

[AS PASSED BY THE SENATE]

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BILL

to provide for protection, relief and rehabilitation of rights of the transgender persons and their welfare and for matters connected therewith and incidental thereto

WHEREAS it is expedient to provide for protection, relief and rehabilitation of rights of the transgender persons and their welfare and for matters connected therewith and incidental thereto;

It is hereby enacted as follows: -

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement. – (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2018.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.– (1) In this Act, unless there is anything repugnant in the subject or context,-

(a) **“Act”** means the Transgender Persons (Protection of Rights) Act, 2018;

(b) **“CNIC”** means Computerized National Identity Card;

(c) **“Complainant”** means a transgender person who has made a complaint on being aggrieved by an act of harassment;

(d) **“CRC”** means Child Registration Certificate or B-Form;

(e) **“Gender expression”** refers to a person’s presentation of their gender identity, and/or the one that is perceived by others;

(f) **“Gender identity”** means 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;

(g) **“Government”** means the Federal Government;

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- (h) **"Harassment"** includes sexual, physical, mental and psychological harassment which means any aggressive pressure or intimidation intended to coerce, unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with living, mobility or work performance or creating an intimidating, hostile or offensive work or living environment including the attempt to punish the complainant for refusal to comply with such requests or to bring forth the complaint;
- (i) **"NADRA"** means the National Database and Registration Authority;
- (j) **"Notification"** means a notification published in the Gazette;
- (k) **"PMDC"** means Pakistan Medical and Dental Council made under the PMDC Ordinance, 1962;
- (l) **"Prescribed"** means prescribed by rules made by the Government under this Act;
- (m) **"Rules"** means the rules made under this Act; and
- (n) **"Transgender Person"** is a person who is:-
 - (i) Intersex (Khunsa) with mixture of male and female genital features or congenital ambiguities; or
 - (ii) Eunuch assigned male at birth, but undergoes genital excision or castration; or
 - (iii) a Transgender Man, Transgender Woman, KhawajaSira or any person whose gender identity and/or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.

(2) A word or expression not defined in the Act shall have the same meaning as assigned to it in the Code of Criminal Procedure, 1898 or Pakistan Penal Code, 1860 (XLV of 1860).

**CHAPTER II
RECOGNITION OF IDENTITY OF TRANSGENDER PERSON**

3. Recognition of identity of Transgender Person. – (1) A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.

(2) A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to NADRA.

(3) Every Transgender Person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to get himself or herself registered according to self-perceived gender identity with NADRA on the CNIC, CRC, Driving Licence and Passport in accordance with the provisions of the NADRA Ordinance, 2000 or any other relevant laws.

(4) A Transgender Person already issued CNIC by NADRA shall be allowed to change the name and gender according to his or her self-perceived identity on the CNIC, CRC, Driving Licence and Passport in accordance with the provisions of the NADRA Ordinance, 2000.

**CHAPTER III
PROHIBITION OF CERTAIN ACTS**

4. Prohibition against discrimination. – No person shall discriminate against a transgender person on any of the following grounds, namely:-

- (a) the denial of, or discontinuation of, or unfair treatment in, educational institutions and services thereof;
- (b) the unfair treatment in, or in relation to, employment, trade or occupation;
- (c) the denial of, or termination from, employment or occupation;
- (d) the denial of, or discontinuation of, or unfair treatment in healthcare services;

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- (e) the denial of, or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment of use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of general public or customarily available to the public;
- (f) the denial of, or discontinuation of, or unfair treatment with regard to right to movement, safe travel, and use of public facilities of transportation;
- (g) the denial of, or discontinuation of, or unfair treatment with regard to the right to reside, sale/purchase, rent or otherwise occupy, inherit any movable and immovable property;
- (h) the denial of, or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; or
- (i) the denial of access to, removal from, or unfair treatment in, government or private establishment, organizations, institutions, departments, centers in whose care, custody or employment a transgender person may be.

5. Prohibition against Harassment. - Harassment of Transgender Persons, as defined in this Act, both within and outside the home, based on their sex, gender identity and/or gender expression is prohibited.

CHAPTER IV OBLIGATIONS BY THE GOVERNMENT

6. Obligations of the Government. - The Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society, namely: -

- (a) Establish Protection Centers and Safe Houses to ensure the rescue, protection and rehabilitation of Transgender Persons in addition to providing medical facilities, psychological care, counseling and adult education to the Transgender Persons;

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- (b) Establish separate prisons, jails, confinement cells, etc for the transgender persons involved in any kind of offence or offences;
- (c) Institute mechanisms for the periodic sensitization and awareness of the public servants, in particular, but not limited to, law enforcement agencies and medical institutions, relating to the issues involving the Transgender Persons and the requirement of protection and relief of such persons;
- (d) Formulate special vocational training programmes to facilitate, promote and support livelihood for Transgender Persons;
- (e) Encourage Transgender Persons to start small business by providing incentives, easy loan schemes and grants; and
- (f) Take any other necessary measures to accomplish the objective of this Act.

CHAPTER V PROTECTION OF RIGHTS OF TRANSGENDER PERSONS

7. Right to Inherit. – (1) There shall be no discrimination against Transgender Persons in acquiring the rightful share of property as prescribed under the law of inheritance.

(2) The share of Transgender Persons shall be determined as per the gender declared on CNIC in accordance with the law of inheritance in Pakistan.

- (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;

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- (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 18 years, if the person's self-perceived gender identity is Transgender Male, the share of inheritance will be that of man;
 - (b) Upon reaching the age of 18 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 18 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 medical officer on the basis of predominant male or female features.

8. Right to Education.- (1) There shall be no discrimination against Transgender Persons in acquiring admission in any educational institutions, public or private, subject to fulfillment of the prescribed requirements.

(2) All educational institutions shall provide education and opportunities for sports, recreation and leisure activities without any discrimination, and on an equal basis with others.

(3) The Government shall take steps to provide free and compulsory education to Transgender Persons as guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan, 1973.

(5) It is unlawful for an institution whether private or public, to discriminate against a person on the ground of person's sex, gender identity and/or gender expression, including but not limited to:

- (a) in determining who should be offered admission; or
- (b) in the terms or conditions on which admission is offered; or
- (c) by denying the person's access, or limiting the person's access, to opportunities, training or to any other positive externalities associated with the education; or
- (d) by denying access to appropriate student facilities based on a person's sex, gender identity and/or expression.

9. Right to employment.– (1) The Government must ensure the right to enter into any lawful profession or occupation, and to conduct any lawful trade or business for the Transgender Persons as guaranteed under Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973.

(2) No establishment, institution, department, organization, shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion, appointment, transfer and other related issues.

(3) It shall be unlawful for an employer to discriminate against an employee on the ground of their sex, gender identity and/or gender expression:

- (a) in determining who should be offered employment; or
- (b) in the terms or conditions on which employment is offered; or
- (c) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or

- (d) by dismissing the employee; or
- (e) by subjecting the employee to any other detriment.

10. Right to Vote. – No Transgender Person shall be deprived of their right to cast a vote during national, provincial and/or local government elections:

Provided that the access to polling stations shall be determined according to the gender declared on the CNIC of a Transgender Person.

11. Right to hold public office. – (1) There shall be no discrimination on the basis of sex, gender identity and/or gender expression for Transgender Persons if they wish to contest election to hold public office.

12. Right to Health. – The Government shall take the following measures to ensure non-discrimination in relation to Transgender Persons, namely: –

- (a) to review medical curriculum and improve research for Doctors and nursing staff to address specific health issues of Transgender Persons in cooperation with PMDC;
- (b) to facilitate access by providing an enabling and safe environment for Transgender Persons in hospitals and other healthcare institutions and centers;
- (c) to ensure Transgender Persons access to all necessary medical and psychological gender corrective treatment;

13. Right to assembly. – (1) The Government must ensure the freedom of assembly for Transgender Persons in accordance with Article 16 of the Constitution of the Islamic Republic of Pakistan, 1973.

(2) The Government must take steps to ensure appropriate safety measures for Transgender Persons.

(3) No discrimination shall be made on the basis of person's sex, gender identity and/or gender expression subject to reasonable restrictions imposed by law in the interest of public order.

14. Right of access to public places. – (1) No Transgender person shall be denied access to public places, places of entertainment or places intended for religious purpose solely on the basis of their sex, gender identity and/or gender expression.

(2) The Government must ensure Transgender Persons access to public places in view of Article 26 of the Constitution of the Islamic Republic of Pakistan, 1973.

(3) It shall be unlawful to prevent Transgender Persons to access facilities available for access of general public and public places mentioned in sub-section (1).

15. Right to property. – (1) No Transgender Person shall be denied right to purchase, sell, rent or lease property, household or tenancy on the basis of sex, gender identity and/or gender expression.

(2) It shall be unlawful to discriminate any Transgender Person with regards to renting, subletting or tenancy on the basis of their sex, gender identity and/or gender expression.

16. Guarantee of Fundamental Rights. – (1) In addition to rights mentioned in this chapter, Fundamental Rights mentioned in Chapter I, Part II of the Constitution of the Islamic Republic of Pakistan, 1973 shall be available unequivocally for every Transgender Person.

(2) It shall be the duty of the Government to ensure that the fundamental rights mentioned in sub-section (1) are protected and there shall be no discrimination for any person on the basis of sex, gender identity and/or gender expression.

17. Offences and Penalties.- (1) Whoever, employs, compels or uses any transgender person for begging shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

**CHAPTER VI
ENFORCEMENT MECHANISM**

18. Enforcement Mechanism. – In addition to the remedies available under the Constitution or Pakistan Penal Code 1860, Code of Criminal Procedure, 1898 or the Code of Civil Procedure 1908, the aggrieved transgender person shall have a right to move a complaint to the, Federal Ombudsman, National Commission for Status of Women and National Commission of Human Rights (NCHR) if any of the Rights guaranteed herein are denied to him or her.

**CHAPTER VII
MISCELLANEOUS**

19. Act having over-riding effect to any other law.– The provisions of this Act shall have an over-riding effect on any other law for the time being in force.

20. Power of Government to make rules.– The Government may, by notification, make rules for carrying out the purposes of this Act.

21. Power to remove difficulties.– If any difficulty arises in giving effect to the provisions of this Act, the Government may make such order or give such directions, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

Transgender people constitute one of the most marginalized communities in the country and they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on. The Supreme Court of Pakistan passed a ruling in 2009 stating that no Pakistani laws provide room to disenfranchise “eunuchs” from their fundamental rights. Though Article 25 of the Constitution of the Islamic Republic of Pakistan guarantees to all citizens equality before law, clause (1) of Article 26 and clause (1) of Article 27, inter alia prohibit, in explicit terms, discrimination on the basis of sex and Article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against Transgender Persons continue to take place.

The Transgender Persons (Protection of Rights) Bill, 2017 seeks to:

- (i) define a Transgender Person;
- (ii) prohibit discrimination against Transgender Persons;
- (iii) confer right upon Transgender Persons to be recognised as such, and a right to self-perceived gender identity;
- (iv) provide that no establishment shall discriminate against Transgender Persons in matters relating to employment, recruitment, promotion, education and other related issues; and
- (v) provide for welfare measures by the Government for Transgender Persons.

The Bill seeks to achieve the above objects.

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