

THE PAKISTANI FATWA ON “TRANSGENDERS”

Question from a U.S.A. Brother

Please comment on the recent fatwa issued by the Ulama of Pakistan on the issue of recognizing transgenders. Many Muslims are concerned regarding the very liberal fatwa. Is this fatwa valid? The following is the report published in the *WASHINGTON POST* of the U.S.A.

Pakistani Muslim clerics approve transgender people’s right to marry, call them ‘one of Allah’s creations’

By Pamela Constable June 28, 2016 at 11:19 AM

Muslim clerics in Pakistan are usually known for issuing stern, conservative pronouncements on gender-related issues, mostly limiting the rights of women. But in a surprising twist, a large group of clerics there has just issued a fatwa, or religious edict, affirming the rights of transgender people to marry.

The ruling, issued Sunday by 50 Islamic clerics in the eastern city of Lahore, said that transgender people may marry under Islamic law and that they have the right to be buried in Muslim ceremonies and to inherit property, according to reports from Reuters and Pakistani media. The fatwa said the Pakistani state is responsible for protecting them.

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Written by Administrator

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"We need to accept them as God's creation, too," said Zia-ul-Haq Naqshbandi, who heads an Islamic organization that requested the fatwa. "Whoever treats them badly — society, the government, their own parents — are sinners."

Some rights groups said the ruling was confusing and did not do enough to protect the rights of transgender people, who often face abuse and harassment in Pakistan. The fatwa declared that transgender men "with male characteristics" may marry women or transgender women "with female characteristics," and vice versa. It did not detail the nature of such characteristics and did not mention people who have undergone sex-change surgery.

But others activists called it a welcome first step toward seeking full legal rights for transgender people through Pakistani courts.

The ruling also illustrates the complex, diverse and contradictory nature of Pakistani society. The majority-Muslim country of 180 million has spawned fundamentalist and sectarian Islamist groups affiliated with the Taliban and al-Qaeda, and it has one of the world's most severe laws against blasphemy, or insulting Islam. But it also has a sizable Christian minority and is home to mystical Sufi orders, whose poets and musicians promote harmony and peace. It has banned homosexuality and does not allow homosexuals to marry, but it does not aggressively prosecute gays as a rule.

On matters of women's rights, the country has become increasingly conservative since the 1980s, when military ruler Muhammad Zia-ul-Haq presided over a period of "Islamization" in which men were flogged for drinking alcohol and women were imprisoned for adultery and other sexual crimes, known as zina. Laws banning "honor killings" and criminalizing domestic violence have drawn strong opposition from Islamic leaders, and the national clerical council ruled last month that the [Koran allows men to beat their wives "lightly."](#)

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Pakistan also has a long South Asian tradition of accepting transsexuals and people of non-traditional genders as part of society. Some eunuchs and others have been viewed as having mystical powers. They have recognized leaders and associations that have long fought for their rights, and the courts ruled in 2012 that they should be given job quotas and ID cards as a recognized minority. However, they are marginalized from mainstream society, and many work as prostitutes, beggars and entertainers. Men dressed in female costumes and makeup are a familiar sight at public festivals and shrines.

In some cases, transgender people are severely bullied and even killed. The fatwa issued Sunday urged people to be kind to them, saying that "making fun of them, teasing them or thinking of them as inferior is against sharia law, because such an act amounts to objecting to one of Allah's creations."

End of report)

OUR ANSWER AND COMMENT

It is difficult to comment on the English report. We need to read the actual Urdu Fatwa. We shall endeavour to acquire a copy of the original fatwa.

In our opinion the Ulama did not issue any new fatwa. It is in fact the ruling of the Shariah which was propounded by the Fuqaha fourteen centuries ago. The word ‘transgender’ is misleading. The fatwa, we are almost certain, applies to people who are described in the Shariah as *Khuntha a*. If the male organs and characteristics are dominant and functional, then the person will be designated a male. If the female organs and characteristics are dominant, then the person will be a female according to the Shariah.

Such people have both male and female organs / characteristics, but the one is usually dominant. The fatwa is nothing to new to us. It is as old as Islam. The Pakistani fatwa is old hat, but the western press is notorious for blowing much hot air to malign Muslims and Islam. According to the Shariah, a person whose sex cannot be determined due to both sets of organs being functional, is termed *Khuntha Mushkil*. There are Shar’i rules applicable to such a person. Such persons, if they come to Musjid, have to stand in the very last row behind the children.

They do have rights such as inheritance, etc. The Ulama in their fatwa had merely mentioned what the Fuqaha have ruled during the era of *Khairul Quroon*. So what the Ulama in Pakistan have stated is nothing new.

The following is an extract from our kitaab, *Kitaabul Meeraath (The Book of Inheritance)*, which was published 40 years before the latest Pakistani fatwa:

KHUNTHA

(Hermaphrodite)

Khuntha is a person who is born with the deformity of having both male and female organs. Such a person whose sex cannot be determined, is described as khuntha mushkil.

If the sex can be determined by virtue of the dominance of either the male or female organs, the person will be classified accordingly, i.e. if the male organ is dominant, the person will be classified a male and if the female organ predominates, the person will be a female.

All attempts will be made to classify the khuntha either as a male or female. Only when such classification is impossible will the person be classified as khuntha mushkil.

The principle of *obtaining of the lesser share* applies to the inheritance of the khuntha mushkil. According to this rule the khuntha mushkil will receive the share of either a male or a female, whichever is the lesser of the two.

Example: The mayyit is survived by one son, one daughter and one khuntha mushkil. Now, if the khuntha mushkil is assumed to be a male the estate will be divided into 5 parts. In this case the khuntha mushkil will obtain $\frac{2}{5}$ (two fifths) of the estate.

If the khuntha mushkil is assumed to be a female, the estate will be divided into four parts. In this case the khuntha's share will be $\frac{1}{4}$ (one quarter).

A quarter is less than two fifths, hence in terms of the rule of obtaining of the lesser share, the khuntha mushkil, in this example, will be given the share of a female, viz one quarter.

Example: The mayyit is survived by the following heirs:

Mother, wife, khuntha mushkil and a paternal uncle. If the khuntha mushkil is assumed to be a male, the division will be as follows:

Mother $1/6$, wife $1/8$, khuntha mushkil, the balance.

Divide the estate into 24 parts. The shares will be:

Mother $1/6 = 4/24$; Wife $1/8 = 3/24$; Khuntha balance = $17/24$.

Thus, if the khuntha mushkil, in this example, is assumed to be a male, the share will be $17/24$ and the uncle is deprived.

If the Khuntha is assumed to be a female, the division will be as follows:

Mother $1/6 = 4/24$; Wife $1/8 = 3/24$; Khuntha balance $1/2 = 12/24$ and the balance of $5/24$ will be taken by the paternal uncle.

$12/24$ is less than $17/24$, hence the khuntha in this example will be given $12/24$ of the estate since this ($12/24$) is the lesser amount.

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It is not permissible to despise anyone even those who are *Khuntha*. This is Islam’s teaching. It is nothing new. A person who dies without Imaan, is obviously worse than a pig. Since no one is aware of his/her end, it is gross ignorance and pride to despise even a *khuntha*.

This has been the

Ta’leem

of all our Auliya since time immemorial. We, therefore do not see anything new in even the English version of the fatwa.

The *Khuntha* issue should not be confused with homosexuals, gays and lesbians who are all accursed and who are subjected to severe punishment in terms of the Shariah.

We shall, Insha-Allah, comment further when we obtain the actual fatwa.

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