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## The Transgender Persons (Protection of Rights) Amendment Bill – 2022

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In light of the recently introduced Transgender Persons (Protection of Rights) Amendment Bill – 2022, this insight examines some of the key provisions of the Transgender Act, 2018, enacted by Parliament in May 2018. Dr Aslam Khaki brought a lawsuit in the Supreme Court in 2009 in response to a well-reported police assault on a gathering of Khawajasiras in Taxila.<sup>1</sup> His plea led the National Database and Registration Authority (NADRA) to add options to the 'sex' category in ID cards. The Supreme Court of Pakistan instructed the Federal Government to pass legislation establishing the community's rights and protections.<sup>2</sup> Approximately eight years after such a decision, Senator Babar Awan proposed the Transgender Persons (Protection of Rights) Bill in Parliament. The bill was prepared over nearly a year to consider the concerns of the Khawajasira community and those of UN agencies, civil society organisations, the Council for Islamic Ideology (CII), parliamentarians from all political parties, and feminist groups.

Despite the Transgender Act of 2018, Pakistan is still one of the most vocal opponents of expanding acknowledgement and safeguarding human rights regarding sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC). The notions of equality, non-discrimination and universality form the basis for how international human rights law is promulgated. Irrespective of how someone identifies or asserts their gender, everyone has the prerogative to cherish and exercise their human rights. These include the right to be free from cruelty and other inhumane treatment, the right to one's life, freedom, safety, and equality before the law.<sup>3</sup> Thus, it is well established that states have an obligation to preserve, protect and enforce the human rights of all people, including transgender and intersex persons.<sup>4</sup>

Gender incongruence was excluded from the list of mental diseases in the most recent revision of



the International Classification of Diseases (ICD-11).<sup>5</sup> International human rights law also incorporates the Yogyakarta Principles, adopted in Yogyakarta, Indonesia, in 2006 and the Yogyakarta Principles (plus 10) implemented in 2017. The obligations that states have under international human rights law concerning sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC) are underlined in these principles.<sup>6</sup>

### Transgender Act (2018)

The Transgender Act 2018 has seven chapters. Important terms like 'transgender person,' 'gender identity,' and 'gender expression' are defined in the first chapter.<sup>7</sup> The right of transgender people to change how they identify as gender is covered in the second chapter. The third chapter forbids harassment of transgender people and discrimination against them.<sup>8</sup> The fourth chapter mandates obligations on the state, such as providing safe shelters and centres for protection for transgender people, as well as separate prisons and detention facilities for them. In addition, chapter five grants transgender individuals the right to all the rights guaranteed by the Constitution of Pakistan. The exploitation of any transgender person for begging is also made an offence under this chapter, whether done through coercion or employment.<sup>9</sup>

### Disclaimer

The views expressed in this Insight are of the author(s) alone and do not necessarily reflect policy of the NDU.

The methods for enforcing the law are described in chapter six. Transgender people whose rights have been violated may complain with the Wafaqi Mohtasib, the National Commission for the Status of Women (NCSW) and the National Commission for Human Rights (NCHR) in addition to the general remedies provided by criminal and civil law. The law, while it remains in effect, will supersede all other laws, according to chapter seven.<sup>10</sup>

### **Difference between Intersex and Transgender**

Intersex people are those who have a mix of male and female genitourinary characteristics or have ambiguous genitalia, as per Section 2(n) of the Transgender Act, 2018. People who identify as intersex are principally included in the Act's description of a transgender person.<sup>11</sup> The two words' definitions, however, are different. It is a mischaracterisation and factually incorrect to categorise people who identify as transgender as having intersex traits. People with a wide array of naturally occurring variations in their sexual development or characteristics are said to be intersex. Therefore, the gender identity of an individual is distinct from having intersex characteristics. However, by international standards, there is no single classification for a transgender individual. Many existing descriptions of the term, including the one used by the Council of Europe's Commissioner for Human Rights, are based on the notion that individuals may choose a gender identity different from the one assigned to them at birth.<sup>12</sup>

Neither do the Yogyakarta Principles define transgender people; however, they provide the gender identity definition, which is "Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms."<sup>13</sup>

The disagreement over how to categorise intersex people had an impact on the creation of the Disorders of Sex Development (DSD) taxonomy. Alice Dreger, Cheryl Chase (pioneer of the Intersex Society of North America), along with three other healthcare experts, published an essay in the *Journal of Pediatric Endocrinology and Metabolism* in 2005 endorsing a change in the existing clinicians' nomenclature and taxonomy.<sup>14</sup>

### **Transgender Persons (Protection of Rights) Amendment Bill (2022)**

On October 3, 2022, the Senate received the Transgender Bill 2022, which seeks to amend the Transgender Act 2018.<sup>15</sup> The bill stated that intersex people would be entitled to the

same possibilities for work, education and healthcare as other members of society. The bill makes the case that safeguarding the rights of intersex people should have been the main goal of the Transgender Act of 2018. The bill claimed that several elements of the 2018 Act were wholly at odds with the country's traditions, religious beliefs, and the Constitution.<sup>16</sup>

The bill details how an American psychiatrist coined the word 'transgender' in 1965. The term was introduced for individuals who chose to endorse their genders based on their sexual orientation instead of those assigned to them at birth. The bill claimed that since it is a psychological condition of the mind, it could not be likened to having intersex characteristics. Therefore, the bill proposes to replace the word "transgender" with the phrase "intersex" across the Act and its title. The law also proposes for the phrase "as per his or her self-perceived gender identity" to be replaced with the phrase "as per his or her sex at birth." Likewise, it proposes to strike down all of the 2018 Act's provisions that go against both the Constitution and Islamic principles.<sup>17</sup>

Transgender Act 2018, according to several transgender activists, was intended to defend the community's rights. They contend that the statute gives transgender persons the right to take legal action against those who compel them to beg on the streets.<sup>18</sup> They have criticised the requirement of medical check-ups to determine their gender. According to them, an infringement of their privacy is only giving CNICs to transgender people following a medical examination.<sup>19</sup> Furthermore, they have argued that the Transgender Act 2018 grants transgender people the same rights to vote and run for office, access to basic healthcare and education, and the ability to identify as transgender on their identification cards and passports.<sup>20</sup>

These activists have also asserted that the term 'intersex' truly refers to a group of more than 30 sexual characteristics. The genitals of each intersex infant vary, and frequently, by the time they reach adolescence, the initially masculine-appearing organs start to alter.<sup>21</sup> Additionally, they asserted that the Transgender Act 2018 made the same argument, stating that every transgender person can pick their preferred gender identity once they are 18 years old.<sup>22</sup> Finally, they have rejected the argument that even though this law is solely for transgender people, ordinary men and women would use it to choose the gender of their preference for their interests.<sup>23</sup>

The confusion surrounding using the term "transgender" rather than "intersex" appears to be at the heart of the criticism from the religious and political segments. The preamble of the Act makes it quite apparent that the Act's objective is to safeguard transgender people, so its

provisions cannot be construed to benefit anybody other than members of this group. The government must clarify the terminology to prevent the vested rights of such a marginalised community from being in jeopardy because the Act has been widely recognised for safeguarding the

interests of the intersex community. Lastly, it is scientifically unwarranted to limit the definition of intersex people to those born with the condition; as a result, the term must also be further clarified by consulting with relevant medical experts.

## References

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- <sup>3</sup> Human Rights Council, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity,” Report of the United Nations High Commissioner for Human Rights, A/HRC/19/41 (2011).
- <sup>4</sup> Ibid.
- <sup>5</sup> International Classification of Diseases <https://www.who.int/classifications/icd/en/>, Accessed on 13 October 2022.
- <sup>6</sup> See, The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2006, <https://yogyakartaprinciples.org/principles-en/>; The Additional Yogyakarta Principles (YP+10): Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, 2017, <http://yogyakartaprinciples.org/principles-en/yp10/>.
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- <sup>8</sup> Ibid
- <sup>9</sup> Ibid
- <sup>10</sup> Ibid
- <sup>11</sup> Section 2(n), Ibid 7.
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- <sup>14</sup> David Andrew Griffiths, “Shifting syndromes: Sex chromosome variations and intersex classifications,” (2018) *Social Studies of Science*, Vol. 48(1), pp. 125–148.
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- <sup>18</sup> Asif Mehmood, “Trans people decry objections to rights bill”, *The Express Tribune* (Lahore, September 20, 2022) <https://tribune.com.pk/story/2377584/trans-people-decry-objections-to-rights-bill> accessed on 24 October 2022.
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- <sup>20</sup> Ibid.20
- <sup>21</sup> Ibid.19
- <sup>22</sup> Ibid.20
- <sup>23</sup> Ibid.21