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TOPIC – ISLAMIC LAWS AND GENDER IDENTITY – CONTROVERSY OVER TRANSGENDER RIGHTS IN ISLAMIC SOCIETIES

ABSTRACT

This research paper examines the position and rights of transgender individuals within the framework of Islamic law, particularly focusing on traditional interpretations, contemporary developments, and legal status in Muslim-majority countries. The study also includes a comparative analysis with the legal and social status of transgender individuals in India, incorporating their historical roles during the Mughal period. The aim is to provide a comprehensive understanding of the challenges faced by transgender Muslims and the evolving discourse around their rights, particularly focusing on how lack of recognition impacts various aspects of life, including marriage and religious participation.

Keywords:- Islamic law, gender identity, societies, transgender

INTRODUCTION

Transgender individuals have historically faced marginalization and discrimination across various cultures and religions. In Islam, the discourse around transgender rights is complex, influenced by religious texts, cultural practices, and contemporary reinterpretations. This paper explores the Hadith and their interpretations, compares

the legal frameworks of several Muslim-majority countries with India, and discusses the socio-legal challenges faced by transgender individuals. The motivation for this study stems from the need to address these challenges and the impact of non-recognition on fundamental aspects of life, including marriage and religious participation. It also examines the historical context of transgender individuals during the Mughal period, highlighting their significant roles and acceptance.

RESEARCH QUESTIONS

1. What are the traditional and contemporary interpretations of Islamic texts regarding transgender individuals?
2. How do the legal frameworks in various Muslim-majority countries compare with India's legal framework concerning transgender rights?
3. What are the socio-legal challenges faced by transgender Muslims, particularly in relation to marriage and religious participation?

METHODOLOGY

This study employs a qualitative research methodology, utilizing a combination of literature review, comparative legal analysis, and historical examination. An extensive review of existing literature on Islamic jurisprudence, Hadith interpretations, and contemporary scholarship on transgender rights will be conducted. Additionally, The legal frameworks of several Muslim-majority countries, including Pakistan, Iran, Malaysia, and Indonesia, will be analyzed and compared with India's legal framework on transgender rights. Following the foregoing, the historical roles and acceptance of transgender individuals during the Mughal period will be explored through historical texts and secondary sources. Instances of oppression faced by transgender Muslims in various countries will be documented to provide a real-world context to the legal and social challenges discussed.

LITERATURE REVIEW

The topic of transgender rights within Islam has been addressed by various scholars and institutions. Muh Bahul Afif's study on Islam and transgender individuals, particularly through the lens of Hadith, provides a foundational understanding of how traditional Islamic texts have been interpreted to address gender non-conformity (Afif, 2018). This study examines the Hadith literature, which offers insights into the Prophet Muhammad's interactions with mukhannathun (effeminate men), and how these interpretations influence contemporary Islamic jurisprudence. In terms of legal

frameworks, *Pakistan's Transgender Persons (Protection of Rights) Act, 2018*, represents a significant advancement in recognizing transgender rights within a Muslim-majority country. The Act grants transgender individuals the right to self-identify their gender and ensures protection against discrimination. This legal recognition is an important step towards addressing the socio-legal challenges faced by transgender individuals (Transgender Persons (Protection of Rights) Act, 2018).

Conversely, Iran's approach to transgender individuals, while unique, highlights the complexities of integrating religious doctrines with contemporary human rights. Iran permits and subsidizes gender reassignment surgery for those diagnosed with gender dysphoria, contrasting with its stringent laws against homosexuality. This legal framework underscores the nuanced relationship between Islamic teachings and state policies (Human Rights Watch).

In India, the Supreme Court's judgment in *NALSA v. Union of India (2014)* marked a pivotal moment for transgender rights, recognizing them as a third gender and affirming their rights to self-identification, education, employment, and social welfare. The subsequent Transgender Persons (Protection of Rights) Act, 2019, further legislates these rights, though challenges in implementation persist (*NALSA v. Union of India, 2014*; Transgender Persons (Protection of Rights) Act, 2019).

Historical texts and secondary sources detailing the roles of transgender individuals during the Mughal period reveal that eunuchs (hijras) held significant positions in the royal courts. The Mughal emperors, particularly Akbar, recognized their abilities and integrated them into administrative and military roles. This historical acceptance contrasts sharply with the marginalization seen in modern times (Khan, 1996).

Case studies and reports from human rights organizations document instances of oppression faced by transgender Muslims, such as exclusion from religious spaces and violence. In Malaysia, transgender women (mak nyah) often report being denied entry to mosques and facing harassment, highlighting the exclusion and marginalization they experience within the Muslim community (Human Rights Watch). Similar instances of exclusion and violence are reported in India, where transgender Muslims face significant challenges in accessing religious and social spaces (Naz Foundation, 2018).

TRADITIONAL VIEWS IN ISLAMIC LAW

Islamic jurisprudence, derived from the Quran and Hadith, has varied interpretations regarding gender and sexuality. Traditionally, scholars have recognized the existence of individuals who do not fit the binary gender model. However, the acceptance and

rights of transgender individuals have often been limited and subject to cultural and social norms. *The Hadith* literature provides insights into the Prophet Muhammad's interactions with gender-diverse individuals. For instance, some Hadiths describe the presence of mukhannathun (effeminate men) in early Islamic society. While some scholars argue that these individuals were acknowledged and tolerated, others emphasize a need for conformity to binary gender roles. The interpretations of these Hadiths have significant implications for the rights and recognition of transgender individuals in Islamic law.

In recent years, there has been a growing movement within Islamic scholarship to reinterpret religious texts in a manner that affirms the rights of transgender individuals. Progressive scholars argue that the essence of Islamic teachings—justice, compassion, and dignity—should extend to all individuals, regardless of their gender identity.

The legal recognition and rights of transgender individuals vary significantly across Muslim-majority countries. This section provides an overview of the legal frameworks in several countries and compares them with India's approach. For instance, Pakistan has made significant strides in recognizing transgender rights. The Transgender Persons (Protection of Rights) Act, 2018, grants transgender individuals the right to self-identify their gender and ensures protection against discrimination. Pakistan has also issued national identity cards that recognize a third gender category. *Iran* has a unique approach to transgender individuals, rooted in both religious and legal frameworks. While homosexuality is criminalized, gender reassignment surgery is legal and even state-subsidized for those diagnosed with gender dysphoria. This paradox highlights the complex interplay between religious doctrines and state policies. Conversely, *In Malaysia*, transgender individuals face significant legal and social challenges. Sharia law, which operates alongside civil law, often criminalizes cross-dressing and other expressions of gender non-conformity. Transgender individuals frequently face harassment and discrimination, and legal recognition remains limited. Indonesia, home to the largest Muslim population in the world, has a mixed approach to transgender rights. While some regions, like Aceh, impose strict Sharia-based laws, other areas are more tolerant. Transgender individuals, particularly waria (transgender women), have historically been part of the social fabric, although they still face discrimination and lack legal protection.

India, with its diverse religious and cultural landscape, offers a unique perspective on transgender rights. The Supreme Court's landmark judgment in *NALSA v. Union of India* (2014) recognized transgender individuals as a third gender and affirmed their rights to self-identification, education, employment, and social welfare. The Transgender Persons (Protection of Rights) Act, 2019, further legislates these rights, although its implementation remains a challenge. In India, hijras (a traditional third

gender community) have been part of the cultural fabric for centuries, enjoying a unique social status despite facing marginalization. In contrast, many Muslim-majority countries do not have such longstanding cultural recognition of transgender individuals, resulting in varying degrees of acceptance and rights.

HISTORICAL CONTEXT: TRANSGENDER INDIVIDUALS DURING THE MUGHAL PERIOD

During the Mughal period in India, transgender individuals, particularly eunuchs (hijras), held significant roles in the royal courts. They served as advisors, guards, and confidants in the harems, and were often trusted with sensitive tasks. The Mughal emperors, especially Akbar, recognized their abilities and integrated them into administrative and military roles. This acceptance contrasts sharply with the later marginalization and lack of legal recognition seen in modern times.

Emperor Akbar's acceptance of transgender individuals can be seen as a pragmatic approach to governance and societal integration. He valued their loyalty and capabilities, utilizing them in various capacities within the court. This historical precedent indicates that social acceptance and recognition of transgender individuals can coexist with Islamic principles when interpreted in a context-sensitive manner.

QUR'ANIC INTERPRETATIONS

The Qur'an, being the immutable word of God in Islam, presents challenges in reinterpretation, especially concerning gender and sexuality. While the Qur'an does not explicitly mention transgender individuals, traditional interpretations have often been restrictive. This underscores the tension between historical practices, such as those during the Mughal period, and contemporary interpretations of Islamic law. The failure to recognize transgender individuals legally and socially can have profound impacts on various aspects of life, including marriage, family, and social integration.

Marriage System

In Islamic law, marriage is a significant institution, and the recognition of gender is crucial for its validity. Non-recognition of transgender individuals can lead to complications in marital status, inheritance rights, and social acceptance. The social integration of transgender individuals is also hampered by non-recognition. Without legal and social acknowledgment, transgender individuals often face discrimination in education, employment, and access to healthcare. This exclusion perpetuates a cycle of poverty and marginalization, further alienating them from mainstream society.

OPPRESSION FACED BY TRANSGENDER MUSLIMS: GLOBAL AND INDIAN CONTEXTS

Global Context

Transgender Muslims face varying degrees of oppression in different countries. In Malaysia, for example, transgender women (mak nyah) are often denied entry to mosques and face harassment and violence from religious authorities and the public. The enforcement of Sharia law in certain states criminalizes their existence and subjects them to legal persecution. In Iran, despite the allowance of gender reassignment surgery, transgender individuals still face significant societal stigma and discrimination. They are often ostracized by their families and communities and face barriers in accessing employment and healthcare.

Indian Context

In India, transgender Muslims face similar challenges. Despite legal recognition as a third gender, they often experience exclusion from religious spaces and social ostracization. Reports indicate that transgender Muslims are frequently denied entry to mosques, face harassment, and are subjected to violence. Moreover, they encounter significant obstacles in accessing marriage rights, leading to legal and social complications.

Importance to Islamic Communities

Addressing the rights and recognition of transgender individuals is particularly important to Islamic communities because it challenges deep-rooted interpretations and practices. Despite the existence of human rights frameworks and legal recognition in some countries, the non-acceptance of transgender individuals within Islamic communities remains a significant barrier. This non-acceptance impacts various aspects of life, from marriage to religious participation, perpetuating cycles of discrimination and marginalization.

By re-examining religious texts and historical precedents, Islamic communities have the opportunity to align their practices with principles of justice, compassion, and dignity, ensuring that all individuals, regardless of their gender identity, are afforded their rightful place in society.

CONCLUSION

The recognition and rights of transgender individuals within Islam are complex and multifaceted issues. While traditional interpretations of Islamic texts have often been restrictive, contemporary scholarship and legal advancements offer hope for more inclusive and compassionate approaches. Comparing the legal and social status of

transgender individuals in various Muslim-majority countries with India reveals both progress and persistent challenges.

Historical precedents, such as the roles of transgender individuals during the Mughal period, demonstrate that social acceptance and integration are possible within Islamic frameworks. However, the non-recognition of transgender individuals continues to impact their lives significantly, particularly in areas such as marriage and religious participation. For Islamic communities, addressing these issues is crucial not only for the well-being of transgender individuals but also for upholding the core Islamic principles of justice, compassion, and human dignity.

Footnotes

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