

## The Transgender Persons (Protection of Rights) Act, 2018: A literature Review of Prominent Literature

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### Abstract

*After the enactment of the Transgender Persons (Protection of Rights) Act, 2018 researchers researched a number of aspects of the Act, 2018. This paper attempts the review the prominent literature on the Act, 2018 and finds out that there is a comprehensive literature available on the subject covering the analysis and Shariah Appraisal of the Act as a whole or some specific provisions of the Act, 2018, but it found out that there is no literature available which cater the issues emerged after the judgement of the Federal Shariat Court. This paper suggests that for the future research the researchers may research the post judgement issues.*

**Key words:** Transgender, Literature Review, The Transgender Persons (Protection of Rights) Act, 2018, Critical Analysis

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### 1. Introduction:

The legislature in Pakistan made an attempt to protect the transgender community in Pakistan and enacted the Transgender Persons (Protection of Rights) Act of 2018. This act was appraised and criticized by the researchers in Pakistan and internationally. The act has been adjudicated upon by the Federal Shariat Court of Pakistan through a number of Shariat Petitions.

Many scholars have critically examined, appraised, and analyzed the act, some of them has appraised the act in light of the Islamic Law. This paper is an attempt to review the available literature on the subject of the Transgender Persons (Protection of Rights) Act of 2018.

The only objective of the paper is to find the research gap. For the same purpose the literature available online was reviewed. The literature was found by using the words “Transgender Persons

(Protection of Rights) Act of 2018”, “Transgender”, “Critical Analysis” “Shariah Appraisal” and “Pakistan” etc.

## 2. Literature Review:

The paper of Farhat et al.<sup>1</sup> criticizes the Transgender Persons (Protection of Rights) Act of 2018 in Pakistan, arguing that it is based on a misrepresented interpretation of international law and undermines the rights of indigenous gender-variant people and the legal and social framework of the country. It suggests the need for a thorough review of the current law based on the Constitution of Pakistan, guidelines of the Supreme Court, and recognized principles of international law. The paper highlights the need to address the rights of transgender and intersex persons without defying existing norms and values, as denying and defying these norms may further jeopardize their rights and status. The contemporary global movement around gender is seen as having done a disservice to transgender people by linking their fundamental rights with those of lesbian, gay, and bisexual persons, which has overshadowed their own rights. The influence of the LGBT movement on the law is noted, including the omission of criminalizing prostitution and the overriding effect of the law over other laws, such as the prohibition of homosexuality.

Usman Ayyaz Gujjar and Ahmad Hassan Khan Naul in their paper<sup>2</sup> provides an analysis of the Transgender Persons Protection of Rights Act 2018 in Pakistan, examining its key provisions, implementation, and impact in practice. It highlights the progress made in recognizing the identity of transgender persons and prohibiting discrimination, while also discussing the challenges faced in ensuring the full realization of transgender rights. The paper identifies the need for further

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<sup>1</sup>Syed Nadeem Farhat et al., “Transgender Law in Pakistan: Some Key Issues,” *Policy Perspectives* 17, no. 1 (2020): 7–33, doi:10.13169/polipers.17.1.0007.

<sup>2</sup> Usman Ayyaz Gujjar and Ahmad Hassan Khan Naul, “An Analysis of the Transgender Persons Protection of Rights Act 2018 in Pakistan: Progress, Challenges, and Prospects,” *Pakistan Journal of Law, Analysis and Wisdom* 1, no. 2 (2022): 82–92.

reforms, including the recognition of legal gender identity and the elimination of discriminatory laws and practices. It offers recommendations for improving the implementation and enforcement of the Act and advancing transgender rights and inclusion in Pakistan. The paper acknowledges the challenges to effective implementation and enforcement of the Act, including inadequate institutional mechanisms, lack of awareness and sensitization, social adaptability challenges, and intersectional discrimination. It emphasizes the importance of collaboration between the government, civil society organizations, and transgender persons themselves in addressing these challenges and ensuring the effective protection of transgender rights in Pakistan.

The Transgender Persons (Protection of Rights) Act, 2018 Misgiving and Clarification researched by Farooq<sup>3</sup> discusses the Transgender Persons (Protection of Rights) Act, 2018 and addresses any misgivings or concerns related to the act. It provides clarification on the provisions of the act and aims to shed light on its implications. The paper may contribute to the national, international, academic, and media discourse surrounding the act, as it has generated considerable interest in these forums. While the act does not explicitly mention terms like marriage or same-sex marriage, the paper acknowledges that scholars and writers have debated these topics extensively and continue to do so. The paper also emphasizes the importance of reflecting human dignity and maintaining social and family relations with the transgender community.

The book chapter by Kamran Qureshi<sup>4</sup> provides a comparative analysis of the Transgender Persons Act, 2018 in Pakistan and the United Nations recommendations, highlighting the differences and potential impact on the lives of intersex individuals in Pakistan. Through content analysis of 50

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<sup>3</sup> Muhammad Farooq, "The Transgender Persons (Protection of Rights) Act, 2018 Misgiving and Clarification," *SSRN Electronic Journal*, 2022, doi:10.2139/ssrn.4249253.

<sup>4</sup> Kamran Qureshi, "A Critical Analysis of the Transgender (Intersex) Persons Act, 2018, in Pakistan Versus United Nations Recommendations," essay, in *Interdisciplinary and Global Perspectives on Intersex*, ed. Megan Walker (Springer, 2022), 177–95.

news reports, articles, and talk shows from local Pakistani and international media outlets, the study examines the situation of intersex people in Pakistan before and after the implementation of the Act. The research sheds light on the little-recognized subject of intersex in Pakistani society and contributes to the understanding of intersex rights, non-consensual surgeries, education facilities, healthcare services, and psychological issues faced by intersex individuals in Pakistan. The study closely examines the Transgender Persons Act, 2018 in relation to media coverage, providing insights into the impact of the Act on the visibility and recognition of intersex individuals in Pakistani society.

Faizi and Bibi in their paper<sup>5</sup> critically analyzes the colonial roots of transgender law in the subcontinent and their imprints in the recent legislation in India and Pakistan. It compares the rights of transgender persons in Pakistan and India, specifically focusing on the Transgender Persons (Protection of Rights) Act, 2018. The paper examines the major features of the 2018 legislation in terms of benefiting the transgender community, not only from an LGBT rights perspective. It highlights the significance of the new legislation as a welcoming addition to the human rights regime in both countries, providing security and guarantees against discrimination for a vulnerable community. They infer that The Indian legislation acknowledges the right of self-perceived gender but imposes certain checks to avoid misuse, such as requiring an application in the office of the district magistrate and a "certificate of identity" as proof. This has led to criticism from LGBT and Queer activists who argue that this examination of gender or the requirement of a certificate undermines the rights of transgender individuals.

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<sup>5</sup> Muhammad Abdullah Fazi and Maryam Bibi, "Discrepancies in Transgender Persons (Protection of Rights) Act, 2018: A Comparative Study of Transgender's Rights in Pakistan and India," *International Journal of Law and Management* 63, no. 3 (2020): 347–56, doi:10.1108/ijlma-10-2020-0262.

The paper critically of Iftikhar et al.<sup>6</sup> evaluates the Transgender Act passed by the Government of Pakistan in 2018, providing a comprehensive analysis of its implications for implementation. The study explores the historic, cultural, and religious background of transgender individuals, highlighting their treatment, rights, and privileges in different societies throughout history. It differentiates between transgender and intersex, emphasizing that transgender is a gender problem while intersex is a sexual problem. The paper references previous judgments from around the world and in Pakistan regarding transgender issues, providing a broader perspective on the subject. The study identifies flaws in the Transgender Act, including its perceived un-Islamic nature, and offers recommendations to consult Islamic authorities before passing such laws. Overall, the paper contributes to the limited studies on transgender issues in Pakistan by critically analyzing the Transgender Act and providing insights for future improvements.

Semra Islam published article titled “The Transgender Community and the Right to Equality in Pakistan: Review of the Transgender Persons Act 2018”<sup>7</sup> in the LUMS Law Journal and the paper analyzes the right to equality in Pakistan from the perspective of the transgender community, examining the legal and policy framework. It evaluates the judgment orders of the Supreme Court of Pakistan and the Transgender Persons Act of 2018 in relation to the transgender community. The paper discusses the two main frameworks of equality: formal and substantive, and how they apply to the transgender community in Pakistan. It concludes that the framework of substantive equality is lacking in Pakistan and advocates for affirmative action by the State to bring the transgender community on par with the rest of the population. The paper highlights the need to

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<sup>6</sup> Hamza Iftikhar, Siti Hasliah Salleh, and Sakandar Hayat, “Analysis of the Transgender Persons (Protection of Right) Act 2018: Implications for Implementation,” *International Journal of Academic Research in Business and Social Sciences* 11, no. 10 (2021): 122–33, doi:10.6007/ijarbss/v11-i10/11022.

<sup>7</sup> Semra Islam, “The Transgender Community and the Right to Equality in Pakistan: Review of the Transgender Persons Act 2018,” *LUMS Law Journal* 7, no. 1 (2020): 208–19.

eradicate social, economic, and political discrimination against transgender persons to achieve formal equality.

Jan et al in the paper titled “Transgender Persons (Protection of Rights) Act 2018: A Critical Appraisal”<sup>8</sup> presents an analysis of the Transgender Persons (Protection of Rights) Act 2018 in Pakistan, highlighting the importance of gender identity and gender self-perception for the transgender community to exercise their rights under the Constitution. It identifies challenges in the effective implementation of these rights, including issues related to voting and political participation, kinship, inheritance, gender identity, and marriage. The paper recommends the addition of strict penal clauses to the act and the enactment of specialized criminal law for transgender persons to address the infringement of their rights and hate crimes against them. It suggests that awareness seminars, social media, mainstream media, and civil society should be utilized to develop an inclusive society and address the persistent issues in the implementation of transgender rights. The paper also mentions the availability of five gender options for transgender individuals to acquire a National Identity card in Pakistan.

The paper by Dr. Rizvi et al.<sup>9</sup> critically appraises Pakistan's Transgender Persons (Protection of Rights) Act 2018, which is seen as a significant step towards empowering and protecting the rights of transgender persons. The paper addresses concerns raised by religious and moderate segments of society regarding the Act, particularly the open-ended right of self-perceived gender identity. It examines the neglect of transgender persons in different jurisdictions worldwide and highlights the need to recognize and protect their rights. The paper discusses the false narratives presented

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<sup>8</sup> Junaid Jan, Aas Muhammad, and Farah Amir, “Transgender Persons (Protection of Rights) Act 2018: A Critical Appraisal,” *Global Legal Studies Review* VII, no. III (2022): 6–14, doi:10.31703/glsr.2022(vii-iii).02.

<sup>9</sup> Dr. Aatir Rizvi et al., “Right Delayed Is A Right Denied: A Critical Appraisal Of Pakistan’s Transgender Act 2018,” *Palarch’s Journal Of Archaeology Of Egypt/Egyptology* 20, no. 1 (2023): 643–53.

by right-wing political parties, religious scholars, and intellectuals regarding the Act, emphasizing the importance of understanding its provisions and true spirit. It highlights that the Act does not require a mandatory medical board before a change of sex and allows any person to claim transgender identity based on their own will, which has been criticized by some. The paper also addresses the issue of determining the gender of transgender persons in cases of inheritance, emphasizing the Act's prohibition of discrimination and the use of gender declaration in CNIC for determining their share.

Jaffar et al.<sup>10</sup> thinks Pakistan lacks a framework for substantive equality, and affirmative action by the State is necessary to bring the transgender community on par with the rest of the population. The Transgender Persons Act of 2018 and the jurisprudence promulgated by the Supreme Court of Pakistan are important in understanding transgender rights in the country. Eliminating all forms of social, economic, and political discrimination against transgender people is crucial for their proper recognition as equals. Sensitizing teachers through workshops, including a chapter on "gender identity" in the school curriculum, and providing legal assistance and a welcoming educational environment for transgender individuals are important steps. The government can play a role by ordering hospitals to include the choice of transgender patients in admission forms and providing separate wards for transgender persons. Knowledge and awareness among decision-makers and the general public about transgender issues and the potential impacts of legislation are essential. They conclude that the language used in the Act is nebulous and unclear, making it difficult to understand the precise meaning and structure of the legislation. The Act's definition of "transgender" is broad and includes various subcategories, which may lead to confusion and lack

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<sup>10</sup> Saad Jaffar et al., "Transgender Act 2018: Islamic Perspective to Interpret Statute for the Protection of Rights and Socio- Psychological Impacts on Pakistani Society," *International Journal of Innovation, Creativity and Change*, Volume 14, Issue 10, 2020 14, no. 10 (2020): 1283–97.

of specificity. The Act focuses on safeguarding and maintaining the mental state of transgender individuals without addressing the underlying issues of gender dysphoria from scientific, moral, logical, religious, or psychological perspectives. The Act does not provide recognition or legal rights for transgender individuals under the age of 18. The Act does not prohibit unnecessary treatments for patients with uncertain sexual orientation or address the issue of castration, which can be seen as a form of self-harm. The Act lacks a focus on social development, community education, and addressing societal flaws that contribute to discriminatory and abusive behavior towards transgender individuals. Critics argue that the Act disregards religious viewpoints and is influenced by Western LGBTQ rights movements, which may conflict with Islamic beliefs and values.

A very celebrated author Afrasiab Ahmed Rana has published three papers on the subject. He is a researcher with diverse fields of study, his researcher on law of evidence<sup>111213</sup>, contracts<sup>14</sup> and Islamic transactions<sup>15</sup>, custody of minors<sup>16</sup>, Competition Law<sup>17</sup>, Corporate Finance Law<sup>18</sup>, Islamic

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<sup>11</sup> Afrasiab Ahmed Rana, "Admissibility of Evidence Produced via Modern Devices and Techniques: A Look in Pakistani Prospective," *SSRN Electronic Journal*, 2020, doi:10.2139/ssrn.3652379.

<sup>12</sup> Afrasiab Ahmed Rana, "Dying Declaration; Admissible in Evidence: A Case in Pakistan," *SSRN Electronic Journal*, 2020, doi:10.2139/ssrn.3682711.

<sup>13</sup> Afrasiab Ahmed Rana et al., "Admissibility and Evidentiary Value of Electronic Evidence in Criminal Cases: A Case Study of Pakistan," *Journal of Law and Social Policy* 4, no. 1 (2022): 27, doi:10.2139/ssrn.4261350.

<sup>14</sup> Afrasiab Ahmed Rana, "Formation of International Contracts and Formation of Contract in Pakistan: A Comparison," *SSRN Electronic Journal*, 2019, doi:10.2139/ssrn.3918467.

<sup>15</sup> Afrasiab Ahmed Rana, "Essentials of a Valid Contract: A Comparative Study of Sighah in Islamic Law and the Agreement in the Contract Act, 1872," *SSRN Electronic Journal*, 2020, doi:10.2139/ssrn.3722822.

<sup>16</sup> Afrasiab Ahmed Rana, "The Right of Custody of Minor: A Comparative Study of *Shari'ah* and Pakistani Legal System," *International Journal of Human Rights and Constitutional Studies* 9, no. 4 (2022): 350–68, doi:10.1504/ijhrcs.2022.126182.

<sup>17</sup> Afrasiab Ahmed Rana and Rao Qasim Zahid, "Competition Law and Digital Technologies in Pakistan: Critical Analysis," *SSRN Electronic Journal*, 2021, doi:10.2139/ssrn.4134359.

<sup>18</sup> Afrasiab Ahmed Rana, "Role of Corporate Finance Law in Corporations," *SSRN Electronic Journal*, 2021, doi:10.2139/ssrn.3861737.

Banking<sup>19</sup>, jurisprudence<sup>20</sup>, Islamization of Laws in Pakistan<sup>21</sup>, Artificial Intelligence regulation<sup>22</sup>, child marriage<sup>23</sup>, Corporate Governance<sup>24</sup>, economic security<sup>25</sup>, juvenile rights<sup>26</sup>, and *tazkiya*<sup>27</sup> is also widely available.

His paper “Protecting the Vulnerable”<sup>28</sup> highlighted the significance of the Act, 2018 in providing rights and protection to the transgender community in Pakistan. It emphasizes that the Act has defined the term transgender, which helps to eliminate ambiguities associated with the term. The paper acknowledges that the legal system in Pakistan is a mixture of Islamic Legal System and Common Law legal system, but it asserts that the Pakistani legal system is distinctive in its efforts to protect vulnerable communities. It recognizes the Act, 2018 as a "masterpiece" for its endeavors in protecting the transgender community, but also acknowledges that it has faced criticism for providing the facility of self-perceived gender identity. The paper highlights that the rights of transgender persons in Pakistan are derived from the Constitution of Islamic Republic of Pakistan and have been reinforced by the Act, 2018. It mentions that the Constitution requires the

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<sup>19</sup> Afrasiab Ahmed Rana and Waqar Ahmad Janjua, “Sharī‘Ah Governance in Islamic Banking Industry: A Critical Review,” *SSRN Electronic Journal*, 2020, doi:10.2139/ssrn.3729510.

<sup>20</sup> Dr. Hafiz Falak Shair Fazi, Dr. Mahmood Ahmed Shaikh, and Afrasiab Ahmed Rana, “Jurisprudential Styles: Reasoning from Textual Expressions and Its Examples: A Research Review,” *INKISHAF* 3, no. 8 (June 30, 2023): 439–60.

<sup>21</sup> Afrasiab Ahmed Rana and Fiza Zulfiqar, “Role of Federal Shariat Court in Islamisation of Laws in Pakistan: A Case Law Study of Leading Cases,” *SSRN Electronic Journal*, 2023, doi:10.2139/ssrn.4491926.

<sup>22</sup> Beata Polok, Homam el-Taj, and Afrasiab Ahmed Rana, “Balancing Potential and Peril: The Ethical Implications of Artificial Intelligence on Human Rights,” *SSRN Electronic Journal*, 2023, doi:10.2139/ssrn.4484386.

<sup>23</sup> AFRASIAB AHMED RANA, BILAL HUSSAIN, and ZEESHAN HUSSAIN, “Legal and Social Review of Child Marriage in Pakistan: A Judicial Perspective,” *Al-Aijaz Research Journal of Islamic Studies & Humanities* 6, no. 2 (2022): 12–18, doi:10.53575/u2.v6.02(22).12-18.

<sup>24</sup> Afrasiab Ahmed Rana, Abbas Ali, and Zeeshan Hussain, “Unification of Corporate Governance (CG) Model in the European Union and Brexit: An Analytical View,” *Pakistan Journal of Social Research* 04, no. 02 (2022): 626–34, doi:10.52567/pjsr.v4i2.515.

<sup>25</sup> Mahmood A. Sheikh, Syed Muhammad Bin Ahmed, and Afrasiab Ahmed Rana, “Economic Security in Pakistan: Indicators, Issues, Impacts and Way Forward,” *Pakistan Journal of Social Research* 4, no. 1 (2022): 990–99, doi:10.2139/ssrn.4541998.

<sup>26</sup> Afrasiab Ahmed Rana, “The Rights of the Juvenile in Pakistan,” *International Journal of Human Rights and Constitutional Studies* 9, no. 3 (2022): 246–56, doi:10.1504/ijhrsc.2022.123687.

<sup>27</sup> Dr. Mahmood Ahmed Shaikh et al., “Development Of Human Character And Its Socio-Legal Effects (Islamic And Psychological Review Of Character To Meet Tazkiyatu-Shuhud),” *Webology* 19, no. 2 (2022): 10418–29.

<sup>28</sup> Afrasiab Ahmed Rana, “Protecting the Vulnerable,” *SSRN Electronic Journal*, 2022, doi:10.2139/ssrn.4503160.

elimination of all forms of exploitation and equal treatment for all citizens, including transgender persons.

Similarly, his paper<sup>29</sup> on *Courting the Law* highlights the neglect and lack of recognition faced by transgender individuals in both developing and developed societies. It discusses the enactment of the Transgender Persons (Protection of Rights) Act in Pakistan, which guarantees fundamental rights to transgender individuals, including the right to education, right to vote, and protection against discrimination and harassment. The Act also imposes penalties, including imprisonment and fines, for forcing transgender individuals into begging. The paper mentions discrepancies between the official census data and the estimated number of transgender individuals in Pakistan, with claims by the Khawaja Sara Society that there are more than half a million transgender individuals in the country. Overall, the paper highlights the legislative attention given to transgender rights in Pakistan and the need for further recognition and protection of transgender individuals in society.

In another paper<sup>30</sup> he presented the Shariah Appraisal of the act. The paper aims to analyze the Transgender Persons (Protection of Rights) Act 2018 in the context of Islamic injunctions and examine its compliance with Islamic principles. It specifically focuses on the right of self-perceived gender identity and the right of inheritance in Islamic law and the legal system of Pakistan. The paper concludes that the existing legislation on transgender persons is not in accordance with the injunctions of Islam and suggests that amendments are needed. The paper also

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<sup>29</sup> Afrasiab Ahmed Rana, "Transgenders and Their Protection under Pakistani Law," *Courting The Law*, September 28, 2022, <https://courtingthelaw.com/2020/07/27/commentary/transgenders-and-their-protection-under-pakistani-law/#:~:text=Transgenders%20are%20human%20beings%20and,who%20forces%20transgenders%20into%20begging>.

<sup>30</sup> Afrasiab Ahmed Rana and Hafiz Muhammad Siddique, "The Transgender Persons (Protection of Rights) Act 2018: A Shariah Appraisal of Self-Perceived Gender Identity and Right of Inheritance of the Transgender," *SSRN Electronic Journal*, 2022, doi:10.2139/ssrn.4145921.

discusses the discrepancy between the number of transgender persons recorded in the 2017 census and the claims made by the Khawaja Sara Society, highlighting the need for accurate data. Additionally, it evaluates the Shariah-based aspects of the rights to inheritance and self-perceived gender identity, examining the constitutional provisions for equal fundamental rights in Pakistan.

### **3. Research Gap:**

From the review of the above literature, it is clear that all the literature discussed the act or relationship of the act with Islamic law but there exists a gap of research. There is no research or literature which analyses the decision of the Federal Sharait Court or the effects of the same on the act or the community as a whole.

### **4. Conclusion:**

This paper has provided with the review of the available literature on the Transgender Persons (Protection of Rights) Act, 2018. The paper concludes that there is a need to further research on the act, the existing literature reviewed provides a pathway for the future. The future researches may focus on the aftermath.

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