is average for a male and female but as per the majority of Muslim jurists, he shall be given a lesser share. Thus, the same is also against the Islamic injunctions.

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- Dr. Muhammad Aslam Khaki v S.S.P. (Operations) Rawalpindi reported as PLD 2013 SC 188
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"Transgender Community Rejects Census Figures," *The Express Tribune*, August 27, 2017, <https://tribune.com.pk/story/1492120/transgender-community-rejects-census-figures>.
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