

The Analysis of Transgender (Human Rights) Act 2018 in the Light of Islamic Literature

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Abstract:

In the three years from July 2018 to June 2021, 28,723 people have applied to identify themselves as separate from the gender they were assigned at birth based on their unique and internally felt feelings and emotions. Allot) and now they have changed their gender identity documents. Most of them are men, i.e. 16,530 were men who registered themselves as women. Then there are 12,154 women who were identified as girls at birth, but now prefer to call themselves male and become legally male. There are only 9 men who say we are actually transgender but we were mistakenly put in the men's account. On the contrary, 21 eunuchs are those who say that we are completely men and now we should be called men; While 9 transgender women applied to call themselves women. Since "any person" has the right to be recognized at any time with a "personally felt gender identity", if a person who is sexually male goes to a NADRA office and simply declares that If her gender identity is defined as female based on her personal feelings, NADRA has no power to say no, nor does NADRA have the power to ask her to undergo a medical or psychological examination. Now, once she was declared a woman in official papers and documents, she also got all the rights of women. From admission to a girls' college to membership of the National and Provincial Assembly and the Senate, from seats reserved for women in a bus to washrooms reserved for women in a restaurant; Rather, because she is a woman, she was legally allowed to marry a man, and remember that she got all this without changing her "gender" and without changing her physical structure.

Key Words: transgender, society, 2018 transgender act, Islamic literature, agenda

Introduction of Transgender

A person who is not known to be a man or a woman is called a neuter (خنثى). To Declare him/her as a man or a woman; his/her problems are in this matter. The rule is that whatever has a strong sign is counted. If the sign of being a man is strong, they will prefer to be a man. And if the sign of being a woman is strong, they will be declared a woman. The argument for this is the hadith that if there is no resistance and there is no other case, then the decision should be made by looking at the sign.

"فان جاء احد يخبرك
بعدها ووعاءها ووكاءها
فاعطها اياه" ¹

1. When the child has both the pussy (فرج) and the pennies (ذكر), then he is a child.

If the child has pussy parts like a woman and has a penny like a man, then it will be called a vulva.

2. So if he urinates from the penny, then he is a boy, and if he urinates from the pussy, then he is a girl.

If the sign is of both types, then the organ from which he urinates will be counted.

"عن ابن عباس ان رسول الله
سئل عن مولود ولد له قبل
وذكر من اين يورث فقال
النبى يورث من حيث
يبول" ²

It is in this hadith that the one who urinates will be counted.

So if he urinates from both of them, and the urine comes before one of them, then it will be attributed to the first of them.

¹ Muslim bin Hajjaj, Sahih Muslim, Bab Marifatul-ifas walwika wa hukm Zaaltul-Ghanam wal-Ibil, Hadith no. 1723, p. 78

² Imam Beihqi, Sunan Beihqi, Bab Mirath ul Khuntha, Hadith no. 12518, p. 428/6

Literature Review

Some researchers have been worked about the Transgender Persons (Protection of Right) Act 2018 as Hamza Iftikhar, Siti Hasliah, Sakandarhayat with research paper named: Analysis of the Transgender Persons (Protection of Right) Act 2018: Implications for Implementation which has been published in "International Journal of Academic Research in Business and Social Sciences" and another research paper which has been addressed the "A Comparative Fiqh Study of the provisions of Hermaphrodite between Science and Personal Status" by Dr. Hasan Taisir Shammout Professor, Department of Jurisprudence and its Foundation Jerash University, Jordan in the Journal of Islamic and Religious Studies etc.

Research Justification

In the different papers, on the various dimensions have been tried to analyze but in spite of all "The Analysis of Transgender Act in the Light of Islamic Literature" has not been addressed adequately.

Methodology

In this research paper, the narrative and comparative research methodology has been employed in an impressive and logical way.

The Analysis of the Transgender Act 2018

In this portion, mere those issues would be discussed which seems controversial in the sense of Islamic literature.

In 2018, a bill called the Transgender Act was introduced in the Assembly/Senate under the guise of transgender rights. But in it, they tried to legalize homosexuality like other countries like Britain, Brazil, Canada, and America.

Improper protection afforded by the Act:

The Act gives the right to men and women to change their gender on identity documents based on their feelings and makes NADRA legally bound to do so. If a man or woman who is born fully male or female at birth but grows up unhappy with their gender due to some psychological confusion or complication, social pressure, personal like or dislike. A man has been given the right to register himself as a woman not only in NADRA but in any government body without a medical test/certificate. Men can register³.

Defects of the Act:

Based on this, a man who is now registered as a woman in government documents can marry another man. A female creator can go anywhere, now all the rules for women will apply to her. Similarly, a woman who is female by birth can double her share of inheritance by registering herself as male.

Government data related to the Act:

Fake men and women are definitely benefiting from this act whether trans-genders benefit or not. According to government records, in the three years from July 2018 to June 2021, 28,723 people have changed their gender in identity documents by applying for change of gender and separate identity based on their physical inclinations and feelings and emotions. Among them, the number of men is 16530 who have registered themselves as women while the number of women is 12154. 9 There are men who say that we are actually eunuchs, but we were mistakenly classified as men. There are 21 eunuchs who say that we are completely male, now I should be called male, while 9 eunuchs have requested to be called women⁴.

³ <https://www.icj.org/wp-content/uploads/2020/03/Pakistan-Transgender-Advocacy-Analysis-brief-2020-ENG.pdf>

⁴ <https://www.icj.org/wp-content/uploads/2020/03/Pakistan-Transgender-Advocacy-Analysis-brief-2020-ENG.pdf>

Conspiracy to destroy Pakistan's Islamic identity:

If all the above information is true, then in view of the current situation, there is a danger that this act has been introduced to promote homosexuality in Pakistan and destroy the Islamic identity of Pakistan.

As religious scholars, it is our responsibility to explain the evil of this sin to the people in the light of Sharia. Hence the following lines are being written.

Controlling and satisfying sexual desires:

When Allah created man, He also placed physical desires in him. One of these medical desires is the sexual desire, which is sometimes ordered to be controlled and sometimes to be fulfilled. It is controlled before marriage while it is ordered to be fulfilled after marriage. Therefore, there is a concept of marriage in all nations. It is a different matter that among non-Muslim nations, marriage is not a reality more than a worldly ritual and its purpose is nothing but pleasure, while among the people of Islam, the status of marriage is a matter of religious knowledge, it is a constant act of worship. Its purpose is to eliminate evils like adultery, immorality and sexual immorality from the society and to gain the pleasure of Allah. Moreover, its objectives include achieving legitimate sexual gratification as well as procreation and mutual love in the families of the spouses.

Legitimate method of sexual gratification... Marriage:

Allah says in Quran:

"وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ"⁵

⁵ *Al-Quran, Al-Rum, 30:21*

“And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought”.

Marry women:

Allah says in Quran:

"فَانكِحُوا مَا طَابَ لَكُمْ
مِنَ النِّسَاءِ" ...⁶

“then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]”.

Shariah limits of sexual satisfaction:

In the Holy Quran:

"نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَاَنْتُوا
حَرْثُكُمْ اَنْتِي شِئْتُمْ وَقَدِمُوا
لِانْفُسِكُمْ وَاَتَّقُوا اللَّهَ
وَاَعْلَمُوا اَنَّكُمْ مُلْقُوهُ وَبَشِّرِ
الْمُؤْمِنِينَ" ...⁷

“Your wives are a place of sowing of seed for you, so come to your place of cultivation however you wish and put forth [righteousness] for yourselves. And fear Allah and know that you will meet Him. And give good tidings to the believers”.

Some important results of the above verses:

Consider how clearly the following matters are clarified in the above verses:

1. Marriage is a legitimate method of sexual satisfaction.
2. Marriage Between the opposite sex (a man with a woman) is necessary.

⁶ Al-Quran, Al-Nisa, 4: 3

⁷ Al-Quran, Al-Baqarah, 2: 223

3. The limits of sexual satisfaction in marriage are also determined by Allah.

4. It is not permissible for a man to enjoy sex with another man and a woman with another woman.

Definition of malfeasance:

If a male gets sexual pleasure from a man, it is called malfeasance (بدفعلى) in Shariah terms.

Definition of Sahaq

If a woman obtains sexual pleasure from a woman, it is called (سحاق) in Shariah terms.

Malformation (origin of unnatural action):

In the Holy Quran:

"وَلَوْطًا اِذْ قَالَ لِقَوْمِهِ اِنَّكُمْ
لَتَاْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ
بِهَا مِنْ اَحَدٍ مِّنَ الْعَالَمِينَ -
اِنَّكُمْ لَتَاْتُونَ الرِّجَالَ شَهْوَةً
مِّنْ دُونِ النِّسَاءِ - بَلْ اَنْتُمْ
قَوْمٌ مُّسْرِفُونَ" ...⁸

“And [We had sent] Lot when he said to his people, “Do you commit such immorality as no one has preceded you with from among the worlds? Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people”.

From the mentioned verse, it is known that bad behavior (unnatural behavior) started with the people of Hazrat Lut (peace be upon him). No one had done this before.

The severest punishment of the people of Lut:

Allah says in the Holy Quran:

"فَلَمَّا جَاءَ اَمْرُنَا جَعَلْنَا
عَالِيَهَا سَافِلَهَا وَ اَمْطَرْنَا
عَلَيْهَا حِجَارَةً مِّنْ سِجِّيلٍ نَّخ
مِّنْضُودٍ - مُّسَوِّمَةً عِنْدَ رَبِّكَ

⁸ Al-Quran, Al-Aeraf, 7: 80-81

وَمَا هِيَ مِنَ الظَّالِمِينَ
بِبَعِيدٍ⁹.

“So when our command came, We made the highest part [of the city] its lowest and rained upon them stones of layered hard clay, [which were Marked from your Lord. And Allah’s punishment is not from the wrongdoers [very] far”.

Other Penalties for Offenders:

It is known from the Qur'an and the Sunnah that the people of Lut, whose crime was bad behavior and wickedness, were punished by Allah, the Most High, which was not given to any other nation in the world. Various punishments were collected to kill them.

1. Sunk into the ground.
2. Stones rained down on them from heaven.
3. Allah uprooted their houses and raised them so high towards the sky that the angels could hear the barking of their dogs and the braying of their donkeys. From there, he presented them to the ground.

4. Drowned in water

Dead Sea in Jordan:

The people of the people of Lot, who were evil-doers, have become an example in a city of Jordan today. There is a sea called Bharmet in which their settlements were drowned. There was no sea here before when the people were punished because of their crime, their original land went down four hundred meters below the sea level and the water came up on O. Now no living thing even fish can live in it.

Severe punishment for both offenders:

"وَاللَّذَانِ يَأْتِيَانَهَا مِنْكُمْ
فَأَذُوهُمَا فَإِنَّ تَابًا وَأَصْلَحًا

فَأَعْرِضُوا عَنْهُمَا إِنَّ
اللَّهَ كَانَ تَوَّابًا رَّحِيمًا"¹⁰.

“And the two who commit it among you, dishonor them both. But if they repent and correct themselves, leave them alone. Indeed, Allah is ever accepting of repentance and Merciful”.

It was learned that if someone commits an evil act under the guise of homosexuality, then the Holy Quran has declared him worthy of punishment. Yes, if he repents (after the punishment), forgive him and do not insult him with these things again.

The Messenger of Allah says:

I fear for my Ummah:

"عن جابر رضي الله عنه
قال: قال رسول الله صلى
الله عليه وسلم: إن أخوف
ما تخاف على أمتي عمل
قوم لوط"¹¹.

On the authority of Hazrat Jabir bin Abdullah, may Allah be pleased with him, the Messenger of Allah, May God bless him and grant him peace, said, "The greatest fear I have about my Ummah is that the people will start doing what Lut did".

Malpractice and hypocrisy are acts that cause death:

"عن أنس رضي الله عنه قال:
قال رسول الله صلى الله عليه
وسلم: إذا اشتعلت أمتي
خمسا فعليهم الدمار إذا
ظهر فيه التلا عن ولبس
الحرير واتخذو القينات
وشربو الخمر واکتفی

¹⁰ Al-Quran, Al-Nisa, 4:16

¹¹ Imam Muhammad bin Esa Termazi, Jamei Termazi, Maktabah Rehmania Lahore, Hadith no: 1457

⁹ Al-Quran, Hud, 11: 82-83

الرجال بالرجال والنساء
بالنساء" ¹².

It is narrated from Hazrat Anas that the Messenger of Allah, may God bless him and grant him peace, said: When my Ummah begins to consider the use of five things as halal, it will perish. When they appear to be cursing each other, wearing silk, keeping carols, drinking alcohol and fulfilling their lust in an unnatural way) men? Let it be enough for the man and the woman for the woman.

Bad and sad signs of resurrection:

"عن أبي هريره رضي الله عنه
قال: لا تقوم الساعة حتى
يتسافد الناس في الطرق
كما يتسافد اللدواب
يستغنى الرجال بالرجال
والنساء بالنساء" ¹³.

Hazrat Abu Hurairah (RA) says that the Day of Judgment cannot be established until people do not commit adultery on the roads like animals. Men; through the man and through the woman, through the woman, will be exempted.

An Islamic government can kill perpetrators of misbehavior:

"عن ابن عباس رضي الله عنهما
أن رسول الله صلى الله عليه
وسلم قال: من وجدتموه
يعمل عمل قوم لوط فاقتلوا
الفاعل والمفعول به" ¹⁴.

It was narrated on the authority of Hazrat Abdullah bin Abbas that the Messenger of Allah, may God bless him and grant him peace, said: When you (addressing the rulers of the Islamic state) make the people die of the deeds of the people of Lut, then make both the doer and the object of yours.

¹² Shubaul-Eman, Hadith no: 5084

¹³ Naeem bin Hammad, Al-Fitan Li-Naeem bin Hammad, Hadith no: 1794

¹⁴ Imam Ibne Majah, Sunan ibne Majah, Hadith no. 2561

Construction according to discretionary authority) can kill.

An Islamic government can stone criminals to death.

"عن أبي هرير رضي الله عنه
عن النبي صلى الله عليه وسلم
في الذي يعمل عمل قوم
لوط. قال: ارجموا الأعلى
والاسفل ارجموا جمعيا" ¹⁵.

It was narrated from Hazrat Abu Huraira (RA) that the Prophet (PBUH) addressed the Islamic rulers of the Islamic State about the people who behaved like Lot and said: Stone to death.

Fornication is a form of adultery:

"عن أبي موسى رضي الله عنه
قال قال رسول الله صلى الله
عليه وسلم : إذا أتى
الرجل الرجل فهما زانيان
وإذا أتت المرأة المرأة
فهما زانيتان" ¹⁶.

It is narrated from Hazrat Abu Musa (may Allah be pleased with him) that the Messenger of Allah (may peace be upon him) said: When a man; If she fulfills her sexual desire with a man, she is considered a kind of adulterer. Likewise when a woman; If he fulfills his sexual desire with a woman, she will be considered an adulteress.

Benefit: In the hadith, simple words were used to explain the bad behavior of the Sick, because adultery is something that is known to everyone, so these crimes have been ruled out.

Some measures to avoid malpractice and hypocrisy:

Stay away from things that cause these crimes. They are as follows:

¹⁵ Sunan ibne Majah, Hadith no. 2562

¹⁶ Sunan Beihqi, Hadith no: 17490

1. Looking at the unprivileged and similarly looking at beautiful young boys and girls with lustful eyes.
2. Stay away from mixed gatherings of men and women.
3. Men; Avoid sleeping with a man and a woman with a woman.
4. When children (siblings) reach ten years of age, their beds should be separated.
5. Avoid watching immoral scenes (videos, images etc.)
6. Pray for protection of your faith and actions.

Discussion

The definition of transgender person includes gays and lesbians as well as real transgender.¹⁷

- ii. There is no requirement for a medical board authorization to recognize a transgender person.
- iii. Every citizen of the country now has the right to be identified as transgender.

In their 2020 article, Nadeem Farhat and his three co-authors characterize the 2018 Act's definition of 'transgender person' as:

'Allowing any and all people to be transgender... It unconditionally grants the right to self-perceived gender. When the definition of transgender person and [other sections of] the Act are read together, it means that any person can pronounce a change in gender at any time without any physical or mental condition requiring it, subjecting the entire body of law as well as the social construct to arbitrariness.¹⁸

This article is saturated with the fear of legal and social chaos, as well as an international gay and lesbian agenda that uses transgender rights as a Trojan horse to enter and disrupt Pakistani society. Write to the following authors:

The 2018 Act was conceived in the context of the lesbian, gay, bisexual, transgender, and queer campaign, and it completely disregards the

constitutional framework for legislation in favor of a contentious interpretation of international law. The Act is thus alien to Pakistani society and is likely to disrupt its social structure. This paper contends that the slogan of gender-variant persons' human rights has been manipulated to introduce a fundamental change in Pakistani society.¹⁹

Conclusion:

Transgender individuals have also gained the power to change the rules of inheritance through their gender identity based on their personal feelings. For example, if a physically and sexually female person wants to have more of an inheritance, the simple solution is to go to Nadra and have her gender identity male based on her personal feelings. Then no one will be able to prevent her from taking the male share because according to section 7 of this law it is necessary that the inheritance shares should also be given according to gender identity based on personal feeling. Based on these issues, it has become very clear that this law not only legalizes same-sex marriage and other forms of sexual immorality, but also uproots the family system itself.

¹⁷<https://www.glsrjournal.com/papers/bpZCXsVci1.pdf>

¹⁸<https://www.glsrjournal.com/papers/bpZCXsVci1.pdf>

¹⁹ <https://www.icj.org/wp-content/uploads/2020/03/Pakistan-Transgender-Advocacy-Analysis-brief-2020-ENG.pdf>

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