

Rights of Transgender Persons: An Analytical Study of Sharia

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Abstract: *Transgender persons are found in almost every society; these people were present in Medina state and had been found in Arab cities and societies even before Islam. In Arab societies, they were treated as slaves, and it was their only status at that time in those societies. Comparative research has been done in this article on how different societies, civilizations and cultures of the world consider transgender persons as the curse of God. During the period of the Holy Prophet (PBUH), Transgender was given the title “Guardians of Harem”, and they used to guard the harems (the place where women and children reside) of the Muslim elites. These persons enjoy the rights of male or female and are bound to obey the directions and commands, which are for a male Muslim and female Muslim. This is a medical disability, just like any other disability and nothing else. In many other societies, civilizations and religions of the world, transgender persons have been deprived of their true status and have been humiliated.*

Key Words: Transgender, Guardians of Harem, Curse of The God, Medical Disability

Introduction

Transgender persons enjoyed high positions and ranks in the Muslim religious institutions, and they were considered people of utmost trust. They had a very influential and very vibrant role, and sometimes they influenced the state decisions, as some of them were very close to the crown and queens. In the book named ‘*Eunuchs and Sacred Boundaries in Islamic Society*’ written by Shaun Marmon, the writer writes about the visit of a British traveller Eldon Rutter to Madina. Rutter was very surprised to see that how transgender persons were guarding the tomb of the Prophet (PBUH) (Marmon, 1995). Marmon wrote that transgenders had a very special relationship with the tomb of the Prophet (PBUH), and this relation was sacred.

Rutter, in his book named ‘The Holy cities of Arabia’, writes that the reason to appoint transgender persons at the holy place was a religious one. On all the sacred places in the twin holy cities of Islam, women visitors were also gathered, and in Islam, it is forbidden for a Muslim male to touch any other female who was not his Mahram (a person with whom one cannot marry at all because of their relation, e.g., mother and son cannot marry, a female cannot marry another

female etc.). This was the reason that transgenders were appointed on the Mataf, Holy Kaba, and on the tomb of the Prophet (PBUH) to control and administer the women visitors as well as the male Muslim visitors (Rutter, 1930).

Carsten Niebuhr wrote that Prophet (PBUH) had many treasures, and to guard them, forty transgenders were employed, as transgenders did not have any greed or temptation to steal anything from the treasures as they did not have any decedents (Rouchowdhury, 2018). The trend to employ transgenders for the protection of the administration of sacred places became very popular, and the same practice was done on the other sacred places, and these places included the tomb of Hazrat Ali (RA) in Najaf, the Dome of Rock in Jerusalem, Aqsa Mosque in Jerusalem, the tomb of Imam Hussain (RA) and other martyrs of Karbala in Iraq.

During the reign of the Mamluk Sultanate, Shias were present in the holy city of Madina in a considerable figure. For Shias, Hazrat Abu Bakkar (RA) and Hazrat Umar (RA) were usurpers of the Muslim Caliphate, and they used to throw garbage and rubbish in their tombs. Transgenders were

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employed to restrain Shias from doing these acts (Burton, 1893). Mamluk Sultanate sat another trend by appointing transgenders in the imperial court of Cairo (Rowson, 1998). Previously this practice was found only in the imperial courts of the Ming Dynasty of China. (Tsai, 1996)

Allah Almighty created every human being equal, and there is no discrimination at all on the basis of gender or sex in Islam. All the people have equal opportunities and different fundamental rights in Islam, irrespective of their religion, age, creed, gender, affiliation, profession or class. Violence has no space in Islam. The superiority of one is only on the basis of Taqwa (having fear and conscious of Allah). Allah says in Holy Quran that, *“O mankind, indeed, We have created you from male and female and made you people and tribes that you may know one another. Indeed, the noblest of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted. (The Quran, 49:13).”*

In his last sermon, Prophet PBUH said, *“All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a white has no superiority over black nor does a black have any superiority over a white except by piety and good action. (Omoloso, 2019)”*

Both the Quranic verse and saying of Prophet PBUH prove that there is no discrimination at all on any ground or basis. There is only one ground and only one standard that makes a person superior, and that is to what degree pious he is.

Islam has given transgenders many rights, honor and prestige. In Islam, they are just like ordinary human beings with some disabilities and not inferior to anybody at all. They can contract marriages, own properties and businesses, inherit from the ancestors' job of their own choice, offer prayers and other religious rituals etc. Transgenders had enjoyed a very active status in Islamic history, and they were treated with respect and prestige. Unlike dancing, singing, begging, and prostitution, in Islamic societies, transgenders were protectors, tutors, administrators, soldiers and managers.

Transgender Persons in the Light of Holy Quran

Quran is The Holy book of Allah almighty and has been revealed on the last Prophet Muhammad (PBUH). Quran contains the very words of Allah,

and not even a single word of it has been changed or lost. The Quran is the most important source to understand the spirit of the religion Islam, and in fact, it is the foremost source to be considered to understand the commands and direction of Allah Almighty. It is uniqueness and beauty of the Quran that it is a book, which is for the men and women, old and young, literate and illiterate, and in short, it is a book of guidance for all the human beings, for all the times and for all the parts of the world.

As stated above, Islam has given rights to every living being and living creature. The philosophy of Islamic law is very clear on the rights of human beings. Islam certainly has given so many rights to transgender persons indirectly. They can enjoy every right, which other normal Muslims can enjoy in society. They can do trade, can offer prayers, do Hajj, can become teachers, and even can become Imams. Unlike other societies and cultures, Islam accepts the transgender person as a normal human being and not as a cursed creature.

The Holy Quran contains six thousand six hundred and sixty-six verses, and there is not even a single verse, which expressly deals with the status and rights of transgender persons. This is not a drawback of The Holy Quran; in fact and it is irrational to criticize it on this ground. Islamic teachings treat a transgender person in the way in which it treats an ordinary male or female. Being transgender is not a curse but a disability, just like any other disability. It must be noted that children are born with vision and hearing defects, but Quran does not speak about them specifically as even with disabilities, such people are human beings, possessing all the rights and deserve honor and prestige in society. The analogy also applies in the case of transgender persons.

Although there are some verses from The Holy Quran, which reflects some implied guidelines related to transgenders, some of them are the following.

Allah says in Chapter 3, Verse 6, of The Holy Quran, (The Quran, 3:6)

“It is He who forms you in the wombs however He wills. There is no deity except Him, the Exalted in Might, the Wise. (The Quran, 3:6).”

It is clear from the above verse that every human being is born by the will of Allah Almighty, and it is He who shapes them and decides their gender in the womb of their mothers. Transgenders are the creation of Allah Almighty

and not a cursed creation. Allah made them disable, and it was not the sins of their parents. All the qualities, defects, physical characteristics, and intellectual capabilities are blessings from Allah.

Allah says, in chapter 42, verses 49 and 50 of The Holy Quran,

"To Allah belongs the dominion of the heavens and the earth; He creates what he wills. He gives to whom He wills female [children], and He gives to whom He wills males, or He makes them [both] males and females, and He renders whom He wills barren. Indeed, He is Knowing and Competent. [The Quran, 42:49]."

Allah says in the above verse that it is the will of Him only to select the gender of a living thing, as the third gender is present in animals and plants too. It is not the sins of parents or the transgender baby that he is a transgender. The concept is present there even in modern societies that the birth of a transgender person is because of sinful activities, or a previous sin of his or her parents and such birth is a mode of punishment and curse over them.

In Surah Al Noor (chapter 24 verse 31 of Quran), Allah says,

"And tell the believing women to reduce [some] of their vision and guard their private parts and not expose their adornment except that which [necessarily] appears thereof and to wrap [a portion of] their headcovers over their chests and not expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess, or those male attendants having no physical desire, or children who are not yet aware of the private aspects of women. [The Quran, 24:31]"

This verse directs the Muslim women to make sure their veil and clothing are of private parts and other parts of the body, which may enhance attraction. In the same verse, exceptions are also given, and women are not bound to veil their adornments before above said male relations. In the above verse, the words *"or those male attendants having no physical desire"* are interpreted and understood as transgender people by Muslim jurists.

Interpretation of Quranic Verse

Interpretation of the Quran has been so challenging for the jurists and scholars of Shariah law. As mentioned above that, there is no explicit

verse available in Quran, which discusses anything related to transgender people. All the major schools of thought are agreed that the reason for not discussing the issues of transgender is that Islam does not treat them as a third gender, but Islam treats transgender persons as ordinary males or ordinary females.

The word 'both' in the line, *"or He makes them [both]"* of Verse 49 of Surah Al Shurah is interpreted by the majority of the Islamic scholars that this word, i.e., 'both' in this verse means male and female. By saying this, we get an interpretation that Allah gives a female child to whom He wills, and He gives male child to whom He wills, and it is Allah who gives both male and female children to whom He wills. Although some modern jurists present the other side of the picture and say that the word 'both' means that Allah combines male and female, i.e., a transgender. However, this interpretation is not accepted by the majority of Muslim scholars.

Similarly, in the fifth verse of Surah Al-Haj, an explanation of different stages of sperm and genes in the woman's body is given i.e.

"O People, if you should be in doubt about the Resurrection, then [consider that] indeed, We created you from dust, then from a sperm-drop, then from a clinging clot, and then from a lump of flesh, formed and unformed - that We may show you. [The Quran, 22:5]."

In this verse, the words *formed and unformed* must be taken literally, but the essence of these words should be considered. The Arabic word used for the word 'formed' is 'Mukhalaqa', and it means complete, and for word, 'unformed' Arabic word 'Ghair Mukhalaqa' is used. 'Ghair Mukhalaqa' means incomplete. It means that 'lump of flesh' has two types, the first is complete, and the second is incomplete, and it is Allah Almighty certainly who decides that a flush should be complete or incomplete. An incomplete flush results in a transgender person.

All the verses from Quran only give one meaning that all the children, male, female or transgender, are born with the will of Allah, but Quran does not contain any verse which expressly states the rights and status of transgender persons. Some of their rights are found in the Ahadith of Prophet (PBUH) and in the interpretation of Muslim jurists.

Transgender Person in Ahadith

Hadith means the things that are related to Prophet (PBUH). Ahadith are a very important source of Shariah Law, and it is impossible to understand and extend the Shariah law without

having the knowledge of Ahadith ([Hashmi, 2021](#)). Quran contains the very words of Allah Almighty. Allah has guided human beings through Quran, and there are many commands and directions present in the Quran for human beings. It was very difficult to understand the directions and commands of Allah Almighty, and that is why Allah sent his messengers to teach human beings. For Muslims, Prophet PBUH was a practical form of the Quran. Prophet PBUH taught his companions the directions and commands of Allah Almighty by practically obeying and following those commands and directions. It is obvious and certain for a human being to feel it difficult to understand Quran but reading Ahadith makes the job easy.

Ahadith Related to Transgenders

The text of the Quran is in both implied and express narration. Normally implied narration needs interpretation, but in the case of the Quran, express narration mostly needs to be interpreted. Holy Prophet PBUH was a practical form of The Holy Quran as his whole life was according to the directions, teachings and commands of The Holy Quran. Therefore, ahadith are the second most important source and tool to understand the Islam and teachings of the Quran particularly. Without ahadith, one cannot access the spirit behind the text of the Quran, and it is very difficult to understand its true meanings. Fortunately, there are some ahadith, related to transgender persons found in different books of ahadith.

From Sunan Abi Dawud, hadith number 4928, it is reported that the companions brought a person before Prophet PBUH. They told Prophet PBUH that captured person was in similitude to women. Companions asked Prophet PBUH the permission to kill him, but Prophet PBUH refused and ordered the captured man to leave Madina. When companion asked again, Prophet replied that he could not kill a worshiper of Allah. This event from the life of Prophet PBUH shows that how much Islam is sensitive when it comes to humanity. (*Sunan Abi Dawud*, Hadith 4928)

From Sahih Bukhari, Hadith number 5887, it is reported from Umme Salma (RA), wife of Prophet PBUH, that I was sitting with my husband Muhammad PBUH. A transgender, who used to work in our home, was explaining with joy to my brother Abdullah the beauty and attractive physique of the women of Ta'if. On listening to this, Prophet PBUH directed us to abstain from transgender to enter our house again as he had a

desire towards women. The name of that transgender was Haiy'yet and according to some, his name was Mughees, and he was banished from Madina city. Later during the period of Hazrat Umar (RA), he requested Hazrat Umar (RA) to let him enter the city of Madina, as he became very old and weak. Upon his request and his weak financial and physical condition, Hazrat Umar (RA) was allowed to enter the city of Madina once a week for begging. The transgender people were very loyal and trustable slaves and servants during the period of Muhammad PBUH, but the people who had desire towards women were not allowed to serve or enter the houses, and even Muslim women were directed to take the veil in front of them.

From [Ibn e Maja, hadith number 2613](#), it is reported that a person named Umro Bin Mara visits Prophet PBUH. Umro seeks permission from the Prophet to sing and dance to earn a livelihood. He requested that he would sing and dance in a way that would not be in-appropriated. At that time, some men used to wear female clothes for dancing. Prophet PBUH restrained Umro Bin Mara strictly to do such an act. ([Ibn e Maja, Hadith 2613](#))

From Sunan Abi Dawud, Book 42, Number 4910, it is reported that a man from Madina dyed his hands and feet with henna (a herb that leaves red colour) was brought to the Prophet by the companions. Prophet PBUH asked the companions that "what was the matter with that man". He was told: Prophet of Allah, he had adopted women's get-up. Prophet PBUH ordered to banish that transgender to An-Naqi' (a place outside Madina). The companions asked: Prophet of Allah, should we not kill him? He said, "I have been prohibited from killing people who pray". Abu Usamah said, "Naq is a region near Madina and not a Baqi (in other words, not referring to Jannat al-Baqi' cemetery. ([Sunan Abi Dawud, Hadith 4910](#))

The above hadith shows that the last Prophet Muhammad PBUH has prohibited even the killing of those men who imposter themselves and express themselves as women. Prophet Muhammad PBUH does not restrain him from religious practices and rituals rather, Prophet PBUH cancelled his sentence only because he was a worshiper of Allah. Today, the need is there to understand that transgender people should be treated with respect, and they must be allowed to participate in religious practices and acts. Their religious freedom must be guaranteed.

From the source of ahadith, a number of important things related to transgender persons are gathered, e.g., types of transgenders, how to determine their gender, which transgenders were allowed to enter into houses and which were not and many other similar things. As we discuss it already from Quran, we only reach a unanimous conclusion that a transgender person is a creation of Allah Almighty. Now it is concluded that directions and guidelines to treat transgender people are found in ahadith.

The third most important source to understand Islam is Ijma. Ijma is the consensus to Muslim jurists over a question of law that cannot be found in the Quran and Ahadith expressly. There are many ijmahs related to transgender persons, and these ijmahs played a key role to determine and improve the rights and status of transgenders in Muslim societies. Ijma is the third primary source of Islamic Law, and all the Sunni and Shia schools are agreed on this source.

Rulings of Prominent Sunni Imams on Transgenders

Unlike western ideology, Islam is a very modern religion. It has the capacity to cover all the topics and dimensions of human life. It is very vast and very versatile. Quran is the basic source of Islamic directions and teachings from Allah, and Sunnah of Prophet (PBUH) is the second source and a very important source indeed. The third source to understand the teachings, directions or command of Allah is Ijtehad, i.e., intellectual effort to understand the implied meanings of Quranic verses and Sunnah of Muhammad (PBUH) (*Islamic Concept of Ijtehad*). This source discriminates the religion of Islam from other religions, as it opens the door of wisdom. It is Ijtehad that let the Muslim scholars think on the topics which are not discussed in Quran and Sunnah explicitly. By performing ijtehad, Muslim scholars and thinkers have been resolving day to day issues related to human life and society since the beginning of Islam. The topic of transgenders is discussed in Quran in the form of implied verses, and those verses only give one meaning that transgenders are the creation of Allah Almighty just like man and women, and they are human beings by all definitions. In the collection of Ahadith, this topic is discussed in detail, but most of the time, it is only limited only to their kind and how to determine their kind, but their personal rights or social status is found rarely in Ahadith. These things are found in the different schools of

Islam, which interpret the Quranic verses and Sunnah to elaborate on this topic.

All the Muslim scholars used the word 'Mukhanatun' for the transgender persons, and then these people were divided further into three categories i.e.

Natural born persons with sexual disabilities. These people act like any other normal people.

Those persons who act like other gender and they may include both people, i.e. either having sexual disabilities or not.

People who have both male and female genitals are also called 'Khunsa Mushkil'. It is difficult to ascertain the gender of these people, but these people also have a certain gender which has to be determined in order to determine their rights and duties according to their respective gender. (*Response to The Queer Sahaba*)

Under is stated the opinions of different Muslim scholars on the status of transgender people.

Hanafi School of Thought

That Hanafi School of Fiqh was the first school to be founded by Nauman ibn Thabit, a non-Arab Muslim scholar, famous with his family name Abu Hanifa. Imam Hanifa was from Kufa, Iraq and was born in 699 AD. Imam had not written any book, but his pupils did, i.e., Imam Muhammad and Imam Yousaf. Hanfi Schools is predominant in Pakistan, Afghanistan, India, Turkey, Egypt and central Asian states.

Hanafi school of thought is the biggest school which is followed by majority of the people of Pakistan, and this is the reason that interpretation and ruling of this school is treated as more than mere opinion rather than as religious obligations. According to Hanafi School, if a Mukhannath shows desires towards women, then he must be kept away from the women are must not be allowed to serve in the houses. On the other hand, if a Mukhannath has feminine behavior or traits, if he has developed breasts, and all of this is by nature, then such a Mukhannath can be allowed to be left with women as such people have no desires towards women. (*Al Kitab Al Mabsut*)

Maliki School of Thought

The school of Imam Malik was founded by Imam Malik of Madina. Imam Malik was born in Madina and was very intellectual. He wrote a book named 'Al-Muwatta' containing three hundred ahadith, and about this book, Imam Shafi said that it was

the most authentic book on earth after Quran. The reasoning of Imam Malik was appreciated even by Imam Abu Hanifa. Maliki School is predominant in Tunisia, Algeria, Morocco and Nigeria.

According to Maliki School, a Mukhannath does not mean a person who does lewd actions rather, it is person who has strong femininity in his traits. Such femininity resembles them with women and if such person has no desire towards women or if he is a person of average mind, then he may be allowed to stay with women at home. (*At-Tamhid Lima Fil-Muwatta Min Al-Ma'ani Wal-Asania*)

Shafi School of Thought

Imam Shafi was from Syria and born in 150 AH. His full name was Muhammad bin Idrees Al Shafi. Shafi attended the prominent Muslim scholars of that time. One of the greatest among those was Imam Malik. Imam Shafi was very wise and intelligent as it was reported that he memorized Quran at the age of seven and he was declared Mufti (a person who is expert of Shariah laws, their derivation and implementation) at the age of fifteen years. Shafi School is predominant in Malaysia, Indonesia, Southern Arabia and Eastern African Muslim states.

According to Shafi School, any person who has traits and characteristics of women in his acts by birth, then he is innocent and not a sinner. (*Al-Muhtaj Ila Ma'rifat Al-ma'ani Alfaz Sharh Al-Minhaj*)

Hanbali School of Thought

Hanbali School of Fiqh was founded by Imam Ahmad bin Hanbal. Imam Ahmad was born in Khurasan and had a Persian background. Imam Ahmad took education from Imam Yousaf of Hanafi School and Imam Shafi. He wrote 'Masnad e Hanbal' in which he compiled approximately 40,000 ahadith of Prophet (PBUH). Hanbali School is predominant in Arabian Peninsula and Kingdom of Saudi Arabia particularly.

According to Hanbali School if a Mukhannath has desires towards women, then he would be

treated as a *Na-Mahram* (a person with whom a marriage can be made) male to the women and if a mukhannath has no desires towards women then he would be treated as *Mahram* (a person with whom, marriage cannot be made at all) male to the women. (*Al Mughni*)

According to Imam Al-Nawawi, a Mukhannath person is one who acts like women, appears like women and some physical characteristics of women. Further Mukhannath persons can be categorized into two types, first type is those who act this way naturally and are innocent indeed until or unless they do not involve in any immoral activity, but second type is those who adopted this behavior and thus are sinners. Imam Ibn Hajar was also convinced with the opinion of Imam Al-Nawawi. (*Fath Al-Bar*)

Conclusion

Transgender were present in the holy cities of Madina and Makkah. Their traces are very few in the books of hadith and in the Quran, but Muslim jurists have done many ijtehad and ijmas related to the rights and duties of transgenders. From the above rulings of Muslim Jurists, it is easy to conclude that transgenders are a part of human society and have certain rights and duties like other citizens of the society. They were treated very gently in the Muslim societies. The transgender, who was banished by Prophet (PBUH) from the city of Madina, was banished only because he was an imposter. He had adopted the characteristics of women and putting up the characteristics of other gender is a sin in Islam. The transgenders who are sexually disabled by birth or if such disability is by a post birth accident, are a part of human society. It is the duty of transgender persons to act and appear according to their real gender and do not engage their selves in any illicit or immoral activity. Transgenders are ordinary human beings and are allowed to work and reside in homes and other work places. They can enjoy their rights and are bound to perform their religious and social duties.

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