

further to amend the Transgender Persons (Protection of Rights) Act, 2018

WHEREAS it is expedient further to amend the Transgender Persons (Protection of Rights) Act, 2018, (XIII of 2018) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.**- (1) This Act may be called Transgender Persons (Protection of Rights) (Amendment), Act, 2022,
(2) It shall come into force at once.
2. **Amendment of short and long titles, Act XIII of 2018.**- In the Transgender Persons (Protection of Rights) Act (XIII of 2018), hereinafter referred to as the said Act, in short and long titles, for the words "transgender persons" wherever occurring, the words "intersex persons" shall be substituted.
3. **Amendment of section 2, Act XIII of 2018.** - In the said Act, in section 2,-
 - (i) for the words "transgender persons", wherever occurring, the words "intersex persons" shall be substituted.
 - (ii) sub-section (e) shall be omitted.
 - (iii) for sub-section (f), the following shall be substituted namely.-

"intersex identity" means identity of an intersex person be made on the basis of physical appearance, genital features or congenital ambiguities, however, in case of dispute over the gender of said person, a notified medical board shall determine the gender identity of an intersex person."
 - (iv) after sub-section (h), the following sub-section shall be inserted namely.-

"(hh) "medical board" means a duly notified "Medical Board" of doctors by the Government who are experts in the intersex identity."
 - (v) sub-section (n) shall be omitted.
4. **Amendment of section 3, Act XIII of 2018.** - In the said Act, in section 3,-
 - (i) for sub-section (1), the following shall be substituted namely.-

"An intersex person shall have a right to be recognized on the basis of physical appearance, genital features, congenital ambiguities or by a duly notified medical doctor."
 - (ii) for sub-section (2), the following shall be substituted namely.-

"A person recognized as intersex under sub-section (1) shall have a right to get himself or herself registered on the basis of physical appearance, genital

features, congenital ambiguities or by a duly notified medical doctor with all government departments including, but not limited to, NADRA.”

(iii) for sub-section (3), the following shall be substituted namely:-

“Every intersex person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to let himself or herself registered on the basis of physical appearance, genital features, congenital ambiguities or by a duly notified medical doctor with NADRA on the CNIC, CRC, driving license and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000) or any other relevant laws.”

(iv) for sub-section (4), the following shall be substituted namely:-

“An intersex person to whom CNIC has already been issued by the NADRA shall not be allowed to change the name and gender according to his or her self-perceived identity, but in accordance with physical appearance, genital features, congenital ambiguities or by a duly notified medical doctor on the CNIC, CRC, driving license and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000).”

5. **Amendment of section 4, Act XIII of 2018.** - In the said Act, for section 4, the following shall be substituted namely:-

“No person shall discriminate against an intersex person on any of the following grounds, namely:-

(a) the denial or discontinuation of education in educational institutions and services thereof;

(b) the denial of, or termination from, employment or occupation;

(c) the denial or discontinuation of healthcare services;

(d) the denial or discontinuation in 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;

(e) the denial or discontinuation with regard to, right to movement, safe travel and use of public facilities of transportation;

(f) the denial or discontinuation with regard to, the right to reside, sale, purchase, rent or otherwise occupy or inherit a movable and immovable property;

(g) the denial or discontinuation with regard to, the opportunity to stand for or hold public or private office; or

(h) the denial of access to, removal from government or private establishment, organizations, institutions, departments, centers in whose care, custody or employment of an intersex person may be.”

6. **Amendment of section 5, Act XIII of 2018.** - In the said Act, section 5 shall be omitted.

7. **Amendment of section 6, Act XIII of 2018.** - In the said Act, section 6 shall be omitted.

8. **Amendment of section 7, Act XIII of 2018.** - In the said Act, in section 7:

(i) sub-section (1) shall be omitted.

- (ii) existing sub-section (2) shall be renumbered as sub-section (1), and for the said sub-section, the following shall be substituted namely:-
 "The share of an intersex person shall be determined as per his or her physical appearance, genital features, congenital ambiguities or on the basis of a duly notified medical board, and the sex declared by such board shall be in accordance with the religion and personal law of the said person."
- (iii) for the existing sub-section (3), re-numbered as sub-section (2), the following shall be substituted, namely:-
 (2) The share of inheritance for intersex persons, in accordance with their physical appearance, genital features, congenital ambiguities or on the basis of a duly notified medical board, and the sex declared by such board shall be as follows:-
 (i) for intersex male, the share of inheritance shall be that of man;
 (ii) for intersex female, the share of inheritance shall be that of woman;
 (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 eighteen years, if the person's gender identity is intersex male, then the share of inheritance shall be that of man;
 (b) upon reaching the age of eighteen years, if the person's gender identity is intersex female, the share of inheritance shall be that of woman;
 (c) upon reaching the age of eighteen years, if the person's gender identity is neither intersex male nor intersex female, the share of inheritance will be an average of two separate distributions for a man and 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."
9. **Amendment of section 8, Act XIII of 2018.** – In the said Act, in section 8:
 (i) in sub-section (1), for the words, "transgender persons", the words "intersex persons" shall be substituted;
 (ii) in sub-section (3), for the words, "transgender persons", the words "intersex persons" shall be substituted;
 (iii) in sub-section (4), the words "and gender expression" shall be omitted.
 (iv) in paragraph (d), sub-section (4), the words "and expression" shall be omitted.
10. **Amendment of section 9, Act XIII of 2018.** – In the said Act, in section 9:
 (i) for the words, "transgender persons", wherever occurring, the words "intersex persons" shall be substituted;
 (ii) words "or gender expression" shall be omitted.
11. **Amendment of section 10, Act XIII of 2018.** – In the said Act, in section 10:
 (i) for the words, "transgender person", the words "intersex person" shall be substituted;
 (ii) for the proviso, the following shall be substituted:
 "Provided that the access to a polling station shall be according to the gender declared on the CNIC of the intersex person, based upon physical

appearance, genital features, congenital ambiguities or by a duly notified medical board already mentioned in CNIC.”

12. **Amendment of section 11, Act XIII of 2018.** – In the said Act, in section 11:
 - (i) for the words, “transgender persons”, the words “intersex persons” shall be substituted;
 - (ii) words “and gender expression” shall be omitted.
13. **Amendment of section 12, Act XIII of 2018.** – In the said Act, in section 12, for the words, “transgender persons”, wherever occurring, the words “intersex persons” shall be substituted.
14. **Amendment of section 13, Act XIII of 2018.** – In the said Act, in section 13:
 - (i) for the words, “transgender persons”, wherever occurring, the words “intersex persons” shall be substituted;
 - (ii) words “and gender expression” shall be omitted.
15. **Amendment of section 14, Act XIII of 2018.** – In the said Act, in section 14:
 - (i) for the words, “transgender persons”, wherever occurring, the words “intersex persons” shall be substituted;
 - (ii) words “or gender expression” shall be omitted.
16. **Amendment of section 15, Act XIII of 2018.** – In the said Act, in section 15:
 - (i) for the words, “transgender person”, the words “intersex person” shall be substituted;
 - (ii) words “or gender expression” shall be omitted.
17. **Amendment of section 16, Act XIII of 2018.** – In the said Act, in section 16:
 - (i) for the words, “transgender person”, wherever occurring, the words “intersex person” shall be substituted;
 - (ii) words “or gender expression” shall be omitted.
18. **Amendment of section 17, Act XIII of 2018.** – In the said Act, in section 17:
 - (i) for the word, “transgender person”, the words “intersex person” shall be substituted;
 - (ii) At the end of section 17, the following proviso shall be inserted:

“provided that in such occasion, the intersex person already determined on the basis of physical appearance, genital features, congenital ambiguities or by a report of duly notified medical board may file a complaint before the 1st Judicial Magistrate having territorial jurisdiction.”
19. **Amendment of section 18, Act XIII of 2018.** – In the said Act, in section 18, for the words “transgender person”, the words “intersex person” shall be substituted.
20. **Amendment of section 19, Act XIII of 2018.** – In the said Act, section 19 shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Transgender Persons (Protection of Rights) Act, 2018 has been enacted to protect and safeguard the rights of transgender community in Pakistan. However, it has failed to achieve the afore-cited purpose. There are various lacunas and loopholes in this Act, which needs to be dealt with on priority basis. The phrase "Transgender Persons" itself is not appropriate and needs to be replaced with the "Intersex Persons". The definition of transgender opens door for conflicts and contradictions among various school of thoughts of Islam, and requires to be omitted. Moreover, the concept of "self-perceived identity" is against the spirit of Islam, as the same does not allow any person to adopt an identity on the basis of his or her own choice, but should solely be determined on the basis of physical appearance, genital features, congenital ambiguities or by a report of duly notified medical board. In addition, same characteristics must be applied, in case of inheritance of any intersex person, to be based on their religion or personal law. Hence, these amendments have been brought to bring this Act in conformity with Quran and Shariat.

2. This bill is aimed to achieve the above-said objective.

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