**Transgender Act and Objections**

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The Transgender Act is being hailed for the opportunities it provides to transgenders on one hand, but it is also receiving scathing criticism for its controversial parts. This article would focus on the objections to the Transgender Act. There are three important points in the Act, which paint a negative picture of the Act 2018. The first point is the use of the term “Transgender” and its definition. Many of us think that transgender means hermaphrodite, but that is not the case. The modern term transgender is usually used for those people who think that their spirit is infused in the wrong body. Those people who are not satisfied with their gender that was assigned at the time of birth. A part of the definition is problematic, which says that “any person whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.” The second point rests with the recognition of identity. The term “self-perceived identity” has drawn flak because it does not sit well with our society, religion, and constitution. Under the umbrella of recognition of identity, any person would be able to register his/her CNIC following self-perception. No medical or psychological board would be required to determine the gender and the reason to change gender. The third point is that this Act provides the option to change the already changed gender based on an individual’s perception. So, given the above-mentioned points, critics of Act 2018 have raised some important points:

Violation of Islamic Code: According to Surah Nisa verse 119, Satan challenged Allah that “And I will mislead them, and I will arouse in them sinful desires and I will command them so they will slit the ears of cattle, I will command them so they will change the creation of Allah.” This verse shows that changing the creation of Allah is equal to following Satan’s path. Desires, perceptions, and whims can never be the criterion to change gender. Desires can only be a source of guidance for disbelievers not for believers. In surah Qasass, verse 50, Allah says, “But if they do not respond to you- then know that they only follow their desires. And who is more astray than one who follows his desire without guidance from Allah?” Herein, it is clarified that those who do not accept Allah’s verses are guided by desires despite having Allah’s message. It also says that those who follow their desires have gone astray. The change of gender based on self-perception is not prohibited for females and males only. Even, if a male changes his gender into intersex based on self-perception, it is equally prohibited in Islam.

In Transgender Act 2018, self-perception is enough to change gender without going through any surgery or medical process.

Fatwas on Gender Change: Some human rights activists are wrongly presenting Fatwas of Imam Khomeini and Shaikh al-Tantawi of Egypt in favour of changing gender. Do they support gender change policy without any medical and psychological consultation? This is not the case. M Alipour in his research paper titled, “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” talks about these fatwas at length. He believes that Tantawi’s fatwa is not explicit. Al- Tantawi’s fatwa used various prophet’s (S.A.W) sayings (in which hermaphrodite people were allowed to remove femininity) to build his case. Tantawi concludes, “It is permissible to operate to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so because it must be considered a treatment when a trustworthy doctor advises it. It is, however, not permissible to do it at mere wish to change sex from a woman or vice versa.”

Now, we have to see the Fatwa of Imam Khomeini. A man namely, Fereydoon Mulkara, was going through social pressure due to his proximity to the female gender. He went to psychologists and doctors. Doctors proposed a sex-reassignment operation. He wrote two letters to Khomeini for permission. Khomeini took him as a hermaphrodite and advised him to wear female clothes and to practice his religious duties like women. One day, Mulkara managed to meet Khomeini in person and explained his situation to the latter. Then Khomeini delivered a fatwa: “In the name of God. Sex reassignment surgery is not prohibited in Shari’a law if reliable medical doctors recommend it. InShaAllah, you will be safe, and hopefully, the people whom you mentioned take care of your situation.”

Finally, Fereydoon Mulkara changed into Maryam Khatoon with the help of medical experts. Palpably, both fatwas emphasize the medical recommendation for gender change. It simply destroys the concept of changing gender based on self-perception.

Unconstitutional Provision: Article 227 of the constitution maintains that “all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah.” Islam neither supports the change of gender based on self-perception nor without medical recommendation. Articles 228, 229, and 230 define the Islamic ideology council and its function. According to the constitution, it is the Islamic ideology council’s advisory power to gauge whether a law is conforming to Islamic injunctions or not. Islamic Ideology Council was not taken on board while making the transgender Act 2018. The focal person of the Khawaja-Sara community, Almas Bobi, said that she could not get any opportunity to present her view regarding the bill. Representatives from the Khawaja-Sara community should have been included in the law-making process. It is strange to make laws about a neglected community without taking its opinion. Another important point is that it is not allowed to change gender without a medical process, even in a secular country like India. In Section 7 of transgender person’s rules 2020, Indian law presents the whole procedure of gender change. It mentions the need for a medical certificate by the Chief medical officer in the institution in which that person is going through surgery to change gender. In our Transgender Act 2018, self-perception is enough to change gender without going through any surgery or medical process.

Same-sex marriage: In 2020, a case of same-sex marriage occurred in a tehsil of Rawalpindi, Taxila. A woman, Asma Bibi changed her CNIC to Akash Ali and married her student, Neha Khan. Akash Ali claimed that he went through a gender change operation. Akash Ali was directed by the court to appear before the medical board for gender identification. Akash could not prove his gender transition before the court. Lahore High Court Rawalpindi bench issued a red warrant for Akash Ali and further ordered the registration of a case under sections of deception, fraud, and homosexuality. His name was put on ECL and CNIC was blocked. Finally, Akash Ali (Asma bibi) divorced Neha to clear up the mess. This same-sex marriage happened under Act 2018. However, Transgender Persons (Protection of Rights) rules 2020 (promulgated in 2021) have made it clear that a male or a female can change gender to X and people having X cannot get married. But still, change of gender to X is prohibited in Islam, especially based on self-perception without medical recommendation. According to NADRA, 1035 male changed their gender to X and 87 female changed their gender to X. If this law of self-perceived identity is not changed, the people having a soft corner for LGBT may question the allotment of X. Consequently, this would bring secular and religious extremists eyeball to eyeball.

Yogyakarta principles: The Transgender Act 2018 is, no doubt, a brilliant document but a few controversial provisions have overshadowed its positive aspects. Senator Mushtaq Ahmad mentioned on a talk show that the human rights ministry took Yogyakarta principles as a guide to incorporate controversial provisions. This document consists of 29 principles to ensure human rights. The gender identity in the Transgender Act 2018 is at par with the Yogyakarta principles document. Principle 18 of Yogyakarta principles denies the importance of the medical board under the aegis of human rights violation. Yogyakarta principles present the international standard of human rights and talk about the protection of same-sex relations. Principles 2,4, and 6 direct the countries to decriminalize consensual same-sex relations. Perhaps, international pressure led to introduce controversial provisions in the Act.

The basic issue lies in approach; an issue through the lens of Islam is not an issue through the lens of secularism. Not only does Islam discourage sin, but also the possible path to sin. Unfortunately, this Act was passed recklessly and in unnecessary haste. Had the bill been presented to the Islamic ideology council, these controversial provisions could have been improved. Our lawmakers must uphold their constitution and religion before passing such laws.

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