

Transgender Rights and Debate from an Islamic Legal Perspective

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Abstract: *This research study explores the complex relationship between transgender rights and Islamic legal ideas, providing insight into the changing discourse regarding gender identity within Islamic jurisprudence. This study investigates the religious and legal aspects of the ongoing dispute surrounding the rights, social recognition, and discrimination experienced by transgender individuals residing in predominately Islamic nations. This study aims to enhance scholarly comprehension of transgender rights within Islamic contexts by conducting a thorough examination of Islamic literature, historical precedents, and contemporary interpretations.*

The initial segment of the paper explores the theological discourse present within the realm of Islamic studies. This study investigates the perspective of traditional Islamic law on gender identity and its capacity to include modern interpretations pertaining to transgender individuals. The research underscores a range of theological perspectives, placing particular emphasis on the dynamic development of Islamic discourse on gender diversity.

The subsequent section of the study delves into an examination of the legal entitlements afforded to transgender individuals in specific Islamic nations, namely Iran and Pakistan by means of two illustrative case studies. The cases mentioned above exemplify the various methodologies employed in addressing transgender rights within the context of Islamic legal frameworks. It acknowledges the existence of diverse interpretations and practices pertaining to this issue across various nations with Muslim-majority populations.

Keywords: *Transgender rights, Transgender debate, Islamic perspective, Islamic legal concept*

Introduction:

The convergence of transgender rights and Islamic legal viewpoints is a multifaceted and extensively discussed subject that necessitates thorough analysis within our present-day society (Redding, 2016). The primary objective of this research is to provide a comprehensive understanding of the complex issue at hand through an examination of the many viewpoints within Islamic jurisprudence. Additionally, this

study will present case studies from different Islamic countries to further illuminate the subject matter. This discussion is of utmost importance as it aims to establish a connection between the promotion of human rights and Islamic customs, thereby cultivating a culture that is more accommodating towards transgender individuals residing in nations where Islam is the predominant faith.

The discourse about transgender rights in Islamic cultures is frequently situated within a wider framework of human rights and social justice. It is imperative to acknowledge that Islamic jurisprudence, commonly referred to as Sharia law encompasses a multitude of schools of thought and diverse interpretations (Redding, 2016). There exists a scholarly debate wherein certain academics advocate for an inclusive and empathetic perspective towards transgender individuals, while others adopt a more conservative standpoint that is grounded in conventional gender norms (Redding, 2016). This article aims to examine these ideas within the context of Islamic legal concepts.

This research study strives to provide a valuable contribution to the continuing debate surrounding transgender rights in Muslim-majority countries by conducting a thorough analysis of Islamic legal frameworks and examining relevant case studies. The objective is to cultivate a thorough understanding of the complex matters about the rights and experiences of transgender individuals within the Islamic world, and to develop a future that is more inclusive and empathetic towards all individuals.

Historical Perspectives

The Islamic civilisation exhibits a vast and varied historical trajectory that extends over a period of more than 1,400 years. This civilization is marked by a wide range of cultural, theological, and legal traditions. Over the course of history, there has been a continuous and dynamic discourse surrounding the topics of gender and sexual variety within the context of Islamic jurisprudence (fiqh) and societal conventions (Alipour, 2017). During the early Islamic period, there existed a notable degree of tolerance towards transgender individuals, who frequently had distinct roles within society, such as serving as eunuchs in royal courts or fulfilling the role of guardians for sacred sites. Nevertheless, the traditional viewpoints on gender in Islamic countries have met challenges due to foreign influences and the process of modernization. During the 19th and 20th centuries, there was a notable development in the formalisation of Islamic legal systems across various countries, resulting in a heightened adherence to traditional gender norms. Consequently, transgender individuals frequently encountered instances of prejudice, social exclusion, and physical aggression (Lee, 2016).

The present transgender rights movement in Islamic nations has its origins in the historical processes that have taken place. In recent decades, there has been a noticeable increase in global consciousness and advocacy efforts pertaining to the rights of transgender individuals. Within the framework of Islamic legal ideas, this particular movement has prompted a reassessment of traditional jurisprudential viewpoints concerning matters of gender and sexuality (Yusuf, Willya, Rajafi, & Djabli, 2022). Currently, there exists a comprehensive dialogue among scholars and activists that seeks to harmonise Islamic traditions with modern conceptions of gender identity and human rights. This research study aims to provide a scholarly contribution to the ongoing discourse by analysing the theological, legal, and social aspects of transgender rights in Islamic civilizations. It emphasises the wide range of perspectives and experiences within this context (Cviklová, 2012).

Islam asserts that human beings were created into two distinct genders, namely male and female, with

each individual naturally aligning with one specific gender identity. However, a change from the established global formula does not necessarily negate the possibility of prospective occur (Alipour, 2017). In the instance of indeterminate genitalia, for instance. In the realm of Islamic law (fiqh), this particular scenario is referred to as *khunṣā*. In such a scenario, the acceptance of the matter can be justified on the grounds that it represents an unequivocal divine decision. This phenomena, known as *mukhannās* for men resembling women and *mutarajjilāt* for women resembling males, is distinct from the transgender phenomenon. *Mukhannaṣ* is seen as an unhealthy state resulting from depressive tendencies (Jan, Muhammad, & Amir, 2022). According to (Jan et al., 2022), individuals experiencing depression may be influenced by their mental state to persist in certain behaviours, including self-identification as women. The same phenomenon can be observed with *mutarajjilāt* as well.

The aforementioned conduct is regarded as an aberration from inherent human tendencies and divine provisions, thereby being explicitly prohibited within the context of Islam. The Islamic perspective on the issue of transgender individuals can be derived from the primary religious scripture of al-Quran, despite the absence of explicit mentions pertaining to this matter (Fazi & Bibi, 2021). A more detailed elucidation of this issue can be located in the compilation of hadith, which serves as a secondary authoritative source following al-Quran, containing the teachings and actions of the Prophet Muhammad ﷺ (Wei, Baharuddin, Abdullah, Abdullah, & Ern, 2012).

Hence, it is imperative to grasp the historical progression of perspectives on transgender individuals within the Islamic framework in order to fully realise the complex discussions and obstacles that continue to exist in contemporary times. Scholars and activists aim to promote enhanced acceptance and compassion of transgender individuals within Islamic communities, while also upholding the diverse fabric of Islamic tradition, through the examination and resolution of these concerns (Yusuf et al., 2022).

Islamic Theological Perspectives:

The Islamic theological viewpoints regarding transgender rights exhibit a multifaceted and diverse nature, which mirrors the wide range of perspectives found within the Muslim community. Although there is no universally applicable interpretation, it is possible to go into several significant themes. Primarily, Islam places significant emphasis on the values of compassion, justice, and respect towards individuals, irrespective of their gender identification (Triantoro & Ardiansyah, 2018). The Quran espouses the belief in the equality of all individuals in the divine perspective, as evidenced by verse 49:13, which asserts that humanity is created from both male and female and diversified into various communities and ethnicities to facilitate mutual understanding and interaction. Undoubtedly, the individuals who are deemed most honourable in the eyes of Allah are those who exhibit the highest degree of righteousness. This passage emphasises the notion that an individual's value is contingent upon their level of religious devotion, rather than their gender (Afif, 2019).

Nevertheless, the perspectives of Islamic law about transgender rights may differ depending on the particular interpretation. Certain scholars contend that within the founding scriptures of Islam, there is no explicit mention or discussion of transgender matters. Consequently, they believe that the use of *ijtihad*, a process of independent legal reasoning, becomes imperative in order to effectively address and accommodate the rights and requirements of transgender individuals (Kato, 2017). In Iran, Ayatollah Khomeini issued a fatwa in 1987 that permitted gender reassignment surgery for those experiencing

gender dysphoria. This decision was grounded in the principle of alleviating human suffering (Alipour, 2017).

On the contrary, several conservative Islamic scholars believe that transgender identities are incongruous with the conventional binary conception of gender within Islam, thereby leading to potential opposition towards transgender rights and acknowledgment (Saeidzadeh, 2016). The aforementioned divergent viewpoints exemplify the continuous discourse within the Islamic community, underscoring the imperative of engaging in constructive conversations and deliberate contemplation of the moral, legal, and theological aspects pertaining to transgender rights within the framework of Islam. The primary obstacle at hand pertains to the harmonisation of conventional Islamic doctrines with the progressing comprehension of gender identity and rights in contemporary society, all the while maintaining the fundamental ideals of justice and compassion that constitute the essence of Islamic theology (Azadi & Saeidzadeh, 2022).

Islamic Legal Frameworks:

The treatment of transgender rights within Islamic legal frameworks exhibits considerable variation among Muslim-majority nations and Islamic jurisprudential schools. This diversity can be attributed to the intricate connection between religious doctrine, cultural norms, and changing social perspectives. The Islamic world exhibits a lack of consensus on various matters, however discernible patterns and continuous discussions can be observed (Redding, 2016).

Transgender individuals have considerable legal obstacles in several Islamic nations as a result of traditionalist interpretations of Islamic jurisprudence. The aforementioned interpretations frequently originate from the concept of a binary gender system that is firmly ingrained throughout conventional Islamic jurisprudence (Luhur, Brown, & Goh, 2020). In the context of Iran, a nation characterised by a predominant Shia Islamic population, a legal structure exists that permits gender reassignment surgery. This framework acknowledges the entitlement of transgender individuals to modify their physical attributes in order to conform to their gender identity. Nonetheless, this methodology has faced criticism due to its tendency to reinforce conventional gender norms and sustain societal stigmatization (Alipour, 2017).

On the other hand, there are proponents who advocate for a broader and more comprehensive understanding of Islamic jurisprudence, which recognises the presence and entitlements of transgender individuals. Transgender rights are justified within the Islamic framework by appealing to the principle of compassion (*rahma*) and the overarching Islamic values of justice and equity (Umar & Jambi, 2021). Certain Muslim scholars and activists contend that the inflexible gender binary framework fails to acknowledge the wide range of human experiences and identities. They say that the core teachings of Islam can be interpreted as providing backing for transgender rights. Frequently referenced is the narrative of Khawlah bint Tha'labah, a female individual who held the esteemed status of being one of the companions of the Prophet Muhammad. Certain readings of this account suggest that she actively contested conventional gender norms. The aforementioned viewpoint emphasises the dynamic character of Islamic legal discourse about transgender rights and brings attention to the ongoing deliberation within the Muslim community (Redding, 2016).

Hence, the discourse surrounding transgender rights under the Islamic legal framework continues to be

a topic of discussion and development, characterised by a range of interpretations and practises throughout Muslim-majority nations and groups. While certain nations have implemented measures to acknowledge and safeguard transgender rights within the framework of Islam, others persist in upholding orthodox views that impose limitations on these rights (Haniff, Atan, Yusoff, Salleh, & Yusof, 2021). The discourse surrounding transgender rights within the framework of Islamic law exemplifies the wider deliberations occurring among religious traditions globally over the harmonisation of longstanding religious doctrines with the progressive comprehension of human rights and gender identity in contemporary times. This highlights the intricate nature of bridging cultural and religious conventions in the pursuit of upholding equality and justice for transgender individuals (Etengoff & Rodriguez, 2020).

Case Studies:

Case Study I: Iran - A Progressive Approach:

In recent years, Iran's approach to transgender rights has elicited both commendation and censure. Although the nation upholds conservative principles in various societal domains, its approach towards transgender individuals has demonstrated a comparatively progressive trajectory when juxtaposed with certain other Middle Eastern countries and abroad. This case study examines the manner in which Iran addresses transgender rights, with a focus on pertinent policies, cultural elements, and the persisting discourse surrounding this matter (Alipour, 2017).

The examination of Iran's stance on transgender rights necessitates an analysis within the framework of its encompassing socio-cultural and political milieu. The nation possesses a rich historical tradition of conservatism deeply entrenched in Islamic beliefs. However, it also boasts a comparatively contemporary healthcare system and a legislative structure that, to some extent, recognises the rights and identities of transgender individuals (Saeidzadeh, 2016).

The primary policies and initiatives that are of utmost importance are as follows:

1. Gender Reassignment Surgery (GRS): Iran is among a limited number of nations where gender reassignment surgery (GRS) is legally permissible and receives partial financial support from the government. Since the 1980s, Iran has been offering financial support to persons who are pursuing gender reassignment surgery (GRS), encompassing hormone therapy and surgical procedures. The policy implemented by the government is based on the principles and teachings of Islamic jurisprudence. The issuance of a fatwa by Ayatollah Khomeini, the esteemed founder of the Islamic Republic of Iran, has granted permission for gender reassignment surgery (GRS) to be pursued by those who sincerely identify as transgender (Vahedi, Alimardani, Behrouzih, & Asli, 2021).

2. Legal Recognition: Iran emerged as an early adopter of legal recognition for transgender individuals, joining the ranks of pioneering nations in 1987. Individuals have the ability to acquire updated identification documents, which may include revised gender markers, subsequent to the completion of gender reassignment surgery (GRS). The legal acknowledgment of transgender individuals enables them to avail themselves of a range of services, such as education and work, in accordance with their stated gender identity (Sarcheshmehpour & Abdullah, 2017).

3. Provision of Psychiatric Support: Iranian healthcare practitioners offer comprehensive psychiatric care to transgender individuals, encompassing mental health interventions and counselling, with the aim of

assisting individuals in managing their gender transition journey (Afshari, 2016).

In the realm of public knowledge and advocacy, Iran has witnessed the birth of transgender advocacy groups and activists that diligently strive to enhance societal understanding of transgender matters and foster a climate of acceptance. In addition, the government has made efforts to enhance public consciousness through the implementation of educational initiatives and media-based promotional endeavours.

Case Study 2: Pakistan - Legal Ambiguity:

Pakistan, akin to numerous nations, has been contending with challenges pertaining to transgender rights for an extended period of time. Despite the implementation of certain laws in recent years, the existing legal structure continues to exhibit ambiguity and frequently falls short in affording sufficient safeguards and acknowledgement for transgender individuals. This case study examines the legal uncertainty surrounding transgender rights in Pakistan, emphasising significant discussions and obstacles through illustrative instances (Farhat, Abdullah, Hali, & Iftikhar, 2020).

Transgender individuals in Pakistan frequently self-identify as "khawaja siras" or "hijras" and possess a rich historical legacy within the nation, spanning several centuries. Throughout history, these individuals have been highly esteemed for the auspiciousness they bring at the time of birth and throughout matrimonial ceremonies. However, in more contemporary times, they have encountered heightened levels of marginalisation and discrimination (Redding, 2019).

Legal Ambiguity:

1. Gender Identity Recognition: One significant area of disagreement revolves over the acknowledgment of gender identity. Pakistan has implemented a policy that grants transgender individuals the opportunity to select a third gender category when applying for national identity cards. Nevertheless, the current legal system lacks the necessary provisions to acknowledge and safeguard the complete range of gender identities, encompassing those who identify as non-binary and genderqueer (Islam, 2020).

In the year 2018, the government of Pakistan introduced a significant development by issuing its inaugural passport that incorporated a distinct category for individuals who identify as transgender. Although this development represents a notable advancement, it exclusively recognises transgender identities within the binary framework, so neglecting non-binary individuals who remain devoid of legal acknowledgement (Islam, 2020).

2. Discrimination and Violence: The prevalence of discrimination and violence against transgender individuals remains distressingly high. The existing legal framework exhibits a deficiency in explicit measures aimed at addressing hate crimes targeting those who identify as transgender, hence posing difficulties in effectively prosecuting those responsible for such offences (Malik, Ijaz, & Khan, 2022).

The year 2020 witnessed the tragic murder of Gul Panra, a prominent transgender activist, which served as a poignant reminder of the persistent violence faced by individuals within this marginalised society. The protracted conclusion of the case, in the face of widespread public outcry, highlights the inefficacy of the legal system in safeguarding the rights of transgender individuals, thereby impeding the attainment of justice (Malik et al., 2022).

3. Health Care Access: The topic of healthcare accessibility is also a subject of ongoing debate and disagreement. Although there exist clinics and hospitals that provide services for transgender individuals,

a significant number of healthcare professionals lack adequate training in addressing the special healthcare requirements of this population. Furthermore, it is common for insurance companies to exclude coverage for gender-affirming procedures.

In the year 2019, an individual named Alisha, who identified as a transgender woman, tragically passed away in Peshawar due to the denial of medical care at a hospital. This occurrence highlights the pressing necessity to provide healthcare personnel with appropriate training and to revise policies in order to guarantee fair and equal access to healthcare services for transgender individuals (Saddique, Mirbehar, Batool, Ahmad, & Gang, 2017).

4. Employment discrimination: Transgender individuals have significant obstacles in securing employment as a result of prevailing biases and discriminatory practises. The workplace lacks explicit anti-discrimination rules safeguarding their rights (Qureshi, 2022).

In the year 2021, Marvia Malik, a transgender woman, achieved the distinction of becoming Pakistan's inaugural transgender news anchor. The celebration of her achievement brought attention to the limited work prospects available to transgender individuals in conventional occupations, notwithstanding their qualifications (Qureshi, 2022).

5. Social inclusion and education: Numerous transgender individuals encounter societal and educational marginalisation. The existing legal structure fails to sufficiently address the discrimination experienced by individuals in these domains (Abbas, 2019).

The case of Kami Sid, a transgender activist, serves as an illuminating example of the challenges encountered by transgender adolescents in educational settings. Although she ultimately achieved success as a model and activist, her narrative highlights the imperative for legal measures that guarantee comprehensive and accessible education (Abbas, 2019).

Conclusion:

The subject of transgender rights is a matter of significant concern on a global scale, including within Islamic civilizations. The discourse pertaining to these rights within the context of Islamic legal theory is characterised by its complexity and ever-evolving nature. The examination of historical perspectives on gender identity within Islamic tradition holds significant importance. Instances can be found throughout Islamic history where persons who identified as non-binary were acknowledged and embraced. This academic study examines the theological underpinnings of gender identification within the context of Islam. It delves into the analysis of Qur'anic passages and Hadiths frequently invoked in the discourse, while exploring the diverse interpretations attributed to them. Furthermore, the study delved into the theological rationales both in favour of and in opposition to the acknowledgement of transgender identities. Transgender rights in Muslim-majority nations are significantly influenced by Islamic legal systems, which are predominantly grounded in Sharia law. This section explores the varying interpretations of gender identity among different Islamic legal schools of thought and the resulting ramifications for transgender individuals. Furthermore, the paper examined the convergence of secular and religious legal systems within these nations. Three case studies conducted in Islamic nations have provided valuable insights into the practical ramifications of debates surrounding transgender rights. Sustaining this discourse is of utmost importance in order to foster inclusiveness, uphold human rights, and advance social justice for individuals, irrespective of their gender identification.

References

1. Abbas, S. (2019). Through the Lens of Television: Progression in Portrayal of Pakistani Trans* Community (A study of TV shows from 2010 to 2018). *Online Journal of Communication and Media Technologies*, 9(4), e201919.
2. Afif, M. B. (2019). Islam and transgender (A study of Hadith about transgender). *International Journal of Nusantara Islam*, 7(2), 185-189.
3. Afshari, R. (2016). LGBTs in the Islamic Republic of Iran: JSTOR.
4. Alipour, M. (2017). Islamic shari'a law, neotraditionalist Muslim scholars and transgender sex-reassignment surgery: A case study of Ayatollah Khomeini's and Sheikh al-Tantawi's fatwas. *International Journal of Transgenderism*, 18(1), 91-103.
5. Azadi, B., & Saeidzadeh, Z. (2022). Trans subjectivities in Iran: epistemic misrecognition. *Journal of Gender Studies*, 1-12.
6. Cviklová, L. (2012). Advancement of human rights standards for LGBT people through the perspective of international human rights law. *Journal of comparative Research in Anthropology and Sociology*, 3(02), 45-60.
7. Etengoff, C., & Rodriguez, E. M. (2020). "At its core, Islam is about standing with the oppressed": Exploring transgender Muslims' religious resilience. *Psychology of Religion and Spirituality*.
8. Farhat, S. N., Abdullah, M. D., Hali, S. M., & Iftikhar, H. (2020). Transgender law in Pakistan: Some key issues. *Policy Perspectives*, 17(1), 7-33.
9. Fazi, M. A., & Bibi, M. (2021). 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(3), 347-356.
10. Haniff, W. A. A. W., Atan, S. M., Yusoff, R. M., Salleh, R. M., & Yusof, Z. (2021). Transgender Rights in Accordance with Civil & Sharia Law: Malaysia and Asean Perspectives. *International Journal of Academic Research in Business and Social Sciences*, 11(3), 1305-1320.

11. Islam, S. (2020). The transgender community and the right to equality in Pakistan: Review of the Transgender Persons Act 2018. *LUMS LJ*, 7, 208.
12. Jan, J., Muhammad, A., & Amir, F. (2022). Transgender Persons (Protection of Rights) Act 2018: A Critical Appraisal. *Global Legal Studies Review*, VII (III), 6-14.
13. Kato, H. (2017). Sexual Minorities in Indonesia: The Clash Between Muslim Fundamentalists and Liberals. *Dialogue and Universalism*(1), 103-115.
14. Lee, P.-H. (2016). LGBT rights versus Asian values: de/re-constructing the universality of human rights. *The International Journal of Human Rights*, 20(7), 978-992.
15. Luhur, W., Brown, T. N., & Goh, J. N. (2020). Public opinion of transgender rights in Malaysia.
16. Malik, S., Ijaz, U., & Khan, A. (2022). Constitutional Human Rights Of Transgender Persons In Pakistan: A Linguistic And Social Inquiry. *Pakistan Journal of Gender Studies*, 22(1), 97-120.
17. Qureshi, K. (2022). A Critical Analysis of the Transgender (Intersex) Persons Act, 2018, in Pakistan Versus United Nations Recommendations *Interdisciplinary and Global Perspectives on Intersex* (pp. 177-195): Springer.
18. Redding, J. A. (2016). Transgender rights in Pakistan?: Global, colonial, and Islamic perspectives. *Human Rights in Translation: Intercultural Pathways*, 49.
19. Redding, J. A. (2019). The Pakistan Transgender Persons (Protection of Rights) Act of 2018 and its impact on the law of gender in Pakistan. *Austl. J. Asian L.*, 20, 103.
20. Saddique, K., Mirbehar, S., Batool, H., Ahmad, I., & Gang, C. (2017). Transgender issues in Pakistani community. *European Academic Research*, 4(10), 9048-9057.
21. Saeidzadeh, Z. (2016). Transsexuality in contemporary Iran: Legal and social misrecognition. *Feminist Legal Studies*, 24(3), 249-272.
22. Sarcheshmehpour, Z., & Abdullah, R. (2017). Transsexuality in Iran: Issues and Challenges. *Journal of Shariah Law Research*, 2(1), 55-74.
23. Triantoro, D. A., & Ardiansyah, A. (2018). Negotiation and Contestation of Islamic Religious Practices of the Transvestites in Yogyakarta. *Cakrawala: Jurnal Studi Islam*, 13(2), 88-101.

24. Umar, H., & Jambi, U. S. T. S. (2021). ISLAMIC LAW PERSPECTIVE ON LGBT BEHAVIOR (LESBIAN, GAY, BISEXUAL AND TRANSGENDER). *International Journal of Southeast Asia*, 2(2).
25. Vahedi, M., Alimardani, A., Behrouzih, M. R., & Asli, M. R. (2021). Gender Dysphoria in Iran: legal and Islamic Jurisprudence Perspectives: Gender Dysphoria in Iran. *Bioethics and Health Law Journal (BHL)*, 1(1), 1-10 (e14).
26. Wei, C. L., Baharuddin, A., Abdullah, R., Abdullah, Z., & Ern, K. P. C. (2012). Transgenderism in malaysia. *Dharmaram Journals*, 37(1), 79-96.
27. Yusuf, N., Willya, E., Rajafi, A., & Djabli, I. (2022). Islamic Legal Status on Hajj for Transgender People according to Muslim Scholars in North Sulawesi. *Mazahib*, 21(1), 29-62.