

Journal of Law & Social Studies (JLSS)

Volume 7, Issue 4, pp 231-243

[www.advancelrf.org](http://www.advancelrf.org)

## Recognizing The Third Gender in Pakistan: A Critique of The Transgender Persons (Protection of Rights) Act, 2018, Based on Shariah

Umaira Kalsoom

Advocate High Court, Pakistan

Email: [umairakalsoom137@gmail.com](mailto:umairakalsoom137@gmail.com)

### Abstract

*This study offers a critical examination of Pakistan's Transgender Persons (Protection of Rights) Act, 2018 (TPPA) through the prism of Shari'ah law. While the TPPA represents a landmark step in formally recognizing and safeguarding the rights of transgender individuals while including self-identification, non-discrimination, and inheritance. Its enactment has provoked significant resistance on religious, cultural, and administrative grounds. The 2023 Federal Shariat Court ruling in Hammad Hussain v. Federation of Pakistan declared several provisions of the Act incompatible with Islamic injunctions. It underscored a fundamental tension between contemporary human-rights norms and traditional Islamic jurisprudence. Employing an analytical and doctrinal research methodology, the paper contrasts the biologically-centric criteria of Shari'ah with the TPPA's emphasis on self-perceived gender identity. It identifies substantial implementation obstacles such as pervasive societal stigma, ambiguous administrative guidelines, and opposition from religious institutions. Drawing on classical and contemporary Islamic scholarship, the study explores the status of khuntha (intersex) individuals and demonstrates the potential for juristic adaptation (ijtihad) within an Islamic framework. To reconcile the TPPA with Shari'ah principles, the paper proposes a suite of policy reforms such as the establishment of multidisciplinary Gender Determination Boards, legal re-definition to distinguish between intersex and gender-diverse identities, culturally resonant public awareness campaigns grounded in Islamic ethics, and safeguards against the exploitation of gender recognition for same-sex marriage. The analysis concludes that a harmonized approach respecting both Islamic values and human dignity it is essential for the effective protection of transgender rights in Pakistan. It offers a viable model for legal and social reform in other Muslim-majority societies.*

**Keywords:** Transgender Rights, Islamic Law, Shariah, TPPA 2018, Ijtihad, Maslaha, Gender Identity, Legal Reform.

### Introduction

The Transgender Persons (Protection of Rights) Act, 2018 (TPPA) was a watershed for the transgender people's community in Pakistan in terms of their legal recognition, institutional safeguards and the consequent provocation for a change in the public discourse. Nonetheless, the quest for complete equality is still hampered by multifaceted obstacles in the legal, cultural and religious spheres. In Pakistan the third gender people have been pushed to the margins of society. This Act has grabbed huge media attention and kicked off intense debates about whether modern human rights can truly fit with Pakistan's Islamic legal framework. (Afrasiab, 2024).

This study aims to sketch out the historical trajectory of the rights of transgender persons in Pakistan by tracing the historical movement in the statutes, as well as the interpretive contours of Shariah law. While the main goal of the TPRA is to ensure the dignity and rights of transgender people, the implementation of the law has caused significant tensions - especially considering the recent judgment of the Federal Shariat Court (FSC) that some provisions on official documentation, self-defined gender and inheritance go against Islamic principles (Hammad Hussain case). The FSC

highlights a larger conflict between traditional Islamic jurisprudence and contemporary issues. The legal ideas regardless of gender identity that uphold the inherent value and freedoms of all individuals.

By asking questions about these intersections, this research is responding to the gaps left in previous evaluations of the TPPA, 2018 and Shariah law. It focuses on highlighting how religious doctrine can be reconciled with international human rights norms through specific policy reforms. Consequently, this study argues for a need to increase societal acceptance and provide for a nuanced approach towards making policies that are sensitive towards both the traditional religious values and modern legal values. In order to create an inclusive environment for transgender citizens in Pakistan.

### Literature Review

This paper critically looks at the Shari'ah and the legal framework on the trans-gender minority in Pakistan. This researches the issues that face transgender people in Pakistan. The literature review summarizes the key points of this paper referencing various sources, such as books, articles, news, and judicial decisions. The new TPPA (2018) has not been compared with the Shari'ah law in Pakistan. This thesis will look at the transgender rights in Pakistan based on both religious and current legal perspectives.

The main difference between the Shari'ah law and the TPPA, 2018, lies in the acknowledgment of the gender identity. Whereas the Act permits people to choose their gender according to personal perception and accords them the respective legal rights, the Shari'ah law follows the biological and physical appearance standards strictly. The Islamic jurists have also stressed significance of transgenders on biological and physical basis (Ibn Abdul Barr, n.d.). This fundamental difference highlights the challenges of balancing the Act and Shari'ah standards, particularly when it comes to the issues of inheritance and legal documentation.

The article Status and Rights of Transgender from Islamic Perspective (Iram et al., 2021) assesses the status and rights of transgender people based on the Islamic principles. The literature review focuses on the contents of the article titled Critical assessment of the TPPA in Pakistan, 2018, and how it conformed to the Shariah law and other laws. The idea of intrinsic dignity and rights is present in the article and applies to all people, including transgender ones. In these verses, the Quran which is the most important Islamic text confirms that Allah aimed at the production of numerous sexes.

chapter 3, Verse 6 affirms,

*“It is He who forms you in the wombs in a way He wants. He has no god, but Him, the High in Power, the wise.”*

The critical evaluation of the TPPA, 2018, also demonstrates the points of agreement and disagreement in the context of the implications of the article. Inclusive principles emphasized in Islamic teaching are compatible with the requirements of the Act which recognizes self-identified gender identity and guard against discrimination. Some Pakistani conservatives, however, might seek to repeal such rules citing the fact that they are against Islamic gender values.

By the Islamic Fiqh (jurisprudence), that individual with male and female multiplying organs is referred to as a khuntha or hermaphrodite (Muhammad, 2016). The article insists on the need to resolve the cultural and societal stigmas experienced by transgender individuals. It seeks to sensitize people through awareness and educational initiatives on the teachings of Islam in order to discourage discrimination and encourage gender diversity acceptance.

The article "Who Am I? Gender-Identity Seeking: Transgender People: A Theoretical Review of the gender identity problem that transgender persons (TGPs) experience in Pakistan (Sharyn, 2024). It is also a major part of the research to investigate gender identification as per Shari'ah perspective. The authors elucidate that there is a third gender in Islamic law, which is called Khansa. The Quran and Hadith emphasize the necessity of justice and equality by depicting the fact that Allah created people

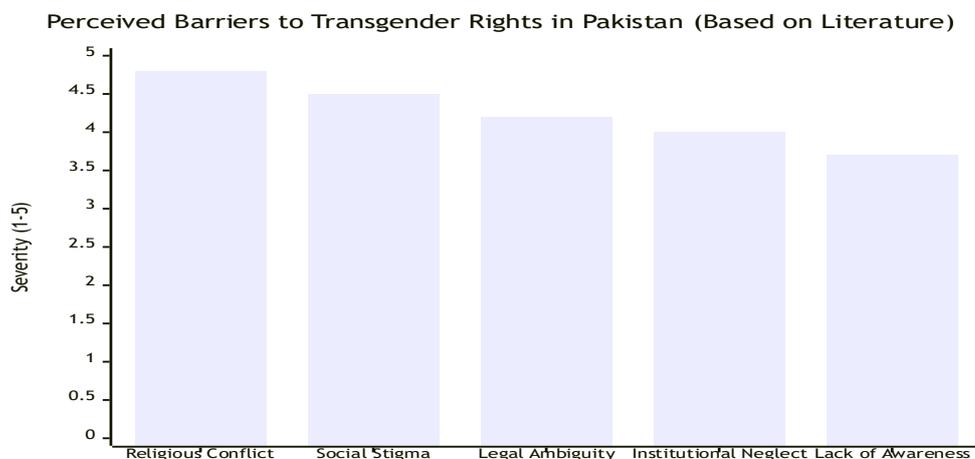
of different genders, even transgender people. The paper presents the controversial opinions in the Islamic jurisprudence in relation to gender reassignment surgery/SRS/ (javid,2013) and the Maslahah Mursalah principle that promotes the actions that serve the people.

The Islamic jurisprudence provides a contradictory and complex opinion on gender and sexual diversity. Although written Islamic sources might imply hard-and-fast gender dichotomies, Sharyn Graham Davies claims that it is clear that as times and geography change, interpretations of gender roles and gender identities become fluid. In the past, these people like the mukhannathun in the early Islamic societies were not totally excluded and some were even assimilated into religious and domestic areas. Nevertheless, the binaries introduced by modern Islamic thinking tend to be stricter because of the sociopolitical influences and not because of the doctrine itself.

The paper at hand is meant to shed light on the numerous practical and legal issues that the transgender population encounters. Such a strategy will bring together religious ideas and the current human rights paradigm. In this paper, the TPA, 2018 provisions will be examined in terms of the lens of Shari'ah law with reference to Pakistan and its complex society. The research on the Act and the Shari'ah law will focus on such areas of convergence with a view to identifying possible areas of conflict.

The study will help shed light on the numerous cultural and socioeconomic issues that affect the transgender minority population in Pakistan, such as a vast amount of prejudice, stigma, and bureaucratic obstacles. Despite these legal safeguards by the TPPA, 2018, these obstacles make it hard to realize their full rights. There is a relationship between conservative attitudes to the gender roles and the approval of such beliefs by society in cultural tradition and social values. Other institutional challenges hinder access to justice and other vital services and they can be ineffective rules and poor implementation of the available laws. The research helps to advance more accommodative policies and attitudes based on the primary principles of equality and human dignity.

This study will help shed light on the serious cultural and socioeconomic barriers that are encountered by the transgender minority in Pakistan such as prevalent prejudice, stigma as well as institutional obstacles. These hiccups to the full exercise of their rights notwithstanding the lawful protections and guarantees offered by the TPPA, 2018. There is a correlation between the conservative views on gender roles and how they are accepted in the cultural norms and social attitudes. Other institutional blockades hamper access to justice and other requisite services such as weak regulations, and lack of enforcement of the laws. The research is focused on making the policies and attitudes more welcoming to follow the basic principles of equality and human dignity.



**Figure 1:** Barriers to Implementation of TPA, 2018 in Pakistan

### Significance of Study

The relevance of the proposed study lies in the fact that it can fill the gap between the modern legality of laws and the classical Islamic jurisprudence concerning gender transgender rights in Pakistan. It is relevant as it describes a crucial point of intersection of the contemporary human rights systems and the firmly rooted religious standards and offers an extensive discussion of the TPPA, 2018 in the framework of Shari'ah law.

The TPPA 2018 of Pakistan was a progressive step that allowed the transgender people to be self-identified, free of any discrimination, and inherited property, which is in line with the constitutional guarantees of Articles 9, 14, and 25 (Kirmani, 2019). Nevertheless, *Hammad Hussain v. FSC 2023*. Federation of Pakistan made major parts heinous to Islamic injunctions, which is not certain in the law since even today appeals are pending in the Supreme Court (Adil, 2024). This study is well-timed in the wake of ongoing violence and at least eight transgender killings have been documented in Khyber Pakhtunkhwa in 2025 alone and retrogressive amendment bills asking that medical confirmation be conducted or that transgender be substituted with intersex.

The value of this research to the current literature is that it presents an in-depth analysis of legislative and judicial reactions to transgender rights in Pakistan and reveals the points of congruity between the Act and the teachings of Islam. Other studies commonly focus on legal (Siddiqui, 2022) or religious aspects (Alipour, 2016), whereas this study unites them with the help of a doctrinal comparison and finds abundant concordant (e.g., self-perception vs. biological markers) and discordant (e.g., self-perception vs. social norms) clashes but considers reconciliation as possible through the lens of *maslahah* and *ijtihad* (Kamali, 2008; Tabassum, 20 Including an empirical view of enforcement like NADRA delays, unenforced quotas and stigma imposed by society gives it a subtle analysis of practical challenges as evidenced by over 158 murders in Khyber Pakhtunkhwa since 2009, as well as an increase in hate crimes (Human Rights Watch, 2025; TransAction Alliance, 2025).

In addition, the study will offer policy recommendations that could be used to reconcile the Act with the Shari'ah law in order to strengthen the protection of transgender people in an Islamic legal system. Some of the suggestions are that multidisciplinary Gender Determination Boards (medical experts, ulama) should be established to verify it, awareness should be done based on the compassion of Quran (42:49-50) and sanctions should be imposed on discrimination (Rehman 2013). The contribution serves as an important contribution to policymakers, legal practitioners, and human rights activists to a more inclusive and equitable society of transgender individuals in Pakistan, where conservative practices and low enforcement levels are the sources of marginalization (Human Rights Commission of Pakistan, 2024).

The findings of the study will not only seal major gaps in the existing literature like integrative Shariah-TPA analysis and lived experiences, but it will also be used as a resource to conduct future research and policy formulation in the area. It provides a conciliatory approach to maintaining dignity (*karamah*) and respecting the sanctity of religion in an environment of international questioning and internal demands, which may have an impact on changes in other Muslim-majority countries (Kamali, 2003).

### Research Methodology

Since the proposed research is comprehensive, analytical and doctrinal research is the most suitable paradigm. Analytical legal research aims at the current legal framework with no need to look further into the past, reasons, or development of laws, which is the reserve of historical legal research. The main goal is to learn and decode the present situation of the law and its provisions that are contrary to the Islamic injunctions.

A legal researcher deals with so many documents which are constitutional law, statutory law, decisions of constitutional courts, rules and regulations, notifications and orders of administration

departments. Through the wide examination of these documents, the researcher defines the exact position of the law. Thus, the essence of legal research is analytic in nature, and it dwells upon the present legal environment. The specific status of law is discovered by a thorough reading of these documents by the researcher. A law researcher is therefore engaged in nothing but analytical research.

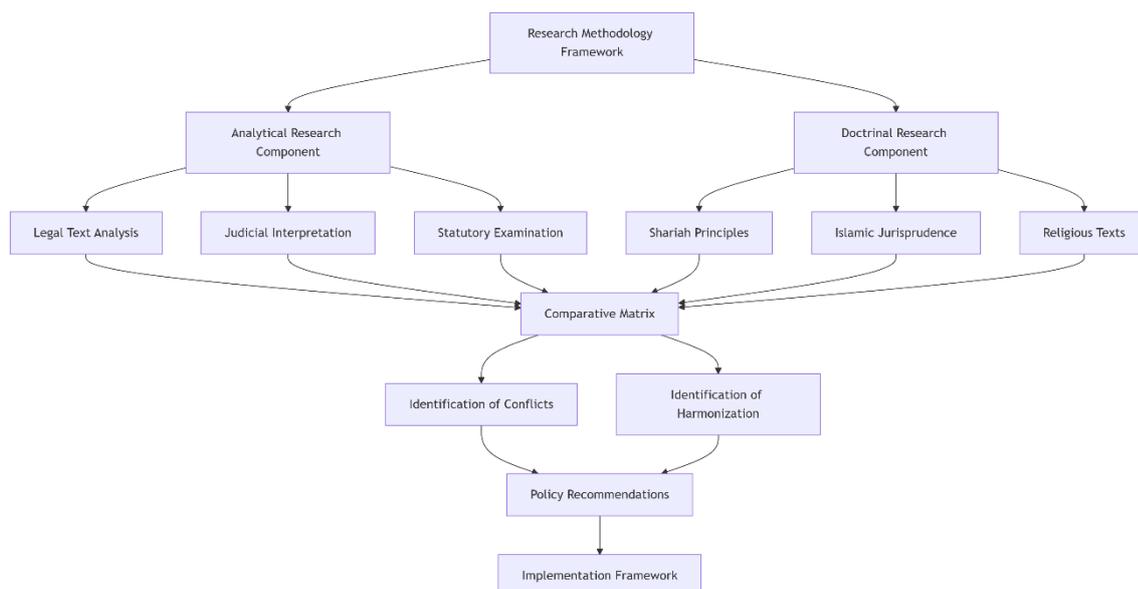
Doctrinal research, on the contrary, is a critical analysis of the currently existing laws. This technique considers legislations against constitutional values, national legal system, the ruling of the higher courts, and the local traditions. This can be analyzed to enable the researcher to determine the sustainability of certain laws under the Shari'ah law.

In her book *Legal Writing*, Lisa Webley makes the argument that being a legal researcher and author requires clarity, precision, and analytical rigor (Lisa, 2013). In her writing she notes that legal writing is all about critically analyzing and interpreting the coherent elements and persuasive arguments, legal writing is not just about the presenting facts and legal provisions. This shows that in legal writing analytical and doctrinal research is required as its focus is on dissecting the legal framework and focusing the legal principles and societal norms.

Webley highlighted the analytical research as a systematic approach to understand the language of the law, intention of the lawmakers and judicial interpretations. In the context of this proposed research, it means analyzing the text of TPA, 2018 while focusing the relevant Islamic principles and judicial rulings. On the other hand, doctrinal research is concerned, it involves evaluation of the law as it stands is logically structured and whether it achieves its intended purposes. In this proposed research, doctrinal analysis will help to understand the provisions of TPA, 2018, whether the provisions are consistent to Islamic injunction or not.

The combination of analytical and doctrinal research methodologies is appropriate for this proposed research. Lisa Webley in her book outlined these principles which will help to enable a comprehensive and critical examination of TPA, 2018 within the context of Shari'ah law. The aim of this research is to analyze legal texts, judicial interpretations and societal implication of the Act. It will provide the valuable insights and recommendations for enhancing the legal framework for the transgender rights in Pakistan focusing the Islamic injunctions.

### Visual Representation of Methodological Framework



**Figure 2:** Methodological Framework for Analyzing TPA, 2018 vis-à-vis Shariah Law

## Shari'ah Perspective on Gender

Shari'ah (Islamic law) establishes a clear framework regarding gender which rooted fundamentally in the biological attributes assigned by the Creator of the universe, Allah SWT. As per Islamic teachings, gender is not a subjective experience based on an individual's self-perception or personal feelings instead it is an objective reality tied to the physical characteristics with which a person is born.

The Quran asserts, "*And He created you in pairs, male and female*" (Surah An-Najm: 45)

This verse is highlighting that the male-female binary is divinely instituted. Islamic scholars around the classical juristic schools generally maintain that gender identity must align with one's biological characteristics at birth. The concept of self-identified gender finds no support in traditional Islamic jurisprudence. In Shariah, gender determination rests upon physical indicators like reproductive organs, pattern of urination and later secondary sexual characteristics at the time of puberty (Ibn Qudamah, vol 6, p137).

Significantly, Shari'ah does recognize the existence of individuals who are born with ambiguous sexual characteristics. These individuals are organized as *khunsa* (intersex). The Prophet Muhammad (PBUH) and successive Islamic jurists provided detailed rulings related to *khunsa*, especially in matters of inheritance, prayer arrangement, and legal rights (Al-Kasani, vol. 7, 125). Gender determination of intersex individuals based on their observable physical characteristics such as the organ predominantly used for urination during childhood it is mentioned in Hadith.

Islamic teachings specifically prohibit the act of changing or altering one's gender based solely on self-perception or subjective feelings. On the other hand, a very critical Hadith narrated by Ibn Abbas narrates that the Prophet Muhammad (PBUH) said

*"The Prophet (PBUH) cursed men who act like women and women who act like men."* (Sahih al-Bukhari, Hadith No. 5885)

Islamic teachings established those modern efforts to frame gender identity are purely psychological and self-expressive phenomenon which finds themselves at odds with immutable principles. Human beings are seen as trustees (khalifah) over their bodies, which are a trust from Allah in Islam. Human beings are not as entities free to redefine their essential nature. Trying to change one's gender identity where there is no biological or medical factor is inherently rebellious against God's order. (Yusuf al-Qaradawi, 2004, p211-212)

Shariah acknowledges that people have many needs and keeps true to God's commands. Both Ibn Qudamah and Al-Kasani, along with renowned contemporary scholar Sheikh Yusuf al-Qaradawi, have explained that justice (*adl*) and mercy (*rahmah*) should be applied in every ruling about individuals like *khunsa* (Yusuf al-Qaradawi, 2004). Shariat Petition No. 05-I of 2020 confirmed the classical view that aligning gender identity only with personal feeling, before any proof, fails to comply with what Islam prescribes. Based on medical and biological information, the law must provide legal protection to intersex individuals.

## Ruling of Islamic Philosophers on the Third Gender and Gender Identity

Islamic law is dynamic, competent and can handle all the affairs of human life. Its main principles are derived mainly from three fundamental sources: the Qur'an, the Sunnah (the Prophet Muhammad (Peace Be Upon Him) acts and sayings and Ijtihad (independent juristic reasoning by qualified scholars). Together, these sources allow Islamic jurisprudence (*fiqh*) to engage current challenges on various topics throughout the centuries and different societies. The fundamental principles are established by the Quran and Sunnah. Some scholars follow the way of Ijtihad to deduce Islamic rulings in respect to a contemporary matter, without the matter explicitly discussed in the original texts.

Gaining special focus is the treatment and legal status of individuals within society who are considered a third gender or appear classes as gender non-conforming. Although the Quran and Hadith do not elaborate extensively on intersex individuals or transgender persons they provide sufficient foundational principles such as the safeguarding of human dignity, the prohibition of harm, and the emphasis on justice that assist scholars in developing appropriate rulings (Al-Mawardi, 1994). Classical jurists are recognizing that not every eventuality could be directly addressed in the foundational texts but utilized Ijtihad to expand Islamic law in a manner consistent with its overarching objectives i.e *Maqasid al-Shariah*.

The status of *Khunsa* persons was discussed with minor differences in method by the four main Sunni traditions (Hanafi, Maliki, Shafi'i and Hanbali). These schools of thought suggest that gender ambiguous people should not be discriminated against and should not be excluded from basic human rights. What Islamic law seeks to understand is to recognize human beings and that the rulings are based on their biology and moral realities. From the perspective of the classical jurists Islam acknowledges that humans are not creatures of simple pieces of clay. They are independent and subtle in recognizing how this applies without engaging in simple discrimination. It additionally indicates that this discourse of law also acknowledges the importance of human dignity and maintaining social structures that the Shari'ah is meant to preserve.

Contemporary jurists continue this tradition by accommodating additional products of modern science, such as genetic testing and endocrinological research and using the principles of *fiqhi* reasoning to address issues concerning third gender beings. However, medicine has made great developments yet the basic legal system is still based on the purpose of Islamic law: to protect religion, life, intellect, lineage and property. Hence, unlike other religions Islam is uncompromisingly simple and accommodating at the same time, such that it accommodates the new challenges of the time through the procedure of Ijtihad yet ensures that the modifications are loyal to the principles ascribed by Allah and The Messenger.

In such a case, its interaction with gender diversity reveals both its divine foundation and its adaptability. Islamic jurisprudence relies on the Quran, the Sunnah and Ijtihad to offer an all-encompassing and equitable response to a changing human condition to satisfy a complex of social concerns based on reason, mercy and adherence to fundamental religious principles.

### **Convergence with Stories from Religious and Cultural Background**

The discourse over transgender rights in Pakistan is sharply bound up in cultural and religious issues. Islamic ethics and history have been employed by a multitude of scholars and activists to provide a response to conservative narratives of transgender identities by the traditional interpretation of Islamic law. This attempt tries to recover religion as an instrument of compassion and justice rather than of exclusion and punishment. Transgender activists, religious and otherwise, are increasingly quoting Quranic notions such as *adl* (justice), *karamah* (dignity), *rahmah* (mercy) or the inherent diversity of creation (*ikhtilaf*). These are principles that are seen as ethical anchors and validating the rights of all human beings regardless of their gender identity.

Surah Al-Hujurat (49:13): "*O you mankind, we created you from a single (pair) of a male and a female and made you into nations and tribes, that you may know each other. And verily the most honourable of you with Allah is the most righteous of you.*"

Many inclusive verses regard this verse as referring to the fact that social status, including gender, should not be the source of discrimination, while only *taqwa* (moral character) is the only yardstick in the eyes of God. Transgender advocates have also pointed out the historically transgender people of Islamic history, citing eunuchs and gender-variant people living in the Abbasid, Mughal and Ottoman empires (Adnan Hossain, 2012). Historical records about Khwaja Siras show that they were custodians of harems, advisors and administrators appointed to respectable positions in royal courts. In Muslim societies, these individuals weren't only accepted but regularly institutionalized as a third

gender category. Their existence and status invalidate the claim that gender diversity in Islam is a Western implant or just unacceptable. Calling up these historical precedents, activists want their audience to understand that the exclusion of transgender persons lacks a divine basis and that it is a historical anomaly within Islamic civilization.

Sociologists and anthropologists argue that the stigmatization of transgender persons in Pakistan is more a function of cultural patriarchy and colonial influence than of Islamic tradition (Faris Khan, 2014). Rigid binary gender classifications were imposed by the British colonial administration on Hijras, through the imposition of such legal instruments as the Criminal Tribes Act of 1871 which criminalized entire communities of 'habitual sodomites' (Serena Nanda, 2014). Structures of exclusion were reinforced into these laws, which were then absorbed into post-independence legal and bureaucratic systems. Many contemporary Muslims thus confuse cultural practices with religious doctrine when they understand gender variance as instead than diversity. In addition, the public discourse that takes place in Pakistan often does so in a reactionary and literalist manner by using religious texts. This approach ignores the dynamic tradition of *ijtihad* (independent reasoning) practiced in Islamic jurisprudence, from which scholars historically derived the ability to respond to the new social reality. Instead of the politicized forms of religion, progressive Islamic scholars ground the need to return to the tradition, to get back to the ethical essence of religion (Hashim Kamali, 2008). However, they say that the *maqasid al-shariah* (objectives of Islamic law) to preserve life, intellect, dignity, and justice are in favor of including and protecting the transgender person.

### **Societal Critiques & Implementation Challenges**

The TPPA, 2018 as a progressive and rights based legal framework has faced overwhelming resistance in all sectors of society and religion. The aim of the Act is inclusiveness and the protection of transgender individuals in the mainstream of society has been blighted by legal ambiguity, religious values and public discourse shaped by criticisms of the Act. But it has also meant that the intended spirit of the TPPA has been undermined by controversy and institutional inertia.

One of the main obstacles to the act being accepted also led to this having to do with culturally established norms of gender roles. However, many segments of society see the TPPA's submission to self-identification of gender rather than focusing on the biological and binary understanding of male and female as doing battle with societal values. The Act, meanwhile, is under fierce debate with religious bodies like the Council of Islamic Ideology and other religious scholars rejecting it because it goes against the teachings on gender determined in the Islamic teachings. (Council of Islamic Ideology, Press 2021).

So far as no verification by a medical profession is required by the Act. As self-perception of gender characteristics has been construed a potential abuse. Critics warn that without the same procedural safeguards, fraud would be allowed in areas such as inheritance, marriage and access to gender segregated spaces. While these fears are often overstated, they have led to administrative reticence among the main implementing agencies most notably NADRA and the police, who are unclear how to implement the Act without clearer legal guidelines or support.

### **Administrative and Practical Challenges**

Due to absence of SOPs for NADRA, healthcare and law enforcement officials the way the law was applied varied from region to region. The FSC decided in 2023 that medical verification must be carried out for gender reassignment, and as a result, more officials had reservations about how to handle both religious and legal issues.

Additionally, many frontline service providers have not received adequate gender-sensitivity training, resulting in discrimination and administrative barriers for transgender individuals. Because public awareness about the Act is usually lacking, many people continue to hold wrong beliefs, and this harms the Act's purpose.

Legal ambiguities, particularly the initial reliance on self-perceived gender identity without safeguards, have also contributed to implementation challenges. Although the FSC called for establishing medical boards to manage gender change applications, no uniform procedures have been adopted. Without urgent reform and clearer mechanisms, the TPPA risks remaining more symbolic than transformative.

### **Conclusion**

TPPA, 2018, is a step forward in the history of the Pakistani legal system as it recognizes that a historically marginalized population has their rights. It balances the legal system of Pakistan with the constitutional and international human rights. It shows an essential commitment to equality, dignity and inclusion of transgender. In Islamic law, the Court has emphasized that rights and responsibilities are inherent as a result of biological sex and not subjective gender identity. This is particularly true when it comes to the matters of matrimony, succession and religious obligations.

The Islam religion recognizes and protects under a specified legal system those that are born with biological ambiguity (Khunsa). The Islamic juristic system of Quran, Sunnah, and Ijma constantly differentiates the biological difference of men and women concerning the worship, family law, and duties in the society. It is against this backdrop that there is need to reconcile the Act with the Islamic principles. The reconciliation procedure in accordance with the societal and moral values of Shariah must put into the fore the safeguarding of the inherent dignity and basic rights of the third gender such as intersex individuals.

Training of the masses will make everyone aware that the position of Islam on the rights of transgender is one that is kind and will not exploit them during the lawmaking process. The reforms in Pakistan can be implemented to improve its constitution and values as well as guaranteeing adherence to the laws of human rights. In this way Islamic society will be able to save its moral purity and integrity.

By making sure that TPPA, 2018 is more aligned to Islamic principles, Pakistan would preserve its Islamic heritage and make people more united and compassionate towards respecting human dignity and guidelines outlined in the divine law. This to the rest of the world demonstrates that they should rely on religious perceptions and observe human fundamental rights.

### **Recommendations**

In order to balance the TPPA, 2018 and the Shari'ah principles without harming the dignity and rights of the gender-diverse people, the following measures can be suggested:

To start with, it is necessary to revise the definitions in the TPPA to figure out the difference between khunsa (intersex) people acknowledged according to the classical Islamic jurisprudence and people who have gender dysphoria but are not biologically ambiguous. Gender as a component of inheritance, marriage, official documents and so on should be legally established and be subjected to biological or medical confirmation to make sure that it complies with the focus of Shari on the observable physical reality.

Second, the state needs to form provincial Gender Determination Boards, which will be directing under the Ministry of Health and these boards will include endocrinologists, psychiatrists, Islamic jurists (fuqaha), and legal experts. The multidisciplinary boards would evaluate gender recognition applications on a more medically informed and religion compliant basis. It also avoids abuse and gives a respectable avenue to true cases.

Third, the Act must be clearly revised to ban same sex marriages in order to uphold the Islamic law on families. Any legalization of gender should not be employed to avoid the Shari'ath prohibitions of unions between individuals of the same biological gender, which will ensure the preservation of the moral and social order ascribed by the teachings of Islamic religion.

Fourth, the campaign on the awareness of the population should be conducted completely by the Pakistan Electronic Media Regulatory Authority (PEMRA) and other sources. Such campaigns should inform the population on Islamic ethical values of compassion (rahmah), justice (adl), and dignity (karamah), and should also help to eliminate the misinformation and stigma by explaining the differences between biological intersex and gender identity problems.

Lastly, the government ought to make institutionalized Shura-based consultations between Islamic scholars, legal experts, medical specialists, transgender activists, and policymakers. These consultative forums are based on the Islamic tradition of group consultation. It makes the application of transgender rights responsive to religious principles and the development of the social needs and creating a sustainable and inclusive system of law.

## References

Abu Dawud. (n.d.). *Sunan Abi Dawud*.

Adil, K. (2024). Islamic law and gender identity: Reflections after the FSC judgment. *Pakistan Law Review*, 11(1), 58.

Akhtar, N., & others. (2018). Who am I? A quest for gender-identity by transgender people: An analytical study. *Asian Journal of International Peace & Security*, 2, 13.

Al-Buhuti. (n.d.). *Kashshaf al-Qina'* (Vol. 5). Dar al-Fikr.

Al-Bukhari, M. (n.d.). *Sahih al-Bukhari*.

Al-Ghazali. (1993). *Al-Mustasfa min 'Ilm al-Usul* (Vol. 1, Al Murghiani, Ed.). Dar al-Kutub al-Ilmiyyah.

Ali, A., & Ali, M. (2016). Simplify inheritance rights in Islamic law: Hermaphrodite right to inheritance and married (Khuntha). *Australian Journal of Basic and Applied Science*, 10(7), 104.

Alipour, M. (2016). 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(1), 91–103.

Al-Qaradawi, Y. (1960). *The Lawful and the Prohibited in Islam*. American Trust Publications.

Al-Qaradawi, Y. (2004). *Contemporary fatwas*. Dar Al-Shorouk.

Al-Qurtubi. (2000). *Tafsir al-Qurtubi* (Vol. 14). Dar al-Kutub al-Ilmiyyah.

Al-Sarkhasi, A. (2010). *Al Kitab Al Mabsut* (Vol. 12). Dar Al-Kotob Al-Ilmiyyah.

Al-Shafi'i, I. (1940). *Al-Risala* (A. Shakir, Ed.). Dar al-Turath.

Al-Zuhayli, W. (2002). *Al-Fiqh al-Islami wa Adillatuhu* (Vol. 9). Dar al-Fikr.

American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders* (5th ed.).

- Amnesty International. (2023). *Pakistan: Amendments to Transgender Rights Act threaten safety and dignity*. Retrieved June 15, 2024, from <https://www.amnesty.org/en/latest/news/2023/06/pakistan-transgender-rights-at-risk/>
- Attia, G. E. (2007). *Towards the philosophy of Islamic law: Maqasid al-Shari'ah and contemporary challenges* (pp. 102–104). IIIT.
- Blue Veins. (2018). *Transgender youth education rights in Khyber Pakhtunkhwa*.
- Bucha, A. (2022, October 8). The truth about Pakistan's Transgender Act 2018. *Paradigm Shift*. Retrieved June 9, 2024, from <https://www.paradigmshift.com.pk/transgender-act-2018/>
- Buhanudin, A. bin A. B. (n.d.). *Al Hidayah Fi Sharah Bidayatul Mabtadi, Kitabul Khunsa*.
- Business Research Methodology. (n.d.). *Fundamental research*. Retrieved June 20, 2024, from <https://research-methodology.net/research-methodology/research-types/fundamental-research/>
- Drescher, J. (2014). Gender identity diagnoses: History and controversies. In B. P. C. Kreukels, T. D. Steensma, & A. L. C. de Vries (Eds.), *Gender dysphoria and disorders of sex development: Focus on sexuality research*. Springer.
- Hammad Hussain v Federation of Pakistan through Secretary, Ministry of Law and Justice* [2023] PLD 301 (FSC).
- Hashmi, T. M. (n.d.). *Role, importance and authenticity of the Hadith*. Al-Mawrid: The Foundation for Islamic Research and Education. Retrieved June 5, 2024, from <https://www.al-mawrid.org/index.php/questions/view/role-importance-and-authenticity-of-the-hadith>
- Human Rights Commission of Pakistan (HRCP). (2024). *Post-judgment legal framework for transgender rights* (Briefing Paper, p. 5).
- Human Rights Watch. (2016). "You don't want second class citizens": *Discrimination against transgender people in Pakistan*. Retrieved June 30, 2025, from <https://www.hrw.org/report/2016/01/15/you-dont-want-second-class-citizens/discrimination-against-transgender-people>
- Ibn Abd al-Barr. (n.d.). *Al-Tamhid* (Vol. 24). Dar al-Fikr.
- Ibn Abdul Barr, I. (n.d.). *At-Tamhid Lima Fil-Muwatta Min Al-Ma'ani Wal-Asanid*. Al-Maktaba Al-Assriyya.
- Ibn Abidin. (1992). *Radd al-Muhtar 'ala al-Durr al-Mukhtar* (Vol. 5). Dar al-Fikr.
- Ibn Hajar Asqalani. (n.d.). *Fath Al-Bari: English Commentary of Sahih Bukhari* (K. Williams, Trans.; M. I. Waley, Ed.; Vol. 1). Visions of Reality.
- Ibn Maja. (n.d.). *Sunan Ibn e Maja*.
- Ibn Qudamah. (2013). *Al Mughni* (8th ed.). Dar 'Alam Al Kutub.

- Ibn Rushd. (2004). *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* (Vol. 2). Dar al-Hadith.
- Julie, S. (2006). *Encyclopedia of Arabic literature*. Routledge.
- Kamali, M. H. (2003). *Principles of Islamic jurisprudence* (pp. 282–286). Islamic Texts Society.
- Khan, A. (2022). Transgender healthcare in Pakistan: Gaps and barriers. *Pakistan Journal of Public Health*, 19.
- Khan, M. A. (2021). Transgender rights and legal recognition in Pakistan: Between inclusion and exclusion. *Pakistan Journal of Gender Studies*, 18(1), 73.
- Kirmani, N. (2019). Citizenship and the margins: The case of the Khwaja Sira community in Pakistan. *Journal of Asian Studies*, 53(3), 537.
- Lego Desk. (n.d.). *Types of legal research*. Retrieved May 27, 2024, from <https://legodesk.com/blog/legal-practice/types-of-legal-research/>
- Masud, M. K. (2005). *Shura and democracy: A comparative study*. Council of Islamic Ideology.
- Muhammad, H. (2003). *Principles of Islamic jurisprudence*. Islamic Texts Society.
- PEMRA. (2018). *Notice on ethical reporting of gender and sexual minorities*. Retrieved July 21, 2024, from <https://www.pemra.gov.pk>
- Pirnia, B., & Pirnia, K. (2021). Sex reassignment surgery in Iran, re-birth or human rights violations against transgender people? *Iranian Journal of Public Health*.
- Rehman, J., & Polimenopoulou, E. (2013). Is green a part of the rainbow? Sharia, homosexuality and LGBT rights in Muslim world. *Fordham International Law Journal*, 37(1), 1.
- Rowson, E. K. (1991). The effeminates of early Medina. *Journal of the American Oriental Society*, 111(4), 671. Retrieved May 28, 2024, from [http://www.williamapercy.com/wiki/images/The\\_effeminates\\_of\\_early\\_medina.pdf](http://www.williamapercy.com/wiki/images/The_effeminates_of_early_medina.pdf)
- Sabiq, S. (1991). *Fiqh-us-Sunnah* (Vol. 2). American Trust Publications.
- Siddiqui, M. N. (2022). Implementation gap: The real struggle for transgender rights in Pakistan. *Journal of Law and Policy Reform*, 14(1), 101.
- The Constitution of the Islamic Republic of Pakistan 1973.
- The Holy Quran.
- The legal recognition of transgender persons in Pakistan: A critical analysis. (2019). *Pakistan Journal of Social Sciences*, 36, 421.
- TransAction Alliance. (n.d.). *TransAction Pakistan*. Retrieved July 10, 2024, from <https://www.transactionpakistan.org>
- Transgender Persons (Protection of Rights) Act 2018 (Pakistan).

- Webley, L. (2013). *Legal writing* (5th ed.). Routledge.
- West, B. A. (2010). *Encyclopedia of the peoples of Asia and Oceania*. Infobase Publishing.
- Yousaf, H. (2020). *Stereotypes and sensationalism in the portrayal of transgender people in Pakistani media*. Media Matters for Democracy.
- Yusuf, A. (2021). Transgender visibility in Pakistan's entertainment media. *DAWN*. Retrieved July 20, 2024, from <https://www.dawn.com/news/1635579>
- Zia, A. S. (2022). Contesting queer rights in Pakistan: Identity, security and religious nationalism. *Feminist Legal Studies*, 30(2), 215.
- Zubair, M. (2020). A legal review of gender identity in Islamic jurisprudence. *Pakistan Journal of Islamic Research*, 21(2), 45–60.