

[TO BE INTRODUCED IN THE SENATE]

A
BILL

to provide for protection, relief and rehabilitation of the rights of khunsa (intersex) persons, and their welfare

WHEREAS it is expedient to provide for protection, relief and rehabilitation of the rights of khunsa (intersex) 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 Khunsa (Intersex) Persons (Protection of Rights) Act, 2023.

(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 Khunsa (Intersex) Persons (Protection of Rights) Act, 2023;

(b) "CNIC" means Computerized National Identity Card;

(c) "Complainant" means the khunsa (intersex) person or the person afflicted with gender dysphoria, as the case may be, who has made a complaint on being aggrieved by an act of harassment;

(d) "CRC" means Child Registration Certificate or B-Form;

(e) "Government" means the Federal Government or any Provincial Government, as applicable;

(f) "Harassment" includes sexual, physical, mental and psychological harassment which means any aggressive pressure or intimidation intended to coerce, unwelcome sexual advance, request for sexual favours 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.

(g) "Khunsa (Intersex) Person" is a person who is born with a mixture of male and female genital features or congenital ambiguities, and could be classified as khunsa male, khunsa female, or khunsa mushkil;

(h) "Medical Board" means a gender establishment medical board, as well as a board that may establish whether a person is afflicted with gender dysphoria, notified in respect of each division of Pakistan and the Islamabad Capital Territory, by approval of the Chief Minister (in the case of each province) and the Prime Minister (in the case of the Islamabad Capital Territory), and consisting of the following:--

(i)	One Neonatologist with the rank of Professor	Convenor;
(ii)	One Gynaecologist with the rank of Associate Professor	Member;
(iii)	One Plastic Surgeon with the rank of Associate Professor	Member;
(iv)	One Endocrinologist or Geneticist with the rank of Associate Professor	Member;
(v)	One Urologist with the rank of Associate Professor	Member;
(vi)	One Psychologist preferably holding a Ph.D. degree in his field	Member; and
(vii)	The Chief Medical Officer of the district concerned	Member/Secretary.

(j) "NADRA" means the National Database and Registration Authority;

(k) "Notification" means a notification published in the official Gazette;

(l) "PMDC" means The Pakistan Medical and Dental Council constituted under the PMDC Ordinance, 1962 (XXXII of 1962);

(m) "Prescribed" means prescribed by rules made by the Federal Government under this Act; and

(n) "Rules" means the rules made under this Act.

(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 (V of 1898), or the Pakistan Penal Code, 1860 (XLV of 1860).

CHAPTER-II

RECOGNITION OF IDENTITY OF A KHUNSA (INTERSEX) PERSON

3. Recognition of identity of khunsa (intersex) person. - (1) A khunsa (intersex) person shall be recognized on the basis of his, her or its physical attributes, genital features or congenital ambiguities, as male, female or khunsa mushkil, respectively, upon certification by the medical board, in accordance with the provisions of this Act.

(2) A person recognized as male, female or khunsa mushkil under sub-section (1) shall get himself, herself or itself registered as per the certification made by the medical board with all government departments including, but not limited to NADRA.

(3) Every khunsa (intersex) person, being a citizen of Pakistan, who has attained the age of eighteen years shall get himself, herself or itself registered according to the certification made by the medical board 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 khunsa (intersex) person already issued CNIC by NADRA shall be allowed to change the name and correct the gender, according to the certification made by the medical board, on the CNIC, CRC, Driving Licence and Passport in accordance with the provisions of the NADRA Ordinance, 2000.

(5) If a new born child has both male and female, or ambiguous genital features, such as their state is clearly difficult to determine by the parents or the medical practitioner or other person supervising the birth of such child, then it shall be the duty of the parents of such child to promptly refer the matter to the medical board for gender certification of such child in accordance with the Act.

4. Powers and Functions of the Medical Board. - (1) The medical board shall have the following powers and functions, namely:-

- (a) To examine khunsa (intersex) persons based on applications made under this Act, either directly by a khunsa (intersex) person or through any parent or next friend, for issuance of a gender establishment certificate;
- (b) To examine persons claiming to be afflicted with gender dysphoria based on applications made under this Act, either directly by any such person or through any parent or next friend; for issuance of a certificate that the applicant is afflicted by such a condition;
- (c) To act as expert witnesses for examination by judicial and administrative forums, such as NADRA; and
- (d) To give advice to the Federal or Provincial Government, as the case may be, for matters concerning welfare and wellbeing of khunsa (intersex) persons as well as persons afflicted with gender dysphoria.

(2) The manner of making, processing and deciding upon applications pursuant to this section 4 shall be as prescribed.

(3) The medical board shall take its decisions, in respect of an application made pursuant to this section 4, within thirty days of receiving an application, with reasons to be recorded in writing and in accordance with prescribed tests, which shall, in the case of an application made under clause (a) of sub-section (1) of this section 4, include but not be limited to karyotype genetic test.

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CHAPTER-III
PROHIBITION OF CERTAIN ACTS

5. Prohibition against discrimination etc. - (1) No person shall discriminate against a khunsa (intersex) 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;
- (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, centres in whose care, custody or employment a khunsa (intersex) person may be.

(2) No khunsa (intersex) person shall be abandoned by his, her or its parents, at birth or up until the age of majority, and no such khunsa (intersex) person shall be removed from his, her or its parents' abode, forcibly or by consent, including through adoption or carrying by any guru or other leader of the khunsa (intersex) community, by whatever name called.

(3) No person shall employ, compel, use, or solicit the services of, any khunsa (intersex) person for begging, dancing or any form of degrading activity.

6. Prohibition against Harassment. - Harassment of khunsa (intersex) persons, as defined in this Act, both within and outside the home, based on their sex, is prohibited.

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CHAPTER-IV
OBLIGATIONS OF THE GOVERNMENT

7. **Obligations of the Government.** - The Government shall take steps to secure full and effective participation of khunsa (intersex) persons and their inclusion in society, namely:-

- (a) Establish Protection Centres and Safe Houses to ensure the rescue, protection and rehabilitation of khunsa (intersex) persons in addition to providing medical facilities, psychological care, counseling and adult education to khunsa (intersex) persons;
- (b) Establish separate prisons, jails, confinement cells, etc. for khunsa (intersex) 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 khunsa (intersex) persons and the requirement of protection and relief of such persons;
- (d) Formulate special vocational training programmes to facilitate, promote and support livelihood for khunsa (intersex) persons;
- (e) Encourage khunsa (intersex) persons to start small businesses by providing incentives, easy loan schemes and grants; and
- (f) Take any other necessary measures to accomplish the objectives of this Act.

CHAPTER-V
PROTECTION OF RIGHTS OF KHUNSA (INTERSEX) PERSONS

8. **Right to Inherit.** - (1) There shall be no discrimination against khunsa (intersex) persons in acquiring the rightful share of property as prescribed under the law of inheritance.

(2) The share of (intersex) persons shall be determined as per the gender declared on CNIC or CRC, as the case may be, as certified by the medical board, where applicable, in accordance with the law of inheritance in Pakistan.

(3) The share of inheritance for khunsa (intersex) persons will, for the avoidance of doubt, be as follows, namely:-

- (a) For a Muslim khunsa (intersex) person, who is certified and registered as a male in terms of section 3 of the Act, the share of inheritance will be that of man, and in case of such a non-Muslim person, the share will be as prescribed by the applicable law of inheritance in Pakistan;
- (b) For a Muslim khunsa (intersex) person, who is certified and registered as a female in terms of section 3 of the Act, the share of inheritance will be that of woman, and in case of such a non-Muslim person, the share will be as prescribed by the applicable law of inheritance in Pakistan; and

- (c) For a khunsa (intersex) person who has both male and female or ambiguous characteristics, such as their state is difficult to determine, the share of inheritance will be that of the gender as certified and registered in terms of section 3 of the Act on the basis of predominant male or female characteristics, but if no clear certification is made as such, then the share in inheritance shall be determined, as in the case of a Muslim khunsa mushkil person, in accordance with the Sharia, and in respect of such a non-Muslim khunsa mushkil person, as prescribed by the applicable law of inheritance in Pakistan.

9. Right to Education.- (1) There shall be no discrimination against khunsa (intersex) persons in acquiring admission in any educational institutions, public or private, subject to fulfilment 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 khunsa (intersex) persons as guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan, 1973.

(4) It is unlawful for an institution whether private or public, to discriminate against a person on the ground of that person's sex, 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.

10. 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 khunsa (intersex) 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 khunsa (intersex) 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:

- (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.

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11. Right to vote. - No khunsa (intersex) 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 khunsa (intersex) person.

12. Right to hold public office. - There shall be no discrimination on the basis of sex, for khunsa (intersex) persons if they wish to contest election to hold public office.

13. Right to health. - The Government shall take the following measures to ensure non-discrimination in relation to khunsa (intersex) persons, namely: -

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

14. Prohibition of Sex Re-Assignment Surgery. - Any sex re-assignment surgery or any other treatment to change the genital features of a male or female person shall be prohibited on the basis of any psychological disorder or gender dysphoria.

15. Right to assembly. - (1) The Government must ensure the freedom of assembly for khunsa (intersex) 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 khunsa (intersex) persons.

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

16. Right of access to public places. - (1) No khunsa (intersex) person shall be denied access to public places, places of entertainment, or places intended for religious purpose, solely on the basis of their sex.

(2) The Government must ensure 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 khunsa (intersex) persons to access facilities available for access of general public and public places mentioned in sub-section (1).

17. Right to property. - (1) No khunsa (intersex) person shall be denied right to purchase, sell, rent or lease property, household or tenancy on the basis of sex.

(2) It shall be unlawful to discriminate any khunsa (intersex) person with regards to renting, subletting or tenancy on the basis of their sex.

18. 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 khunsa (intersex) 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.

19. Offences and Penalties.- Whoever violates the provisions of sub-sections (2) or (3) of section 5, or section 6 or section 14 of the Act, shall be punishable with imprisonment which may extend to five years or with fine which may extend to five hundred thousand rupees or with both.

CHAPTER-VI ENFORCEMENT MECHANISM

20. Enforcement Mechanism. - In addition to the remedies available under the Constitution of Islamic Republic of Pakistan, 1973, or the Pakistan Penal Code, 1860, or the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, the aggrieved khunsa (intersex) person shall have a right to move a complaint to the National Commission of Human Rights (NCHR), if any of the rights guaranteed herein are denied to him, her or it.

CHAPTER-VII MISCELLANEOUS

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

22. Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by publication in the official Gazette, make such order, give such directions, or 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.

23. Repeal.- (1) Subject to section 6 of the General Clauses Act, 1897 (X of 1897), the Transgender Persons (Protection of Rights) Act, 2018 (XIII of 2018), hereinafter referred to as the Repealed Act, shall stand repealed.

(2) Notwithstanding the repeal of the Repealed Act, except to the extent of inconsistencies with the Act, all decisions taken, acts done and steps taken in pursuance of the Repealed Act shall, as far as practicable, be deemed to have been validly done.

STATEMENT OF OBJECTS AND REASONS

- The Khunsa (Intersex) Persons (Protection of Rights) Act, 2023, is aimed at reforming and repealing the Transgender Persons (Protection of Rights) Act, 2018, for the reason that numerous provisions of the 2018 Act are repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah.
2. "Transgender" is an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to that typically associated with the sex to which they were assigned at birth. Furthermore, "gender identity" refers to a person's internal sense of being male, female or something else and "gender expression" refers to the way a person communicates gender identity to others through behaviour, clothing, hairstyles, voice or body characteristics.
 3. The 2018 Act *inter alia* enables any adult, acting alone, to declare, and get officially registered, his or her own gender on the basis of an internal sense of being male, female or something else and/or how he or she is perceived by others. By contrast, Islamic law recognizes gender solely on the basis of physical attributes, genital features or congenital ambiguities, which medical diagnosis/expertise can determine, and disallows any gender classification based on someone's internal sense or the perception of others. Accordingly, the scope of the Act of 2018 has to be narrowed down, to a significant extent, just to that subset of "transgender" persons as is recognized under Islamic law as "khunsa" (the English term "intersex" being closest to it in exact translation), which is the Bill's main object.
 4. Accordingly, in the case of khunsa (intersex) persons, the Bill aims to give effect to the Islamic law approach involving classification as khunsa (intersex) male, khunsa (intersex) female, and khunsa (intersex) mushkil, based on medical diagnosis/expertise, as well as khunsa (intersex) persons are to be treated in matters of official registration and enforcement of a variety of personal laws, including that of inheritance. The Bill not only keeps intact, in the case of khunsa (intersex) persons, those very rights and protections as are afforded to transgender persons under the 2018 Act, but also provides for certain additional rights and protections over and above the same, along with increasing the severity of punishment in cases involving maltreatment of khunsa (intersex) persons. In addition, the Bill nevertheless defines and recognizes "gender dysphoria" as a condition in the same terms and to the same extent as is done by the World Health Organization, and extends to persons afflicted with such condition several of the rights and protections as have been guaranteed therein to khunsa (intersex) persons.
 5. The Bill aims to achieve the above-mentioned objectives.


(Senator Mushdag Ahmad)