

Sex-Reassignment Rules in Shiite Jurisprudence

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Abstract

Background: The "Sex-Reassignment Surgery" is a solution that besides behavioral therapy has been suggested to people suffering from gender identity disorders in recent years. In Iran, this trend has become more popular over the past years due to the inclination to reach to the goal rapidly with less effort and also the surgery has attracted many patients with the problem. Religious clerics have tried to determine the religious doctrines for this practice and as a result a group of them favor an absolute permission while others choose prohibition and some of them favor a middle path. The aim of this study was to determine the religious doctrines for Sex-Reassignment and legitimate treatment for GID.

Methods: The research method was a library research based on which an investigation was done by analyzing the relevant books, articles and dissertations. Primary documents of Islamic sources (Quran and tradition) along with scientific, medical and psychological materials were used in this research.

Results: In this study, the survey shows that none of the reasons have the power to deliver a definitive and religious ruling on this issue because the validity of its reasons is related to the reality of "Sex-Reassignment".

Conclusion: The results demonstrate that Sex-Reassignment is prohibited and it is not authorized. In case of urgency for doing the surgery, the gender of the person should not be changed.

Keywords: Gender identity disorders, Gender, Sex-Reassignment Surgery, Sex, Transsexualism.

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Introduction

The "Sex-Reassignment Processes and Surgery" and behavioral therapy in recent years have been suggested for people suffering from gender identity disorders (GID). Generally, inclination and desire for Sex-Reassignment may be related to a person's suffering from hermaphrodite, GID, and other physical defects (1). In the current research, juridical decree for Sex-Reassignment Surgery was examined.

People with such disorder desire to belong to opposite sex. They stress on this affair due to experiencing extreme discomfort with their gender role and the sexuality which has been attributed to them (2). Characteristic of such people is that they act as their opposite sex and always suffer from their sex (3).

The motivation of Sex-Reassignment is the lack of cultural acceptance, opposite sex feelings and social and psychological pressures in acting as their original sex as men or women in societies such as Iran (4). The aim of this study was to determine the religious doctrines for Sex-Reassignment and legitimate treatment for GID.

Methods

The research method was a library research based on which an investigation was done by analyzing the relevant books, articles and dissertations. Primary documents of Islamic sources (Quran and tradition) along with scientific, medical and psychological materials were used in this research.

Results

In 1995, GID was regarded as a relatively rare disease (5), while in 2001, the number of cases suffering from this disorder was officially about 4,500 people (6), and it was reported to be between 28,000 and 48,000 in 2010 in Iran (7). This figure shows an obvious jump in the number of the applicants. According to official statistics of the medical board of Iran in a seventeen year period ranging from 1987 to 2004, 214 cases succeeded in obtaining permission for this surgery (8) whereas between 2004 and 2008, those who were able to have sex change permission in Tehran reached to 129 persons (4).

The comparison of above two figures shows that the number of Sex-Reassignment applicants who have received the permit increased from nearly 13 to 32 people annually *i.e.* an amazing jump of 2.5 times.

Discussion

Nowadays, Sex-Reassignment Surgery occurs in Iran (9) and Iran is one of the centers for Sex-Reassignment Surgery in the world (8) and from every 4 surgeries in Iran, one is related to non-Iranians (10).

Based on these statistics, the number of people with GID increased to 10 times and the number of Sex-Reassignment applicants from 13 people per year reached to approximately 32 people per year over the past 20 years.

Opinions of Shiite jurists on Sex-Reassignment: The decrees of Sex-Reassignment can be divided into three groups:

- A. Absolute permission (11-13)
- B. Conditional permission (7, 14)
- C. Prohibition (8, 15-18)

Reasons of absolute Sex-Reassignment permission: The Clerics have cited two reasons for their positive views regarding absolute permission of Sex-Reassignment Surgery:

- 1) Authenticity of innocence
- 2) Domination Juridical Rule

Authenticity of innocence (Bara'at): This rule advocates the absolute permit for Sex-Reassignment Surgery because there is no absolute legitimate reason for the prohibition of Sex-Reassignment and the advocates consider authenticity of innocence as their documented presumption (1, 10, 19).

Domination juridical rule (Taslit): This rule tells that every owner has complete mastery over his

property and can utilize it whatever manner he wants to and nobody can prohibit him from the possession without a legal permit (22).

Contemporary jurists added on the bases of the priority rule that the mastery over the self also comes under the Domination Juridical Rules (22). As a result, people have the right to utilize their properties as well as their body according to their will. Therefore, according to this rule, one of the allowable changes in the body is Sex-Reassignment (19, 23).

Critical analysis:

a) The authenticity of innocence will only be able to absolutely permit such case, when the jurist reviews all the reasons and is unable to find any definite rule

b) The argument of Domination Juridical Rule for Sex-Reassignment has three criticisms:

- i- The domination rule is not in the state of introducing any law (24),
- ii- Doing Sex-Reassignment Surgery is not logical and is a strange thing in the society (19),
- iii- The condition for implementing such a rule is that it should be safe and not harmful (22).

These three criticisms are justified when it is proven that Sex-Reassignment Surgery may cause damages which are irreversible and irreparable. Failure to have surgery, sometimes, leads to suicide or physical or mental harm which is negligible as compared to the stated damages. On the other hand, when human life is in danger, doing anything to save it will be more rational and practical.

Therefore, this study shows that the authenticity of innocence and Domination Juridical Rule are only applicable when the reasons for opposition are weak.

Prohibition's reasons: The clerics have cited the following reasons to prove their viewpoints in the prohibition of Sex-Reassignment Surgery:

- 1- Prohibition of change in divine creation
- 2- Opposition to the public interest
- 3- Lack of rational legitimate benefit and attentiveness
- 4- Prohibition of removing body organs
- 5- Prohibition of imperfection force
- 6- Prohibition of Eliminating Sexual Force
- 7- Prohibition of effeminacy
- 8- Prohibition of imitating male as female and vice versa

Prohibition of change in divine creation: The Quran stated that Satan for its activities to divert man-

kind towards corruption said, "...I will command them so they will change the creation of Allah" (Al-Nisa, 119).

It is clear that the Sex-Reassignment is one of the examples of the change in the God's creation and such thing according to the above verse of Quran is forbidden (25).

Criticism: The correct meaning quoted from the devil is to make changes in the faith and ideological deviation of the man, because God itself has defined "creation" in the Holy Quran as, "So direct your face towards the religion, inclining to truth. [Adhere to] the fitrah [innate] of Allah upon which He has created [all] people. No change should there be in the creation of Allah. That is the correct religion, but most of the people do not know" (Rome, 30). With due attention to the fact about God's creation in both given verses, and in the last verse "No change should there be in the creation of Allah", it can be concluded that it refers to "That is the correct religion" which is not changeable. Hence, it is known that the devil's effort for change in "God's creation" is the same forbidden attempt to change the divine religion (26).

The intention of this term "[Adhere to] the fitrah [innate] of Allah upon which He has created [all] people" is to necessitate the fact that God's nature is placed in man. Therefore, the divine faith has been expressed as innate in the verse. Thus, the verse says that bind yourself to the innate [nature] on which Allah has created you and the term [No change should there be in the creation of Allah] means that there will never be a change in the creation of Allah *i.e.* live according to your nature which is unchangeable and stick to it (8). Many interpretations have also quoted the same meaning for this verse (27-30).

According to what was said, God the almighty in Verse 30 of the Chapter Rome, commands man to follow his own nature, temperament and nature's creation and hold them. Based on "God's creation" in which the devil "command to change" is the same as "human nature and temperament" and the man not only has no right to make changes, rather they are bound to follow it and that is the same innate divine faith.

Accordingly, one of the best adherence to the divine nature is the pledge to power of concupiscence that must be preserved and followed under the defined framework of religion (8).

Even if we accept that all of what commentators have interpreted about this verse is correct, the verse forbids any changes in the creation that is contrary to religion (31), and that includes external creation *i.e.* changes in the body as well as change in the natural faith (8).

Opposition to public interest: The rule that determines civility of a person in society has not been built only to protect his profits but the aim of this kind of principles is to safeguard public's overall interest. Thus, people cannot agree on something by overruling the society's rules because they are also unable to change their race or gender under any agreement (19). Accepting the legitimacy of Sex-Reassignment Surgery from the social point of view is similar to opening the doors of personal desires for the villainous people, who are ready to do this because of their sexual and adventurous inclinations. This will allow such people to damage the ethical values of society and will make them the founder of this (24). Therefore, according to the opposition of public interest, it is prohibited.

The Sex-Reassignment Surgery must be accomplished due to need, urgency with strict compliance and by performing multiple testing to assure that the case is original. But the person who is inclined for such surgery out of whim and lustful desires is unable to pass these stages. Therefore, only those who really suffer from GID without sex change and suffer from hardship and distress would be successful in getting permission for this surgery.

Lack of rational legitimated benefit and attentiveness: In law and jurisprudence, we see that authorities have said that the permission must have a legitimate rational interest and attentiveness. This aspect must also be considered with respect to medical problems (19).

This surgery is performed for those who need it and the people who commit suicide if this surgery is not performed for them. Hence, it is both rational and legal to protect a life.

Prohibition of removing body organs: In Sex-Reassignment Surgery, sexual organs such as breast, gonads, uterus etc. are removed and it creates partial or complete changes in other organs. In fact, these changes necessarily incur damage or loss to body and self-harming like harming others is forbidden. Prophet Muhammad (PBUH) said: "La zarar wa la zirar" and he means "No damage and

no reciprocating is in Islam" and this includes any type of damage (25).

This tradition shows that harmful and damager rules have been removed, but it can't create the new rule. "La zarar" indicates that no the concepts damage or self-harm ruling has not been defined in Islamic Sharia legislation (19). Likewise, the prohibition in removing body organs is when there is no need and no urgency. As a result of removing or destroying part of the body, in case of urgency, removing body organs will be permitted (7).

Prohibition of imperfection force: God the almighty says in the Holy Quran that [Spend your wealth for the cause of Allah, and be not cast by your own hands to ruin; and do good. Lo! Allah loves the beneficent] (al-Baqarah: 195).

The verse prohibits loosing or wasting human force that at one time is social and another physical strength such as the elimination of human life, body organs such as eyes, hands, feet and sex force.

According to this verse, no one is permitted to lose his force and strength by cutting and eliminating body organs. So, it is not permitted to change the sex of man or woman by cutting penis and testicles or removing uterus and ovaries, because all these lead to death and destroying and eliminating power droop. As a result, this verse also implies to the prohibition of Sex-Reassignment (8).

The Sex-Reassignment Surgery creates deficiency in sex of persons and with this performance, male or female is converted to incomplete man or woman because they have lost their sexual force (25).

The arguments have two criticisms:

- i. This verse is related to God's path and Jihad. In response they said: revelation can't appropriate the publicizing of verse (8).
- ii. The loss of self is unlawful and its prevention is obligatory, but it is when there are no rational motives; so preventing harm is not necessary (32). In response, it can be said: as the wise view, if the sexual force elimination and multiple organs destruction is not a serious damage, then the prohibited harm is just grouped as a type of killing; however, no one confirms the concept.

Therefore, this verse can be used in "the prohibition of Sex-Reassignment Surgery" but the higher degree of benefit could possibly change this prohibition to permit.

Prohibition of eliminating sexual drive: The Sex-Reassignment Surgery is considered a type of castration and castration of man is prohibited (25). Many traditions have cited that castration of human is forbidden (33-35). For instance, number of Shia and Sunni's source books cite a tradition that said Prophet Muhammad prohibited castration when Uthman ibn Madh'oun wanted to do it on himself (36, 37).

Prohibition of castration has been cited from Prophet's companions and followers such as Ibn Abbas, Anas bin Malik, Rabi bin Anas, Sufiyan, Shahr ibn Hosheh, Akramah and Abu Salih (37, 38).

Prohibition of effeminacy (Takhannothe): Effeminacy is the condition in which the man in behavior and in the manner of dialogue acts like women. It is of two types:

- i. intrinsic and the man does not imitate and his action is not stylized and dramatic;
- ii. who imitates the behavior and this is not innate (39).

In both Shia and Sunni's sources, numerous traditions cited that effeminacy is prohibited and that effeminate man will not enter into heaven (40). Prophet (PBUH) has cursed such people (33, 41, 42) and banished them from his town (43). The Sex-Reassignment Surgery is also like effeminacy and it is forbidden (25).

The effeminacy prohibition cannot be used to prove Sex-Reassignment prohibition unless it is proved that the sexuality of the person who has undergone Sex-Reassignment has not really and actually changed and still possesses the previous gender. In such case, the Sex-Reassignment Surgery is helping to continue effeminacy.

Prohibition for men imitating women and vice versa: Several traditions cite that Prophet's household has reprimanded the males imitating females and vice versa and the prohibition of such imitations can be extracted from these traditions.

These are some examples that are mentioned in separate chapters in "Vasayil al-Shia" book that entitled "Prohibition for men to imitate women and women to imitate men" (44).

The Sex-Reassignment Surgery is a kind of condition that leads to imitating the opposite sex that it is forbidden, so the Sex-Reassignment is also forbidden (8).

Criticisms: In imitation of one sex to another, the sex as a the main subject is not changed, rather with preserving the sex of the male or female, the

imitation in type of living or dressing or kind of sexual relationship would take place; the male with preserving its sex imitates the female and vice versa. So Sex-Reassignment is fundamentally different from imitation or resemblance to other sex (7).

Critical analysis: The study of prohibition's reasons shows that all reasons are not identical and they can be classified into three categories:

- i. "The prohibition of change in divine creation" cannot immediately be used for proving the rule of prohibition of Sex-Reassignment because without knowing its religious rule, it is impossible to take benefit from the Sex-Reassignment rule.
- ii. There are the reasons that are related to the needs of individuals, *i.e.* Sex-Reassignment Surgery is unlawful without the need and emergency. So, if there is a need for such act, those reasons cannot prove the prohibition of Sex-Reassignment Surgery. Reasons 2 to 6 are in this category.
- iii. There are seventh and eighth reasons, *i.e.* prohibition of "effeminacy" and "imitation". The argument to these reasons is possible when the gender in Sex-Reassignment actually has not changed.

Accordingly, it is necessary to study two subjects:

- i. After Sex-Reassignment Surgery, is the gender changed? And is this change real and actual or not?
- ii. Is there the necessity for Sex-Reassignment Surgery that makes the practice interesting and rational?

Possibility of Sex-Reassignment and juristic Showreyh tradition: The Sex-Reassignment advocates construe from Juristic Showreyh tradition (40) that some of the humans are completely both male and female, and at the same time they can have reproduction and fertility. So based on this presupposition, they believed that it is lawful to link such a person to either sex (1).

Several criticisms have been noted on this tradition. Differences in the text including the four ways of tradition, such as differences in the number of ribs and in the proverb mentioned in tradition, as well as its opposition to medical science and autopsy and its agreement with some of Aristotle's opinion that increases the possibility of fraud and forge, are some of the problems mentioned against this tradition. Likewise, this tradition is a single tradition and it is in contradiction with Imam Baqir's tradition (45).

Possibility of Sex-Reassignment in holy Quran:

God in the Holy Quran said that determination of human sex is in his monopoly, [Unto Allah belonged the Sovereignty of the heavens and the earth. He createth what He will. He bestowed female (offspring) upon whom He will, and bestowed male (offspring) upon whom He will; Or He mingles them, males and females, and He makes barren whom He will. Lo! He is Knower, Powerful] (Shoura: 49, 50).

These verses negate the possibility of gender determining and its reassignment and indicate it is not feasible for mankind, because, if it was possible for human, the monopoly expressed in the verse was not correct and God's "bestowed male or female" was meaningless.

If surgery could create male and female gender, then it was not correct to say the God has bestowed girl or boy. Therefore, this verse says the creation of gender and being male or female is in the hands of God and it is out of human reach. As such, the accomplishment of Sex-Reassignment Surgery is superficial and an external change (8).

It is marvelous that in the past times or today when science abundantly advanced, no one has the power to choose the sex of child and despite all efforts, the gender could not be determined based on human request (26).

Possibility of Sex-Reassignment in science: Sex-Reassignment advocates have accepted that this surgery cannot transform the gender completely (10).

Moreover, gender symbols in scientific point of view are external organs of body such as genital, internal sexual organs such as ovaries and uterus, chromosomal and genetic signs, psychological sexual orientation and shape of the human brain (46-48).

In Sex-Reassignment Surgery to change male to female, they remove genital organ and testicles, and then with part of intestine of person or other animal, they will make female genitalia. At this stage, removing testicles and minimizing most of male characters, such as beard are done and with injection of female hormones, breasts become prominent like that of females.

In Sex-Reassignment Surgery to change female to male, they remove uterus and ovaries and by using part of arm's muscles, they make something like penis and in some cases, placing prosthesis causes the erection of penis (8). It is clear that except in rare cases, the changes are not permanent or complete. Although they make a thing like gen-

ital but gonadal graft is impossible and none of features related to sexual hormones are permanent and to keep them stable, hormones should always be injected. Likewise, the person who has Sex-Reassignment Surgery cannot have normal pregnancy or fertility.

Moreover, it is inconceivable that a medical expert team or even collection of world's skill surgeons could be able to transform sexual chromosomes of a man (XY) to sexual chromosomes of a woman (XX) or vice versa.

Accordingly, it is correct to say that the result of Sex-Reassignment Surgery is an incomplete man and woman, and it has not really been changed.

In fact, with due attention to basic signs of gender, those accepted in religion, custom and biology, the result of Sex-Reassignment Surgery is not only a failure in changing the sex of a person but also such a person changes into an incomplete or sick individual who loses his important and fundamental sexual strength. In reality, he could not get anything except sexual sterilization (49).

Conditional permission of Sex-Reassignment

Urgency and interest: A person who attempts to have Sex-Reassignment, in reality, suffers from a terrible mental illness and there is no solution for this disease unless changing the body as it matches to the spirit of individual (7).

Therefore, when doctors diagnose that Sex-Reassignment is necessary to fix the problem of such patients, the Sex-Reassignment Surgery for them is lawful (19).

The argument of conditional permission for Sex-Reassignment has two criticisms:

a- It should be noted that the urgency will be personal emergency; and it is the criterion for permit.
b- Even if urgency is fixed in one person, such aspect cannot remove prohibition of Sex-Reassignment because it would be extended to suicide and that corruption is the most important problem. This destruction of society mandates the requirement for accepting the secret life of a man with the name of a woman in the society that is definitely associated with promoting prostitution and sodomy.

Here, endurance of this hardship is determined and this surgery cannot be permitted since it is the proliferation of corruption as an emergency (25).

So, Sex-Reassignment Surgery cannot be accepted as the treatment of GID and other similar disorders (8).

Consequences of Sex-Reassignment: Some assess the positive effect of this process on people's life and believe that if this surgery is provided according to medical standards, anxiety and depression would be reduced and happiness and calmness is the outcome (50).

But other researchers reached the conclusion that those who do Sex-Reassignment Surgery have lower quality of life than those who avoid such surgery (51).

There are numerous reports detailing about effectiveness or ineffectiveness of Sex-Reassignment surgeries. The surgery, from the point of view of social rehabilitation, has no benefit for the sick (52). Even some of the Sex-Reassignment Surgery advocates accept the dissatisfaction of those who do this surgery (4).

Also, according to researches conducted by psychologists, 90% of those who do Sex-Reassignment regretted doing the surgery after two years and tried to suicide (8). However, less than 10% of those who had GID tried to suicide prior to going to do Sex-Reassignment Surgery (52).

Thus, there is no real exigency and rational in those who have GID.

Conclusion

Because Sex-Reassignment is actually impossible, based on all prohibition's reasons, it can be concluded that Sex-Reassignment Surgery is prohibited, because it was proved that real change is a non-accomplishment, thus, the person's behavior compliance as "effeminacy" and "imitation of male to female" in male and "female to male" in female and the practice compliance as "Imperfection of force". Therefore, such a person has ruined his sexual drive and physical strength that is unlawful too and because of this fact, prohibition of "change in divine creation" includes this surgery.

However, if one necessarily performs such a surgery, his gender should not be changed. As discussed, the urgency can't create the new rule; rather the tradition "la zarar" is prioritized to harm principle. Therefore, the one who does this surgery must take into account whether he/she can bear such a deficiency and his/her tendency is towards this surgery or his/her preference is to remain in this current state and condition; because in both conditions, he/she would not be allowed to connect with the opposite gender.

Conflict of Interest

Authors declare no conflict of interest.

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