

THE LEGAL AND SOCIAL ASPECT OF TRANSSEXUALITY
AMONG MUSLIMS; A STUDY IN MUSLIM COUNTRIES
WITH SPECIAL REFERENCE TO IRAN

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ACADEMY OF ISLAMIC STUDIES
UNIVERSITY OF MALAYA
KUALA LUMPUR

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SPECIAL REFERENCE TO IRAN**

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THE LEGAL AND SOCIAL ASPECT OF TRANSEXUALITY AMONG MUSLIMS; A STUDY IN MUSLIM COUNTRIES WITH SPECIAL REFERENCE TO IRAN

ABSTRACT

This thesis aims to study the Islamic and jurisprudential perspectives of transsexuality in the contemporary age by scrutinizing the primary sources of Islamic law, analyzing the opinions of religious leaders and Muslim jurists from different Schools of thought such as Shiite and Sunni, as well as surviving different approaches of majority Muslim countries to this subject. Doctrinal methodology was used in this research and some interviews in the form of questionnaires as an empirical study were conducted to support it. The findings of this research revealed that gender identity disorder is considered as an inherent defect and abnormality by the Will of Allah, which implies that individuals with gender identity disorder are not sinners and any surgical treatment to rectify physical defects is not a sinful act. This study also found that, sex reassignment surgery is considered as the most medically effective treatments for gender identity disorders and increases satisfaction and the quality of transsexuals' life after surgery in compare with before surgery. It was also found that despite the acknowledgement by the Quran and Sunnah of the existence of individuals with abnormal sexuality, Transsexuals (TS) are still subjected to numerous forms of abuse. They continuously face discrimination, arrest, torture and harassment, even in Islamic societies. It is hoped that these findings provide a congruent and supportive environment for transsexuals, where they as citizens can live fulfilling lives with maintaining their citizenship, gender and human rights.

Keywords: Transsexuality, Islamic Law, Shariah, sex reassignment Surgery, Islamic Countries

**ASPEK PERUNDANGAN DAN SOSIAL BERKAITAN TRANSEKSUALITI
DI KALANGAN MASYARAKAT ISLAM: KAJIAN DI NEGARA-NEGARA ISLAM
DENGAN RUJUKAN KHUSUS DI IRAN**

ABSTRAK

Tesis ini bertujuan mengkaji transeksualiti di zaman kontemporari menurut perspektif dan perundangan Islam dengan meneliti sumber-sumber daripada undang-undang Islam, menganalisa pendapat-pendapat para pemimpin dan ulama Islam daripada pelbagai mazhab termasuk aliran Sunnah dan Syiah serta pendekatan-pendekatan berbeza yang masih digunakan oleh negara-negara Islam berhubung perkara ini. Kajian dijalankan dengan menggunakan metodologi doktrinal berserta beberapa temubual dalam bentuk soal selidik sebagai satu penyelidikan empirikal bagi menyokong kajian ini. Dapatan kajian ini mendedahkan bahawa kecelaruan identiti jantina dianggap sebagai satu kecacatan dan kelainan yang wujud kerana ketentuan Allah, yang menunjukkan bahawa individu yang mengalami kecelaruan identiti jantina tidak berdosa dan sebarang rawatan pembedahan untuk memulihkan kecacatan fizikal bukanlah perbuatan dosa. Kajian ini juga mendapati bahawa pembedahan penukaran jantina dianggap sebagai rawatan yang paling berkesan bagi menangani kecelaruan identiti jantina kerana ia meningkatkan kepuasan dan kualiti kehidupan golongan transeksual berbanding tindak balas sebelum pembedahan. Hasil kajian juga menunjukkan bahawa walaupun Al-Quran dan Sunnah mengiktiraf kewujudan individu-individu yang mengalami keadaan seksual yang tidak normal, golongan Transeksual masih terdedah kepada pelbagai bentuk penderaan. Mereka sering menjadi mangsa diskriminasi, penangkapan, penyeksaan dan gangguan, mahupun dalam masyarakat Islam. Penemuan ini diharapkan dapat mewujudkan persekitaran dan sokongan yang wajar untuk golongan transeksual agar mereka boleh menjalani kehidupan sebagai anggota masyarakat yang mampu memelihara kewarganegaraan, jantina dan hak asasi mereka.

Kata kunci: Transeksual, Hukum Islam, Syariah, pembedahan semula seks, Negara-negara Islam

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LIST OF ABBREVIATION

APA	: American Psychological Association
ARROW	: Asian- Pacific Resource and Research Centre for Women
AS	: Alayhi s-salām
BC	: Birth Certificate
ICERD	: International Convention on the Elimination of All Forms of Racial Discrimination
DSM	: Diagnostic and Statistical Manual of Mental Disorders
EEF	: Erickson Educational foundation
ETPs	: Ethnolocalized Professional homosexual and Transvestite subject positions
FTM	: Female-to-male transsexual
GI	: Gender identity
GID	: Gender Identity Disorder
HBIGDA	: Harry Benjamin International Gender Dysphoria Association
IC	: Identity Card
ICCPR	: International Covenant on Civil and Political Rights
ICDDR	: International Centre for Diarrhoeal Disease Research, in Bangladesh
ICESCR	: International Covenant on Economic, Social and Cultural Rights
ICRP	: Indonesia Conferences on Religion and Peace
ISGE	: International Society of Gynecological Endocrinology
LGBT	: Lesbian, Gay, Bisexual and Transgender
LGBTQ	: Lesbian, Gay, Bisexual, Transgender and Queer
LMOI	: Legal Medicine Organization of Iran
MMPI	: Minnesota Multiple Personality Interview

- MTF** : Male-to-Female Transsexual
- NATO** : North Atlantic Treaty Organization
- NRIC** : National Registration Identity Card
- OIC** : Organization of the Islamic Countries
- OECD** : Organization for Economic Co-operation and Development
- PBUH** : Peace Be Upon Him
- SF** : Safra Project
- SRS** : Sex Reassignment Surgery
- SAW** : Salla Allaahu Alayhi wa Salaam
- TS** : Transsexuality
- TPI** : Tehran Psychiatric Institute
- WPATH** : World Professional Association for Transgender Health
- UN** : United Nations

LIST OF TERMINOLOGY

Biological sex / Physiological sex: the biological classification of physiological bodies as male or female usually determined by external sex organs.

Bisexuality: a category of sexual orientation which refers to a person who can experience emotional, romantic, sexual attraction to persons of both their own sex and the opposite sex.

Cross-dressed: A person who, regardless of motivation, wears clothes, makeup, that are considered by the culture to be appropriate for another gender but not one's own.

DSM: The Diagnostic and Statistical Manual of Mental Disorders.

Fatwa: In Islam, a religious opinion concerning Islamic law issued by an Islamic scholar. Fatwa is a legal opinion or ruling issued by an Islamic scholar, judge or mufti.

Feminists (Feminism): the Safra Project (SF) defines feminists as scholars and activists challenging gender bias and/or working towards gender equality.

Gay: A term used as a synonym to homosexual.

Gay Man: a man who experiences emotional, romantic, sexual and/or affection attraction only, or primarily, to another man or other men.

Gender: psychological or behavioral characteristics associated with biological males and females (Zucker 2006); or The social construction of masculinity and femininity in a specific culture.

Gender Dysphoria: a medical term referring to people who have a compelling sense that their gender identity is not in conformity with the physiological or biological sex they are born with.

Gender equality: refers to people receiving equal opportunities to realize their full human potential according to their wish, irrespective of gender.

Gender identity: basic discrimination of males from females and a sense of belonging to one sex (Zucker 2006), or an individual's internal sense of being male, female, or something else.

Gender queer: A term used by individuals, mostly transgender youth; who identified as neither female nor male, as both, or as somewhere in between

Gender role: behaviors, attitudes and personality traits that a given cultural/historical society designate as more appropriate to masculine/feminine (Zucker 2006). Gender affects how people perceive themselves and others and how they expect themselves and others to behave, that is, either in a 'masculine' or 'feminine' manner.

Gender Identity Disorder: The classification for transsexuality in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th Edition, Text Revision, 2001)

Heterosexuality: a category of sexual orientation, referring to a person who experiences emotional, romantic, sexual attraction only, or primarily, to a person of the opposite sex

Homophobia: an irrational fear of, or hatred against, lesbian, gay and bisexual people and homosexuality

Homosexuality: a category of sexual orientation, referring to a person who experiences emotional, romantic, sexual attraction only, or primarily, to (a) person(s) of the same sex

Lesbian: a woman who experiences emotional, romantic, sexual attraction only, or primarily, to another woman or other women. Her sexual orientation is categorized as homosexual

LGBT: is the acronym of lesbian, gay, bisexual and/or transgender

Queer: a term often used as a slur in English to refer to lesbian, gay, bisexual, transgender and queer (LGBTQ) persons

Sex: biological male/femaleness; can refer to certain forms of sexual behavior, i.e. ‘having sex

Sexual behavior: the factual behavior of a person in relation to her/his sexuality, either publicly or privately, including - but not limited to – having intercourse

Sexual orientation: refers to emotional, romantic, sexual and/or affection attraction from one person to another person or persons

Sexuality (Sexualities, Sexual diversity): Sexuality refers in its broadest sense to the quality of being sexual. The term sexuality is also used in plural, i.e. ‘sexualities’, to reflect the diversity of sexuality, also known as ‘sexual diversity’

Sharia: Islamic law. Other monotheistic religions

Sex Reassignment Surgery: Surgical procedures that change one’s body to conform to one’s gender identity

Transgender: *Transgender* is an informal term that applies to all individuals with gender identity–related concerns (World Professional Association for Transgender Health, 2001). Most commonly used transgender as an umbrella term for someone who Self-identification or expression challenges traditional notions of “male” and female”

Transsexual: Transsexual is a person whose gender identity is different from their assigned gender at birth and feels the need to undergo physical alterations to the body to express this feeling, such as hormone treatment and/or surgery. Or **Transsexual:** refers to people who have a compelling sense that their gender identity is not in conformity with the physiological or biological sex they are born with

Transvestite (‘Cross dresser’): a person who dresses in the clothing of the ‘opposite’ gender, either occasionally or always

WPATH: World Professional Association for Transgender Health. An Interdisciplinary, professional organization working to further the understanding and treatment of gender identity disorders

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CHAPTER 1: INTRODUCTION

1.1 Introduction

Gender identity disorder (GID) as a medical, psychological and socio-cultural phenomenon has been discussed in a number of science forums in the last century. It is a birth defect and the exact cause of which is still unknown, although many biological and psychological theories have been proposed by scientists¹. It has been diagnosed as a sexual abnormality by the early German sexologists and psychiatrists, such as Richard Von Kraft Ebbing (1840-1902), Magnus Hirschfield (1868- 1935), John Money and Harry Benjamin (1885-1986) (Stephen W. 2010:4-5)

Based on Euro-American studies, the term “Transsexual” is used to refer to individuals who have a strong sense of their biological and physiological sex and do not believe that their gender identity corresponds to the sex they were assigned at birth, especially those who have the intention to Sex Reassignment Surgery (SRS) or undergo hormone therapy (Zucker. 2006: 535-562, Shapiro. 2008: 138-161).

Transsexuals are not homosexual, although, unfortunately, they are often assumed as homosexuals and transgresses by many people. They have been recognized by medical sciences and psychology in 19th century and recently are becoming more visible in daily life and public affairs.

The increase in the number of transsexuals all over the world has become an important topic of discussion in legal and jurisprudential circles. In the US, for example, the number of sex reassignment surgeries conducted in the past four years shows that the male to female SRS was one or more out of 2500 adult male applicants (Conway. 2002, 2009). There are 100,000 transsexuals in Malaysia, and it is estimated that more than one out of

¹ Benjamin, H. MD. (1966). *The Transsexual Phenomenon*. The Julian press. INC. publishers. New York.

every 200 individuals is a transsexual in this country (Chong Lee Wei, Aziz Baharuddin et al 2012). According to Bucar (2012: 416-434), 28,000 to 48,000 transsexuals are found in Iran, and in every 100,000 persons, there are about four to six transsexuals. Hence, this is why Transsexualism is becoming more visible nowadays.

Religious opinions over the legal and jurisprudential status of transsexuals are becoming increasingly difficult to ignore. Despite having diagnosed transsexuality as a gender identity disorder and accepting sex reassignment surgery as the best treatment by any standards of care, transsexuals are still facing cynicism, religious prejudices, negative attitudes and they are grappling with stigma, discriminations, intimidation, arrest, torture and harassment, especially in majority Islamic countries.

Despite the numerous juristic opinions, judicial decisions and some religious verdicts (*fatwa*), transsexuals (TS) continue to suffer societal harassments. This study on transsexuals and their acceptance in Islamic societies was conducted from the Islamic perspective by examining the primary sources of the Shariah and the principles and fundamentals of jurisprudence as the most authoritative method for deducing rules from their source. It seeks to remedy these problems by analyzing the main sources of Shariah, as Prophet Muhammad (PBUH) said:

مَا أَنْزَلَ اللَّهُ دَاءً إِلَّا أَنْزَلَ لَهُ شِفَاءً

There is no disease that Allah has created, without creating its treatment.²

1.2 The Context of the Thesis

Transsexuality is a birth defect which is caused by changes in the amount of sexual hormones in the nervous system during the primary time of pregnancy (Équipe Alter Héros

² *Al-Bukhari. (1987), Ibn Hajar, (1988).*

2003)³. Transsexual refers to an individual who has a complete and strong sense that his/her gender identity is not compatible with his or her physiological or biological sex. Safra Project, Heba G. Kotb M.D. 2004).⁴ This caused some of the individuals to change their sex by sex reassignment surgery to make their biological or physiological sex conform to their gender identity. According to Bahram Mirjalali⁵, transsexuals are not homosexuals, although, unfortunately, they are often assumed as homosexuals and rejected by many people.

They have been recognized by medical scientists and psychologists in the 19th century and have recently become more visible in daily life and public affairs. Sex reassignment surgery as a novel medical phenomenon has raised numerous questions. The issue of completely changing the sex or gender of an individual has become a matter of controversy amongst writers, scientists and psychologists.

According to sexology and psychology sciences, sex reassignment surgery is the most successful treatment for these individuals⁶. Undoubtedly, sex change alters all the social, jurisprudential and legal status of transsexuals and leads to many legal and social consequences. So, the study of legal and jurisprudential status of these people, the viewpoints of religious leaders and the effects of these issues on social life makes this research exceedingly necessary. This thesis intends to consider the Islamic and jurisprudential perspectives of this phenomenon based on the Holy *Quran*, Hadith and juristic views. It will examine views of Islamic jurists on this issue. It will equally study the legal and social status of these individuals in some Islamic countries.

³ AlterHéros, E. (2003). A *Primer on Transsexuality*. Accessed 20 march 2010 from <http://transsexual.org/aprimer.html>

⁴ Kotb, Heba G. (2004). *Sexuality in Islam*. Maimonides University.

⁵ He is a Paris-trained surgeon and Iran's leading specialist in sex-change surgery

⁶ Whittle, S. (2010). A brief history of transgender issues. The Guardian. Reterived from: <http://www.theguardian.com/> <http://www.theguardian.com/lifeandstyle/2010/jun/02/brief-history-transgender-issues..>

1.2.1 Research Background

Although transsexuality might be considered as a new phenomenon, it had existed long before it was diagnosed in 19th century. Since transsexuality is a birth defect and birth defects are a part of nature, it is reasonable to assume that transsexuality could have been in existence from the beginning of the creation of human beings.

Historically, it is believed that people with sexual disorder have been in existence as some verses in the Holy Quran refer to some people that are neither men nor women, or there are men without any arousal to women or without skills of males, where it says:

أَوْ يُزَوِّجُهُمْ ذُكْرَانًا وَإِنَاثًا وَيَجْعَلُ مَنْ يَشَاءُ عَقِيمًا إِنَّهُ عَلِيمٌ قَدِيرٌ

Surah Ash-Shuraa, 42: 50

To Allah belongs the dominion over the heavens and the earth. It creates what it wills. It prepares for whom it wills females, and it prepares for whom it wills males.

In another verse

غَيْرِ أُولِي الْإِزْبَةِ مِنَ الرِّجَالِ

Surah An- Nur, 24: 31

Without the defining skills of males.

According to historical evidences, transsexuals had always been in existence, from the ancient to present time. There are some clues of the Paleolithic transsexuals from the societies of aboriginal peoples who lived in the Stone Age and a few remains of transsexuals

in the rain forests in South Africa⁷. They are called with different names in different societies for example they called as “*Gallea*” in ancient Rome, “*Hijra*” in India, “*Navajos* or *Dine*” in the southwest United States, and the “*Mahu*” of Tahiti. They often considered to as queer power, magic or kin to the Gods or spirits. Being transsexual was a form of courage in ancient culture⁸ and every society has had different ways in relation with these individuals.

However, the modern diagnosis of transsexuality dates back to the 1880s when the first field of sexology was created in Germany. Richard Von Krafft-Ebing (1840 - 1902) and Magnus Hirschfield (1868 – 1935) were the first German sexologists that started their studies in field of sex, gender and sexual disorder in transgender. Magnus Hirschfield as the first pioneer in the field of sex and gender studies, coined two popular terms of Transsexualism and Transvestism and he used the term “psychic transsexuality” for transsexuals. The first complete male to female sex reassignment surgery was performed by him and two of his Co-workers in his institute in 1931. Although, the initial surgeries were incomplete, the procedures were gradually developed in the following years.

Through the earliest sexologist studies of Kraft–Ebbing and Hirschfield, transsexuality became a recognized issue available for study, discussion and treatment. It entered into the scientific community rapidly and continued to spread and equally moved into the public spotlight.

Harry Benjamin (1885 – 1986) a German sexologist widely known for work on Transsexuality began to treat transsexuals with hormone therapy in 1949 and published a book “*The Transsexual Phenomenon*” in 1966⁹. As a direct result of Harry Benjamin’s

⁷Whittle, S. (2010). *A brief history of transgender issues*. The Guardian. Reterived from: <http://www.theguardian.com/lifeandstyle/2010/jun/02/brief-history-transgender-issues>.

⁸ Ibid.

⁹ Benjamin, H. MD. (1966). *The Transsexual Phenomenon*. The Julian press. INC. publishers. New York.

treatment, in the late of 1970s, sex reassignment surgery and hormone therapy widely became accepted as the most successful treatment for transsexuals and this view was confirmed by a 1999 Appeal Court decision in United Kingdom¹⁰. Therefore the situation began to change. Some gender clinics were opened in several universities such as Stanford, Northwestern, UCLA and the University of Minnesota. American private physicians began sex reassignment surgeries.

In the late of 19th century, several institutes started to assist and support transsexual people like: Erickson Educational foundation. 1964 (EEF), The International Society of Gynecological Endocrinology (ISGE), Harry Benjamin International Gender Dysphoria Association, 2001 (HBIGDA), the foundation for standards care for gender identity disorders, The World Professional Association for Transgender Health (WPATH), and currently an annual International symposium on this subject is sponsored by these institutes.

While most of ethical attributes, public affairs and religious duties are dependent on the gender and sex of an individual, sex change alters all these duties. This situation, unconsciously involved the families, friends and communities, and it posed challenge to religious leaders and Islamic scholars.

Ibn Sina and Abu Bakr Al-Razi are the first influential Muslim thinkers who allowed physical alteration to the body for the purpose of revealing the true sex of an individual.¹¹ The history of jurisprudential and legal discussion on Transsexuality in the contemporary world dates back to 1930. The legitimacy of transsexuality and some other questions about

¹⁰ Whittle, S. (2010). A brief history of transgender issues. The Guardian. retrieved from: <http://www.theguardian.com/> <http://www.theguardian.com/lifeandstyle/2010/jun/02/brief-history-transgender-issues>.

¹¹ - Sanders, P. (1991). Gendering the Ungendering Body: Hermaphrodites in Medieval Islamic Law. Women in Middle Eastern History. P:74-95

this issue was expressed by Imam Khomeini for the first time. Imam Khomeini's viewpoint in his book *Al-Tahrir Al-Vasileh* is the beginning of jurisprudential and legal discussion about transsexuality in the Islamic world. Also, the first Fatwa about transsexuality was passed in 1985 by Imam Khomeini in response to a letter from a transsexual, asking religious opinion on sex reassignment surgery as follow: "Changing gender under trustworthy physician prescription is legitimate and with no objection. I hope you will be healthy and good Luck."¹²

The second fatwa on Transsexuality was passed by *Al-Azhar* University Cairo in 1988. It is one of the most respected and the oldest Islamic schools in the world and the fatwa permitted performing gender reassignment surgeries to all Islamic countries. In this fatwa, the Mufti of the University stated;

It is permissible to perform the operation in order to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so on the grounds that it must be considered a treatment, it is, however, not permissible to do it at the mere wish to change sex from woman to man, or vice versa.¹³

Although, Tantawi's fatwa was worded in such a method that all groups claimed that it supported them but three significant points emerged from this fatwa. First sex reassignment surgery was permissible if it was considered as the only treatment for this medical condition. Second, it is not allowed under Islamic law if motivated only by individual desire. Third, since this fatwa has issued concerned to the case of Sally, it has been utilized for approving sex reassignment surgery in the case of individuals with gender identity disorder.

¹² Imam Khomeini. R. (1985). *Imam Khomeini jurisprudential office. Istifta'at section.*

¹³ Skovgaard-Peterson. (1995). *Sex Change in Cairo: Gender and Islamic law. The International Institute. Vol 2. No 3. Spring 1995.*

Gradually, more surgeries took place worldwide. Countries became more relaxed on sex reassignment surgery. Today, cases of sex reassignment surgeries are consistently heard in most countries and transsexuals have become more visible in public affairs and moved into the public spotlight. Nowadays, sex reassignment surgery has been accepted by most legal systems and some countries permitted it as a treatment. Transsexuality has emerged as a field of scientific research and became an all-encompassing idea of globalization which brings together all cultures and civilizations of the world. Further, people are gradually appreciating the defects of the transsexuals and accommodating them.

1.2.2 Statement of the Problem

Lack of knowledge and awareness of the legal status of transsexuals caused that they are considering as sexual perverse and encounter with violence from family, neighbors, co-workers, classmates, teachers and community. They are often subjected to oppression, intimidation, arrest, torture and harassment and are even deprived of their primary rights like education, housing, employment and human services. In addition to the transsexuals, their families also experience vilification, stigmatization and rejection. Family members, friends, co-worker and all those who are related with transsexuals feel constrained in their relations and confused about their interaction. Thus, they resort to religious answers to these problems.

Similarly, sex reassignment surgery, as an effective treatment for TS, has become a controversial subject. Sex reassignment surgery, alters all the social, legal and religious status of transsexuals.

There is no comprehensive Islamic perspective of transsexuality on order to addressing the increasingly challenging issues surrounding TS. Furthermore, notwithstanding the numerous juristic opinions, judicial decisions and some religious

verdicts (*fatwa*), the opinion of scholars over the legal and jurisprudential status of transsexuals is becoming more challenging and transsexuals are not accepted as rightful people in most Islamic societies.

Muslim Countries are different in their attitudes and approach regarding transsexuality. Few countries like Iran and Turkey, adopted some special regulation for the legal status of transsexuals (Danielle M. Lockwood. 2007). Some countries do not have any special legislation regarding transsexuals and only the voluntary cases of sex change are covered through judicial decisions, such as France, Saudi Arabia (Usher. 2004, Lucas Kurrin. 2015) and Switzerland (Drastic M. 1998).

The lack of uniform legislation and regulation about transsexuals all over the world has resulted in unsatisfactory situation concerning the rights of transsexuals hence the problem to be addressed is this research.

1.2.3 Significance of the Study

This work will be of great significance because it intends to add more knowledge about the phenomenon of transsexuality. Despite the fact that transsexuality had been recognized about two centuries ago, yet there is not enough Islamic and jurisprudential works on this issue. This research will attempt to present some Islamic and jurisprudential perspective of transsexuality based on the Holy *Quran*, Sunnah and juristic views.

There are a lot of studies about medical, psychological and social status of this subject in last decades but we are faced with a dearth study about the legal and Islamic jurisprudential status of this individual, especially related to sex reassignment surgery which alters many legal and religious duties of these individuals.

Although some Islamic verdicts had been issued by Islamic jurists and religious leaders in some Islamic countries about transsexuality, but there is no investigation about the source and reasons for their verdicts.

This study investigates the sources and reasons of religious verdicts through the study of the source of Shariah such as Holy Quran and Sunnah by scrutinizing on the fundamentals of jurisprudence and Law. Also the various opinions of jurists and their reasons will be studied in this work. The primary Schools of thought to be considered will be that of the Sunni and Shiite. It will make comprehensive analysis of the opinions of the leaders of these Schools in a manner that has not been covered by any other work.

Similarly, the work could facilitate the recognition and protection of the transsexuals in countries where they have not been given recognition as an independent gender. It could facilitate the promulgation of laws and the issuance of Islamic verdicts towards the protection of transsexuals. To offer alternative solutions as reinforcement the inadequate constitutional provisions regarding the legal status of transsexuals.

1.2.4 The objective of the Study

This study aims to achieve the following three:

The first aim is to identify and fill the research gaps, regarding the Islamic and jurisprudential perspective of transsexuality in today's world to proffer panacea to the short comings of the constitution on the legal and social situations of this vulnerable minority. To achieve this important goal, this study will use the Holy Quran, Hadiths and orthodox Islamic texts as source materials. It will examine the views of various Islamic jurists and analyze the reasons behind the views of the scholars. It will equally compare the viewpoints in order to bring to light the most appealing of the views.

The second aim is to survey the legal status and social situation of transsexuals in different parts of the world, especially in some Muslim countries to examine the various legal, social and medical problems that transsexuals are faced with in order to partake in solving the Muslim schism on medical treatment of transsexuals worldwide.

The last aim of this study is to help and support a better understanding of the issue surrounding transsexuals and create a safe environment to dispel misconceptions that cause stigmatization and discrimination against this vulnerable population as a result of their gender identity.

1.2.5 Research Questions

1. What is Transsexualism and how can it be treated?
2. What is the legal and jurisprudential perspective of transsexuality?
3. What is Transsexuality in the sight of prominent schools of thought in Islam and what are their arguments?
4. To what extent can concurring provisions of sharia and fiqh on transsexuality be used for the peace, unity and the global acceptance of transsexuality?
5. What are the gaps in the constitution relating to transsexuality?
6. How best can the gaps in the constitution relating to transsexuality be filled?

1.3 Methodology

Since this research intends to examine the legal, social and jurisprudential perspective of transsexuality, the doctrinal methodology will be used in this research. The doctrinal methodology involves the use of black letter approach to research. In doing so, both primary and secondary sources of Shariah will be used. This includes the Quran and Sunnah that all other sources of Islamic law are derived from them. Other sources of data include the opinion of religious leaders and Islamic jurists, the Constitution, statutes, textbooks, judicial

authorities, articles, dissertation and theses concerning transsexuality. Other sources were derived from newspapers, periodicals and the internet through electronic means.

The doctrinal methodology is also called documentary analyses and the position of the sharia, the argument of jurists and the standpoint of most Muslim majority countries can be brought to light by adopting this methodology.

Similarly, an empirical study which involves going to the field to interview people was equally adopted in this research. Adopting this study adds more weight to the research by making it original and adding the flavors of reality to the research. In this vein, interviews were conducted with 12 post-operative transsexuals in Iran. They were able to answer the questions of the researcher and have clearly exposed what it feels like to be TS. Their psychological and social situation, attitude of the society towards them, the policies of the state and the laws affecting them were all brought to the fore.

1.4 Literature Review

Transsexuality is a multi-faceted issue. Three areas of research are relevant with respect to the issue of TS thus: medical, social and legal issues. Upon observation, most of the available literatures about TS examined it from social, cultural and medical perspectives. What are often available are reports and documentations on the existing problem. Hence, there is a dearth of Legal, Islamic jurisprudence and religious literature on the phenomenon of transsexuality.

Although this research will not focus on medical and social aspects of TS, certain aspects of medical and social issue will surface in discussing the legal and jurisprudential issues hence making it a relevant aspect of the research.

1.4.1 Primary Researches

Through historical evidence, there were a well-organized categorized of sexual abnormalities in all human societies, long before that this issue appeared in the present age.

The existence of people with different sexual abnormalities had acknowledged by Quran and Sunnah. The Islamic societies in medieval ages also were not free from the subject of people with sexual abnormalities and medieval Islamic thinkers had discussed this subject from different aspects of life.

Paul Sanders (1991), a medieval Islamic thinker, had accurately and transparently portrayed the social and jurisprudential situations of the treatment for hermaphrodites and transsexuals.¹⁴ He described the dilemma of neutrals in medieval gender boundary societies and explained the determining of the gender role for these individuals, the alteration in their body was allowed by prominent Islamic thinkers such as Abu Bakr Al Razi and Ibn Sina¹⁵. Even the medieval European medical scientists like Galinoc have given this chance to these individuals to determine their true sex; and more interestingly, if gender was undetermined this ambiguity could be considered as a social problem not as a sign of sin or moral deviation.¹⁶

According to Everett K. Rowson (1991), there are considerable evidences of the existence of *Mukhannathun* or effeminate men in pre-Islamic and early Islamic Arabian societies. They had played a prominent role in development of music especially in *Mecca* and *Medina*. Since they are not considered as male and it is assumed that they are indifferent on women's body and have any arousal to women, they were allowed to associate with

¹⁴ Sanders, P. (1991). *Gendering the Ungendering Body: Hermaphrodites in Medieval Islamic Law*. Women in Middle Eastern History. P:74-95

¹⁵ Ibid.

¹⁶ Bucar, E. M. (2010). *BODY AT THE MARGINE The case of Transsexuality in Catholic and Shia Ethics*. Journal in Religion Ethics. Vol 38. Issue 4. PP: 601-615.

women freely. They also acted as marriage brokers and go-betweens. According to historians they were acknowledged and had exceptional prestige in the early periods of the *Umayyad* musical circles. This fantastic position ended with unexpected and violent end in the reign of caliph Suleiman¹⁷.

The primary researches on medical and psychological forums of transsexuality dates back to 1980, when Magnus Hirschfield (1868 -1935) and Harry Benjamin (1885 – 1986) as pioneers on transsexual subject started their studies in this field.

Harry Benjamin (1966), discussed transsexuality in all aspects. It is a rich work on this issue. He explained all kinds of transgenders, the causes, symptoms, etiology and legal status of TS and its treatment through psychotherapy and hormone therapy. He found out that, SRS can change unhappy and miserable lives to a satisfactory life (Benjamin. Harry 1999).

1.4.2 Transsexuality in Contemporary Islamic Debates

The first Islamic discussions about the issue of transsexuality were made by *Ayatollah Khomeini* in 1963 when he wrote his book. He wrote the Islamic perspective and explained the religious duties of transsexuality in his book “*Tahrir A l-Vasileh*” for the first time. He stated that “there is no religious restriction on corrective surgery” and it was the first fatwa on transsexuality in the Islamic world. Khomeini also explained some religious and jurisprudential duties of transsexuals.¹⁸

Seyyed Sikandar Shah Haneef (2005) studied the juridical possibility of sex reassignment surgery among Sunni context in Malaysia. He made reference to jurists

¹⁷ Rowson, E. K. (1991). *The effeminate of early Medina*. Journal of the American Oriental Society. Volume 111, No: 4, PP 671-693.

¹⁸ Imam Khomeini, R. (1967). *Tahrir al-Wasilla*. Two vols. Najaf: Matba'at al-Adab.

conflicting opinions on sex reassignment between Shiite and some Sunni scholars. He firstly explained the process of sex reassignment surgery, and then investigated the jurisprudential concept of transsexuals. He further compared them with the hermaphrodites and finally criticized the reasons for juristic controversy on this issue.

He made reference to acceptance of abnormal gendered people in early period of Islam as Mukhannath and Khuntha by orthodox Islamic jurists and disputed its legitimacy in the case of transsexuals by contemporary jurists. He also wrote on the supporting and opposing opinions in this case. He looked at transsexuals as tampering God's creation or it is a kind of deceit for change the true sexual role or it is an unnecessary medical treatment and done for sexual motivation. He opined that psychological therapy could solve the hermaphrodite problems, medical technology as a legitimacy option can also solve the transsexuals' problems.¹⁹

Nahid Mahmoodi, Ghasem Naziri and Mohammad Zarenezhad (2015), found that family play a vital role in controlling defects relating to gender identity. Most people affected by issues of transsexual disorder are due to family problem. Where the mother is over bearing and the father is always absent, that could be a cause. Importantly, the family is the first institution of the individual and the place where he learns the role he is expected to play based on his gender.²⁰

Seyedeh Maryam Mousavi, Samira Habibollahi, Seyedeh Madineh Ghasemnejad (2015) described transsexuality as a disorder. They compared the life style of the male and

¹⁹ Haneef, S. S. (2011). *Sex reassignment in Islamic Law: the dilemma of transsexuals*, International Journal of Business, Humanities and Technology.

²⁰ Mahmoodi, N., Naziri, GH. & Zarenezhad, M. (2015). *A Comparison of Attachment Styles and Identity Styles in People with Gender Dysphoria Disorder (Operated and Not Operated) and Normal People in Southwest of Iran In 2014*, Mediterranean Journal of Social Sciences, Vol 6 No 6 S6.

female gender on the one hand and transsexuals on the other hand. It was found that transsexuals face challenges from the family, society and employers. They face discrimination in employment and suffer low esteem and lack of confidence in themselves.²¹

Milinda Show (2005) described that act of discrimination against transsexuals as amounting to lack of tolerance and must be a thing of the past. The contemporary society must rise to the occasion and appreciate the diversity of human nature by accommodating transsexuals as independent human beings that have the right to remain as transsexuals without discrimination, harassment and molestation of all forms.²²

Javaid Rehman and E. Polymenopoulou, (2012), examined issues relating to homosexuality and LGBT Rights in the Muslim World. They argued that unlike what is generally believed, Islamic law accommodates sexual diversity and harnessing this potential in the contemporary world will allow for much accommodation for people like the transsexuals. This will in turn promote more understanding between Islamic principles and international law instruments.²³

Catherine Bevilacqua, Elizabeth Harper and Catherine Kent (2014) examined the extent of Iran's compliance with its international obligation on the respect of the rights of transgender and people involved in homosexuality and lesbianism. They opined that sexual relationship between people of the same sex is totally prohibited in Iran and people involved in such practice are subjected to different forms of punishment. However, sex reassignment

²¹ Mousavi, M., Habibollahi, S., Ghasemnejad, M. (2015). *A Comparison of Life Quality and Social Adjustment among Normal People and Those with Gender Identity Disorder (Transsexual)*, J. Appl. Environ. Biol. Sci., 5(8S) 19-24.

²² Milinda, C. (2005). *Smith v. City of Salem: Transgendered Jurisprudence and an Expanding Meaning of Sex Discrimination under Title VII*, Harvard Journal of Law & Gender [vol. 28].

²³ Rehman, J., Polymenopoulou, E. (2012). *Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World*, international Law Journal, Vol 37, Issue 1, Article 7, October 10, 2012, available at <http://ssrn.com/abstract=2180807>.

surgeries are very common in Iran; in fact it has been ranked as second in whole world. The reassignment surgery is viewed as a corrective measure against heterosexuality which is considered a kind of illness that requires medical treatment.²⁴ (Catherine Bevilacqua, Elizabeth Harper and Catherine Kent, (2014) Human Rights in Iran Legal Research Series Sexual Orientation and Gender Identity: Iran's International Human Rights Obligations, University Sussex).

Najmabadi A. (2010) also looked at the position of science and opinions of Islamic scholars on transgender in contemporary Iran. She made reference to psychological and biomedical issues with particular emphasis on jurisprudential rules in Iran.

Aghabikloo A, Bahrami M, Saberi SM, Emamhadi MA, (2012), discussed the increase in cases of transsexual surgeries in Iran, it found out that there is significant increase in such cases and the ratio of male to female surgeries is higher than that of female to male. The work also revealed that the extent of the society's rejection of the transsexuals has decreased in recent times.²⁵

Taher Roshandel Arbatani, Seyyed Vahid Aqili and Somayyeh Labafi, (2016), discussed the role of the media on issues affecting transsexuals in Iran. They found that the media has a significant role to play towards creating a positive or negative mind set on the transsexuals. They opined that there is generally negative societal attitude towards them and they suffer discrimination in many spheres of their social life.²⁶

²⁴ Najmabadi, A. (2011). *verdict of science, Rulings of faiths; Transgender/sexuality in contemporary Iran*, Social research, P 533-556.

²⁵ Aghabikloo, A. Bahrami, M. Saberi, SM. Emamhadi, M. A. (2012). *Gender Identity Disorders in Iran; Request for Sex Reassignment Surgery*, International Journal of Medical Toxicology and Forensic Medicine. 2012; 2 (4):128-134.

²⁶ Roshandel Arbatani, T. Aqili, V. Labafi, S. (2016). *Social Representations of Iranian Transsexual People in the Media: A Thematic Analysis*, International Journal of Academic Research in Business and Social Sciences, Vol. 6, No. 5.

Elhum Shakerifar. (2011), examined the attention enjoyed by the issue of transgender in recent years. He observed that the fact that homosexuality is clearly an offence under the Iranian law raises the concern as to where transsexuality can be an opportunity for increase in cases of homosexuality in Iran.²⁷

Bahreini R, (2008) wrote on transsexuality in Iran. She criticized acceptance of transsexuality by Iran. In her view, the Iranian government accepted transsexuality not just for medical and biological reasons but also due to Iran's cultural politics of sexuality and confluence of religious and medical literatures.²⁸

Najmabadi A, (2008) criticized Iran's positive approach towards transsexuality and sexual transitions and claimed that the religious-legal framework of transsexuality in Iran has been beneficial to the homosexuals. She did not only look at sexual transition as a component of same-sex relationship, but also claimed that sex transition has provided more room for relatively safer social space for gay and lesbian. It has boosted the perceptions of people that desire carnal relation with people of the same sex.²⁹

Elizabeth M. Bucar (2010) compared the divergent religious opinions on SRS among the Vatican and Shia clerics in Iran. She found out that although Iran has much in common with Vatican on many aspects of gender and sex, but their viewpoints on transsexuality are different. Vatican look at TS as a psych disorder and prohibited SRS but it is not only permissible in Iran, but also necessary in some cases. Diversity in their attitude on transsexuality is depending on their interpretation on this issue as a human condition.³⁰

²⁷ Shakerifar, E. (2011). *Visual Representations of Iranian Transgenders*, Iranian Studies, volume 44, number 3.

²⁸ Bahreini, R. (2008). *From Perversion to Pathology: Discourses and Practices of Gender Policing in the Islamic Republic of Iran*. Muslim World Journal of Human Right, Volume 5, Issue 1, Article 2).

²⁹ Najmabadi, A. (2008). *Transing and Transpassing across Sex-Gender Walls in Iran*, Women's Studies Quarterly, 36(3-4): 23-42.

³⁰ Bucar, E. M. (2010). *BODIES AT THE MARGINS, the Case of Transsexuality in Catholic and Shi'a Ethics*, Journal of Religious Ethics, JRE 38.4: 601–615.

Aslihan Polate (2005) studied the family attitude toward transgender people in Turkey. It was found out that the reaction of family as a small unit of society is actually a reflection of societies' attitude towards transgender people, the involvement of transgenders' families is an important factor in the process of sex reassignment surgery and there is still a dearth of literature on family's attitude towards transgender individuals. Finally it was pointed out that the media play an important role in showing the real status of transgender individuals and the necessity for more research on the different aspects of transsexuality in Islamic countries.³¹

Similarly, D. M. Lockwood (2007) equally studied the status of transsexuals in Turkey by analyzing the religious, legal and psychological texts and their influence on the definition of sex, gender, male and female. He found out that based on law, religious and psychology texts analysis, there are two category of sexual identity; masculinity and femininity. Social signifiers and literature demand that individuals must belong to one of two genders according to their biological sex.³²

Baudouin Dupret, (2002), examined legal and social aspect of transsexuals among other issues in Egypt. It made reference to two pronounced cases of sex change surgeries in Egypt. The fatwa of Sheikh Tantawi the Grand Mufti of Egypt was referred to in the work. Where he stated that in the case of inheritance, sex change surgery will not alter the status of the transsexual at the time of the death of his parents. That means if the father died while he was a male, he inherits as a male even though he has changed his gender through surgery subsequently

³¹ Polate, A. Yuksel, S. Discigil, A. G. Metris, H. (2005). *Family attitude toward transgendered people in Turkey: experience from a secular Islamic country*. INT'L. J. PSYCHIATRY IN MEDICINE. Vol. 35(4): 383-393.

³² Lockwood, D. M. (2007). *Negotiating the Boundaries of Sexed Identities: The Status of Transsexuals in Turkey*. A master thesis submitted to university Utrecht University.

Khan, Sharful Islam (2009), found out, Hijra in Bangladesh are not given any form of recognition. No other sex is recognized beyond the dichotomy of male and female gender. Being outside this norm, they are subjected to verbal, physical and sexual abuse. He asserted "Before safer sex interventions can be effective in a broader scale, *hijra* need to be recognized as having a space on society's gender continuum".³³

Similarly, Philip A Chan and Omar A Khan, (2007), examined the risk of HIV infection in cases of sexual relationship between males in Bangladesh. They found out that there is high risk of HIV transmission in cases of sexual relationship between males. They considered transsexuals (*hijra*) as a group that can be considered as vulnerable and subject to risk. *Hijra* in Bangladesh they added cannot be said to fall under the category of gay as described under the western settings.³⁴

Javaherian, F (2010) considered the legal and social status of transsexuals in Iran. She explained the process of sex reassignment surgery, terms and conditions that they should respect. Javaherian described problems and obstacles that transsexuals are faced with from their family and society as a result of misunderstanding. She made reference to the influential role of the educational system, mass media and government in informing transsexuals and in creating a satisfactory atmosphere through preventing all forms of discrimination and harassment.

Her findings were reached through interview with policy makers in this field and forty post-operative transsexuals. Eventually she mentioned the necessity of religious leaders' interference on the religious aspect.³⁵

³³ Khan, S. Hussain, M. Parveen, S. et al (2009). *Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh*, Journal of Health Population and Nutrition. 27(4): pp. 441-451 at 446.

³⁴ Philip, A. Chan. & Omar, A. Khan. (2007). *Risk factors for HIV infection in Males who have Sex with Males (MSM) in Bangladesh*, BMC Public Health, 7:153.

³⁵ Javaherian, F. (2010). *A study of Transsexuality in Iran*, Iranian studies, 43: 3, 365 - 377.

Sood, N. (2010) in collaboration with of Asian- Pacific Resource and Research Centre for Women (ARROW) examined the legal status and policies on Transgender people in 12 Asian countries. They made recommendations to governments and civil society actors for law and policy to affirm transgender people's right and improves their access to health service with the aim of reducing stigma, discrimination and violence on the TS.³⁶

The literatures reviewed have examined the issue of transsexuality from various perspectives. Some examined it from medical perspective, some from Islamic and jurisprudential perspectives while others from social and psychological perspectives. This research intends to examine the Islamic and jurisprudential perspective this subject in Iran and some Muslim majority countries.

1.5 Chapters

The study is divided into seven chapters. Chapter one is the introduction of the study. Chapter two provides an overview of the issues by explanation of the introductory concepts such as sex, gender, gender identity disorder, etiology, symptoms and treatment of transsexuality according medical science. Chapter three discussed the Islamic and jurisprudential texts, looking for a solution for this problem by analyzing the primary and secondary sources of Sharia, using exegesis by erudite exegetes. Chapter four examined the sociocultural and political status of transsexuality in Iran and explained the legal process of sex reassignment surgery as well as the Islamic scholars and jurists opinions on transsexuality. Chapter five analyzed the social, cultural and political situation of transsexuals in Islamic majority countries as well as the different approaches and attitudes of Muslim states towards these

³⁶ Sood, N. (2010). *Transgender People's Access to Sexual Health and Rights: A Study of Law and Policy in 12 Asian Countries*. Kuala Lumpur, Malaysia, The Asian-Pacific Resource and Research Center for Women (ARROW)

marginalized groups. Chapter six contains the fieldwork where interviews were conducted with some of transsexuals before and after sex transition and evaluation of sex reassignment surgery as a treatment for this illness.

The conclusion recommended a global focus for policy reforms and increasing the rights of transsexuals with a social constructivism movement from both the government and the individuals. It is hoped that this research will help in creating awareness on the need to respect the right of the transsexuals to live a normal.

1.6 Conclusion

As the name of this chapter suggests, it introduced the headlines and sub headlines discussed in the forthcoming structured of this work. This chapter as an introduction presented an overview of the entire thesis through stating the statement of problem, research background, research question, methodology, significant of study and objective of the thesis. This chapter prepares readers to what they will read in this research. As it mentioned before, this research contains 7 chapters.

CHAPTER 2: INTRODUCTORY CONCEPTS OF TRANSEXUALITY

2.1 Introduction

Since Transsexuality is a multi-faceted issue, it has been discussed from different directions. There is a growing literature of research about this issue from the social, psychological and medical perspectives. This chapter attempts to explain some introductory concepts regarding this subject according to medical, biological and psychological sciences that may be helpful towards a better understanding of this subject. To avoid misrepresentation, this chapter will describe the concepts of sex and gender, gender identity and other terms used in this study and will mention the medical, social and political criteria for diagnosis and assessment of gender identity disorder.

2.2 Sex and Gender

The conceptualization of sex and gender has been widely debated in different sciences, specifically in psychological and medical sciences in the last two centuries. Sociologists, biologists, psychologists and clinicians have studied sex and gender from different aspects and their perspective. Perhaps the first and the most elaborate discussions in this area were made by Harry Benjamin (1966) the pioneer researcher in Transsexuals, in his book "The Transsexual Phenomenon".

He asserts that, although according to dictionary, sex and gender are synonymous, but in fact, they are different. Sex is a word that seems to be definite and limited which is divided into male and female, but it is a vague and indefinite word in English language. Sex is a more applicable word to implications of libido, sexuality and sexual activity but gender is not the sexuality side of sex.³⁷

³⁷ Benjamin, H. (1966). *The Transsexual phenomenon*. Julian Press. Page No: 43. New York.

According to Joan Scott (2011): "Gender is a constitutive element of social relationships that is based on perceived differences between the sexes." And "gender is a primary way of signifying relationships of power"³⁸.

Joan Scott (2011), has enumerated 4 basic elements to definition of Gender: a) cultural symbols; b) normative concepts which is limited and direct and include the explanation of these symbols; c) social and political institutions and organizations; d) subjective identity.

Judith Butler (1990) also asserts: "Gender is repeated stylization of the body, a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being."³⁹

Sex is one of the fundamental classifications of human beings. It is sum of characteristics that can be categorized into one of two reproductive groups- male and female- and has been used for sexual activities, sexual behaviors and sexual orientation. It is determined by reproductive cells. The male reproductive cell is called Sperm and the female reproductive cell is called Egg. The apparent structure of these species may be different and may not be different. But their function, chromosome and hormone are always different.

Similarly, sex and gender are the essential elements to perceive innate differences. "Sex is biological while gender is culturally constructed"⁴⁰ (Judith Butler, 1990). According to psychological and legal evidence, everybody could have

³⁸ SCOTT, J.W. (1999). *Gender and the Politics of History*, New York: Columbia University Press Chapters 2 & 4. Page 42.

³⁹ Butler, J. (2001). *Doing Justice to Someone: Sex Reassignment and Allegories of Transsexuality.* " GLQ: A Journal of Lesbian and Gay Studies 7.4: 621–36.

⁴⁰ Ibid,

only and only one true sex and need one initial and determined sexual identity (D. M. Lockwood, 2007).

"Sex implicated to the biological differences between males and females, especially differences in genital and reproductive capabilities, but gender refers to socially and culturally determined attributes categorized as masculinity and femininity (Oxford Dictionary of Sport Science and Medicine).

Gender refers to behaviors, attitude and feelings that an organization or culture associates with the biological sex of individuals (APA 2011). Gender becomes manifest by the age of three or four years when the sex differences are becoming manifest in children (Harry Benjamin, 1966).

There are different elements and multiple steps or processes to becoming a male or female in human beings. There are also social, psychological and cultural influences involved in this process. Each one of these elements presupposes series of criteria and conditions. If any one of conditions is missed, there is no backtracking.

Furthermore, the sexual categorization of human beings into 'male' and 'female' is not just a matter of physiological appearance of the body. In medical and psychological science, sex means genitalia and refers to properties and attributes which determine biological factors of masculinity and femininity. "It is composed of the sex-determining genes, sex hormones, sex chromosomes, the gonads, the H-Y antigen, the internal reproductive structures, the external genitalia, and secondary sexual characteristics" (APA, 2008⁴¹).

⁴¹ APA. (2008). American Psychological Association; *Report of the Task Force on Gender Identity and Gender Variance*. Washington; (Money & Ehrhardt. (1972); Vilain. (2000); Grumbach, Hughes, & Conte. (2003). MacLaughlin & Donahoe. (2004).

Gender means kind or race and refers to behaviors, attributes and characteristics that societies consider for distinguishing the qualities between masculine and feminine.

Gender is not the sexuality side of sex, although it is sometimes used as an equivalent of biological sex. It may be based on public personality, legal status, social interactions, personal experiences, and psychological setting (Shuvo Ghosh 2012).

2.3 Gender Identity

People usually identify themselves as male or female based on external genitalia at birth. Genes, Gonads, sex hormones, sex chromosome and reproductive organs are the constituent elements of sexual characteristics of human beings. The total perception of an individual about being man or woman is the other important characteristic of a human being that is named gender identity.

Gender identity is an inner sense of masculinity or femininity (American Psychological Association, 2006). It is the awareness that I am a man or woman. Gender identity is how a person sees himself or herself, masculine or feminine, and it is based on culturally determined attitudes, behaviour patterns, and other attributes usually associated with masculinity or femininity.

Gender identity is not fixed at birth; it appears at the age of two or three and is influenced by a combination of biological and sociological factors reinforced at puberty. Once established, it is generally fixed for life. During childhood, boys come to know they are boys, and girls come to know they are girls. People usually act according to their gender identity and reveal their perceptions of their gender in their apparent behaviour. So we

immediately identify the gender role of people by their mannerism, clothing and their activities. These are the most general signs that signify gender role in public.

Gender identity is manifested in attitudes, behaviors and other aspects of personal life. In other words, it is how people exhibit themselves in the society based on their gender which includes clothing, speaking, mannerism and everything that we see. These factors determine each individual's masculinity or femininity.

The term of "*gender identity*" was coined by John Money in 1965 and he made the first definition of gender identity as follow:

"All those things that a person says or does to disclose himself or herself as having the status of boy or man, girl or woman, respectively. It includes, but is not restricted to sexuality in the sense of eroticism. Gender role is appraised in relation to the following: general mannerisms, deportment and demeanor; spontaneous topics of talk in unprompted conversation and casual comment; content of dreams, daydreams."⁴²

According to Money (1973); "Gender identity is the result of a complex interaction between three factors: (1) genetic disposition; (2) physiological factors; and (3) the socialization process"

Based on Money's statement, and since he used the complex reaction for gender identity, it is not possible to say that the nature and natural characteristics is the answer to any individual's sense of self and acquired attributes. Certainly both nature and nurture are effective in demonstrating the nature of individuals as man or woman.

⁴² Money, J. (1973). *Gender Role, Gender Identity, Core Gender Identity: Usage and Definition of Terms*. Journal of American Academy of Psychoanalysis. 1:397- 402.

Gender identity is not the same as gender, the biological sex is often matched with gender identity for most people, but sometimes, in small group of people gender identity is not matched with biological and physical sex that they are born with. This is a rare disorder but leads to a lot of problems and challenges for both the individuals and their families. Although there are specific criteria that doctors use to diagnose the real gender identity, in a nutshell, it is the duty of psychiatrists to find out the true gender identity that is hidden behind physical appearance.

2.4 Gender Identity Disorder or Transsexuality

Gender Identity Disorder (GID) is a medical condition that an individual has a complete sense that his or her gender identity is opposite of the biological and physical sex that he was born with. It is a conflict and struggle between physical phenotype and gender identity.

For instance, an individual identified as a male, may actually act and feel, as a female, and an individual identified as a female, may act and feel as a male. This disorder can impact on a person's self-image and affect his behavior, clothing or their mannerisms and force them to alter their physical appearance with hormones, cosmetics or even surgery.

People with gender identity disorder strongly believe that, they are trapped in a wrong body and that causes serious sexual dissatisfaction with their own biological sex. They may act as members of the opposite sex and want to change their physical sex.

This disorder involves an actual struggle between the biological sex of individuals and the internal sense of self as man, woman or neutral. In fact, the people with gender identity disorder are victims of a biological defect which makes them feel jailed in a wrong body and incongruence with gender identity. It is a rare disorder but leads to a lot of heartache and turmoil for both children and their parents. GID is different from transvestitisms, cross dressers and homosexuality.

Transsexuals refer to individuals that experience their emotional and their gender orientations different from their true sex. They act according to the true identity he or she knows, although their behaviors seem to be the opposite of their physical and sexual appearance. These individuals suffer from an incongruent and conflict between body and soul and believe that their physical sex and their body do not belong to them.

According to Mirjalali, B; “Transsexuality is a disease and is totally different from homosexuality and sexual or moral perversions. Transsexuals are innocent people who have to endure the worst possible agony in their prisonlike bodies”. Also sometimes they lumped in LGBT acronym that includes: Lesbian, Gay, Bisexual and Transgender people.

2.5 Etiology of Transsexualism

The cause of gender identity disorder is actually the most controversial, puzzling and obscure parts of studies and researches about Transsexuals (Harry Benjamin (1966)).⁴³ Indeed, the accurate reason for this disorder is still unknown. There is no clear consensus or general agreement upon the cause of gender identity disorder. Several theories have been developed as causes for transsexuality; genetic abnormalities, hormone imbalance during embryonic and childhood development, upbringing and parental expectations, social factors, environment factors or combination of all these factors, but all these are theories and not facts. (J Charles Goddard, R. M Vickery, Tim R Terry, 2007).⁴⁴

The earliest psychological studies reveal that the close relationship between mothers and their sons lead to gender identity disorder (Stoller R J, 1968)⁴⁵. Other scientists considered extraordinary increase in female hormones in the brain of the fetal in critical

⁴³ Benjamin, H. (1966). *The transsexual phenomenon*. New York. Julian Press. Page 45.

⁴⁴ Tugnet, N. Goddard, J. C. Vickery, R. m. Khoosal, D. Terry, T. R. (2007). Current management of male-to-female gender identity disorder in the UK. *Postgraduate Medical Journal* 2007 83:638-642.

⁴⁵ Stoller, R.J. (1968). *Sex and gender on the development of masculinity and femininity*. The Hogarth Press.

period of development, caused the mismatch between biological sex and gender identity in male (Benjamin H, 1966).

A few studies in Dutch expressed that there are anatomical differences in the central part of the bed nucleus of the stria terminalis (BSTc) of the male who suffers from gender identity disorder⁴⁶. This theory was recently confirmed by some researches in the brain cells of transsexuals in 2000. Scientists identified an area in the hypothalamus that is responsible for sexual orientations. This region in the male is always larger than female. In their studies on six male to female gender identity disorder, they found that there is a female BSTc size in male that suffer from gender identity disorder and that makes their sex hormones not influenced in adulthood. This means that a strong biological force obliged them to be female than a psychological condemnation. They also found the number of neurons in limbic nucleus of female transsexual in the male range and there is probability that some people are born as women with a neuro-hormonal drive to be males (Frank P.M. Kruijver, Jiang-Ning Zhou, Chris W. Pool, Michel A. Hofman, Louis J. Gooren and Dick F. Swaab, 2000)⁴⁷.

Recently many scientific results have been proposed by scientists about the cause of transsexuality as follow:

They suggest that neuro biological origins are causes for transsexuality. “Several sexually dimorphic nuclei have been found in the hypothalamic area of transsexual’s brain (Allen & Gorski, 1990; Swaab et. al., 2001)”⁴⁸

“Transsexualism might be caused by prenatal exposure to abnormal levels of sex hormones that alter the development of the brain structures that determine gender identity

⁴⁶ Zhou, J. N., Hofman, M. A., Gooren, L. J., Swaab, D. F. Nature. (1995). *the Etiology of Transsexualism*. Nov 2. 378(6552): 68-70.

⁴⁷ Kruijver, F. P. M., Zhou, J.-N., Pool, C. W., Hofman, M. A., Gooren, L. J. G., & Swaab, D. F. (2000). *Male-to-female Transsexuals have female neuron numbers in a limbic nucleus*. Journal of Clinical Endocrinology and Metabolism, 85, 2034–2041.

⁴⁸ Allen, L.S. & Gorski, R.A. (1990). *Sex Difference in the bed nucleus of the stria terminalis of the human brain*. J Comparative Neurology. 302:697-706.

(Kruijver et al., 2000; Zhou, Hofman, Gooren, & Swaab, 1995)". "Transsexualism may also be genetic in origin." (Green, 2000; Henningson et al. 2005)

"Regardless of cause, Transsexualism is not responsive to psychotherapy (Cohen-Kettenis & Gooren, 1999)". "For those with severe gender identity disorders, sex reassignment surgery is the most effective treatment available (Cohen-Kettenis & Gooren, 1999)".

2.6 Symptoms of Transsexuality

Gender identity is not fixed at birth. It is well established during the age of two or three of the childhood. So the problem of most individuals with gender identity disorder begins in the early stage of their childhood. During this age, children know themselves as boy or girl and essentially they should behave, act and show their habits according to their gender identity. But sometimes children prefer activities considered to be more appropriate for the opposite sex. As the following symptoms are usually observed in the behaviours of children with gender identity disorder according to Stephen R. Hooper, George W. Hynd and Richard E. Mattison (1993):

- They prefer to wear the clothes of the opposite sex.
- They do not agree with their genital and have a negative feeling.
- They believe that they belong to the opposite sex.
- They usually become brittle by their peers and they feel lonely.
- They intensely wish for join to games and activities related with the opposite sex.
- They behave and dress like the opposite sex.
- They often withdraw from social activities and actions.
- At least they have a deep feeling of isolation, depression and anxiety.

Sometimes gender identity disorder appears in adulthood and sometimes these individuals do not agree with their gender identity for a long time and they keep it secret from their family. So they get married or join some groups in order to escape their desire to be a member of the opposite sex. The problems of these individuals increase at puberty. With the development of the secondary sex characteristics, the anxiety, depression and frustrations increase especially in men.

The following symptoms often display in adults and adolescence with gender identity disorder:

- They act and show habits typical of the opposite sex.
- Feel alone
- Tendency to live as a member of the opposite sex.
- Attempts to get rid of their own genitals.
- Clothing and behaving in a way typical of the opposite sex.
- Isolation from social communications and activities.
- Feelings of isolation, depression, and anxiety.

These people always suffer from a feel of shame, fear, loneliness and they are confused to handle their problems in society, especially about their dishonest behaviours with family and friends. Sometimes the intensity of depression, isolation and anxiety in these individuals becomes a threat to their lives and that requires medical treatment. Sex reassignment surgery has been recognized as the most successful treatment for the severe form of this disorder and if these individuals lack the ability to undertake surgery that could lead to suicide.

2.7 Diagnosis of Transsexuality

The management and diagnosis of gender identity disorder is a difficult process. There is no need for any laboratory test. A careful personal history by a proficient psychologist can diagnose gender identity disorder. Gender identity disorder has been hitherto dictated by the standards of care of the Harry Benjamin International Gender Dysphoria Association (HBIGDA). Different specialties are involved in diagnosis process of gender identity disorder. It may begin by a general practitioner and will then be referred to a professional gender identity disorder service. This process comprises of a specialist group of psychologists, psychiatrists, endocrinologists, professional surgeons, nurses and counselors (Wylie K, BMJ, 2004)⁴⁹.

The mental health professional must first ensure the absence of physical problem and any desire to change to the other sex merely for perceived cultural advantages. If the mental health professional diagnosis any physical problem in individual, it should be referred to a medical doctor for a complete physical examination.

According to “*The Diagnostic and Statistical Manual and Mental Disorders (DMS - IV- TR)*), for labelling a person as gender identity disorder, the following conditions and criteria should to be considered:

1. A transsexual individual should have a strong sense of dissatisfaction and incompatibility with his/her physical sex.
2. Individuals with gender identity disorder must have a desire to change their own genitals and live as a member of the opposite sex.
3. The disorder and conflict must be continuous and sustained at least for two years and should not only be limited to short periods of stress.

⁴⁹ Wylie, K. (2004). *ABC of sexual health: Gender related disorders*. British Medical Journal, 329, 615–617.

4. There should be no any mental disorder like schizophrenia.

For the first time, gender identity disorder was diagnosed in the psychiatric nomenclature in the DSM III (American Psychiatric Association, 1980).⁵⁰ They provided specific criteria for both groups, male and female, and for different age; childhood, adolescence and adults.

Overall, the following general criteria are usually used in researches to label an individual as a victim of gender identity disorder:⁵¹

1. Strong and persistent cross-gender identification.
2. Persistent discomfort with their sex or having a sense of incongruence in the gender role of birth sex.
3. The disorder is not concurrent with a physical disorder, such as hermaphrodites which is born with two genitalia, male and female.
4. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Gender identity disorder is identified by the following criteria in children:

1. They strongly prefer wearing clothes of the opposite sex. The boys prefer displaying for cross-dressing or simulating female actions; the girls would insist on wearing only masculine clothing.

⁵⁰ Zucker, K. J. Bradley, S. J. (1995). *Gender identity disorder and psychosexual problems in children and adolescents*, New York, NY: Guilford Press.

⁵¹ *The Diagnostic and Statistical Manual of Mental Disorders* American Psychiatric Publishing, Inc.; 4th edition. (2000). Zucker, K. J. Bradley, S. J. (1995). *Gender identity disorder and psychosexual problems in children and adolescents*, New York, NY: Guilford Press. Chapter 4. Page40. - Benjamin, H. (1967). *The Transsexual phenomenon*. Transactions of the New York Academy of Sciences, 29, 428–430.

2. Displaying strong and persistent preferences for cross-sex roles in make-believe play or experiencing persistent fantasies of being a member of the other sex.
3. Having an intense desire to participate in the games and pastimes that are stereotypical of the other sex.
4. Exhibiting a strong preference for playmates of the other sex.

Among adolescents and adults, the disturbance is manifested by symptoms such as a stated desire to become a member of the other sex, frequent passing as a person of the other sex, a desire to live or be treated as the other sex, or the conviction that he or she has the typical feelings and reactions of the other sex. These characteristics cannot be merely from a desire for any perceived cultural advantages of being the other sex.

With adolescents and adults, a doctor bases the diagnosis on whether they do the following:

1. Express a desire to be the other sex frequently
2. Try to pass as the other sex
3. Want to live or be treated as the other sex
4. Believe that they feel and react like the other sex”

2.8 Treatment

Gender identity disorder usually begins in childhood and is manifested in adolescence or adulthood. Timely recognition and early treatment can change the course of gender identity disorder and help this individual fix their behavioural problem later in life (American Psychiatric Association, “*Diagnostic and Statistical Manual*”). The combination

of psychotherapy, counselling, hormone therapy and sex reassignment surgery is usually used for gender identity disorder's treatment. Treatments depend on the level of disorder.

According to "*The standards of care of the Harry Benjamin International Gender Dysphoria Association*" the treatment should be accompanied by an extensive psychiatric assessment with at least one year living in the role of the desired gender. Of course the family and friends' supports are essential in this process (Wylie K, 2006). Counseling can also play a prominent role in helping these individuals to pass the critical time during the treatment process.

Transsexuals with low degree of gender identity disorder may not need sex reassignment surgery. They are satisfied with change in gender roles by acting as a member of the opposite sex. Transsexuals with a higher level of gender identity disorder usually need psychotherapy. The psychotherapy is one common form of treatment for transsexuals. Psychotherapy helps transsexuals either in overcoming the problems they are faced with, or assist them in the process of sex reassignment surgery. They are often reluctant towards psychological treatment, but to obtain the sex reassignment surgery and hormone therapy they need psychological treatment.

Hormone therapy is another form of treatment for transsexual people. In hormone therapy the individuals receive the hormones of the opposite sex to adapt to their behaviour with secondary sex characteristics. The use of female hormone oestrogens is made for males to change body and get them closer to female characters and the use of male hormone testosterone for females to effect some changes such as growth of hair, deep voice and other changes in body.

Transsexuals with severe gender identity disorder often request persistent sex reassignment surgery. Before the surgery, the patients have to pass a long time of hormone therapy to repress their own sex characteristics and reinforce the characteristics of the opposite sex. After hormone therapy, they have to live in the role of the opposite sex at least for 1 to 2 years. During this time they must demonstrate the ability to successfully live and act full time in their new gender. Some studies show that gender transition has helped transsexuals to live better and more productive lives. This helps them achieve greater adaptation and life satisfaction.

2.9 Conclusion

This chapter attempted to familiarize the reader with some terms and concepts regarding to this issue and explain the cause, conditions, symptoms, treatment and complications of this phenomenon on personal and social life of people who are involved with it. For more knowledge of reader, this chapter referred to some introductory concepts regarding to this subject according to medical, psychological and biological sciences

CHAPTER 3: TRANSSEXUALITY AND ISLAMIC JURISPRUDENCE

3.1 Introduction

Medical science and surgical technological developments are creating new issues that prepare the grounds for new debates and discussions. "*Sex reassignment surgery*" is one of the issues that have been challenged in different fields of research and it is one of the most significant current global discussions in legal and moral philosophy.

Transsexuality is a common disorder recognized by medical and psychological scientists and has become a central issue for all communities as it is becoming increasingly difficult to ignore, and have heightened the need for answer. Response to these issues will require a new approach that can be found only in the theory of Islamic dynamic Jurisprudence (*fiqh*).

Over the past century there has been a dramatic increase in different fields of research such as socio-cultural, medical and psychological research. So far, there has been little discussion about Islamic and Jurisprudential perspectives of this issue remains a controversial subject. There is no general agreement about the legal and jurisprudential status of these individuals.

This chapter reviews the Islamic and jurisprudential literature concerning these people and seeks to remedy these problems by analyzing the primary and secondary sources of the Sharia using exegesis by erudite exegetes.

It begins by definition of Shariah and Islamic jurisprudence and will equally give a brief overview of sex change in Islamic jurisprudence. It will equally examine transsexuality according to the primary sources of Shariah. After that it will examine this issue according

to secondary and subsidiary sources of Shariah. Finally, it will discuss transsexuality among Islamic thinkers and explain their reasons.

3.2 Shariah and Islamic Jurisprudence (Fiqh)

Sharia is an Arabic word which literally means "the way" or "Path". Although the term Shariah is most commonly used as "Islamic Law", it is jurisprudentially defined by Mohammad Omar Farooq as follow: "The set of rules derived from both the Holy Quran and the authentic traditions (Sunnah) of the Prophet (peace be upon him) and the scholarly opinions (Ijtihad) based on Quran and Sunnah."⁵²

After a Muslim establishes his religion (Din) by believing in Allah, His Prophet, Books and Angels he puts this into practice and that is Shariah.⁵³

Jurisprudence means Fiqh which figuratively means not only the shallow knowledge of legal issue but deep understanding of it through the sources of the Shariah. It is also referred to as usual al-Fiqh (Islamic jurisprudence).⁵⁴

The Holy Quran itself uses the word Fiqh to mean understanding as follows⁵⁵:

هَمْ قُلُوبٌ لَا يَفْقَهُونَ بِهَا

Surah Al-A'raf, 7:179

They have hearts wherewith they understand not.

⁵² Farooq, MO. (2015). *What is Shariah? - Definition/Description potpourri*. Retrieved from: http://www.globalwebpost.com/farooqm/study_res/islam/fiqh/farooq_shariah.html. May 14, 2016.

⁵³ Ibid.

⁵⁴ Hassan Al-Rida'I. *The Basics of Islamic Jurisprudence*. Translated by: Hamid Hussein Waqar. 1426 Hijrī - Qum al-Muqadasah. Ibn Manzūr. Lisān al-'Arab.

⁵⁵ Hassan Al-Rida'I. *The Basics of Islamic Jurisprudence*. Translated by: Hamid Hussein Waqar. 1426 Hijrī - Qum. al-Muqadasah.

This verse has clearly shown that usual al-fiqh under the sharia stands for Islamic jurisprudence.

3.3 “Sex” and “Change” in Jurisprudential Term

Transsexuality is made up of two words “sex” and “change”. The word “sex” in Arabic language means “*Jins*” {الجنس}, which has two different meanings. ‘The literal meaning of “*Jins*” is the “*genus*” of something or the kind or race. In other words, the essence and substance that encompasses multiple types. The secondary meaning of “*Jins*” is “sex”, which can be described as biological differences between male and female.⁵⁶ This study is concerned with the second meaning of “*Jins*” (sex).

The word “change” is defined in Arabic language as:

عَيَّرَ الشَّيْءَ: حَوَّلَهُ وَ بَدَّلَهُ بِهِ غَيْرَهُ، جَعَلَهُ غَيْرَ مَا كَانَ

Changing something means turning it into another one or changing its nature.⁵⁷

It is further said thus:

التَّغْيِيرُ هُوَ أَحْدَاثُ شَيْءٍ لَمْ يَكُنْ قَبْلَهُ؛

Changing something i.e. creating something different from its previous shape.⁵⁸

3.4 “Sex Change” in Islamic Jurisprudence

The literal meaning of “*Sex change*” in medical term is equal with its lexical meaning. It means turning a male into a female or vice versa, as some jurists said:

⁵⁶ Maluf, L. (1979). *Al- Munajjid fi Al-lugha Wa- Al-Alam, Arabic Dictionary*. Dar Al-Mashriq.

⁵⁷ Ibid.

⁵⁸ Jurjani, Seyyed Sharif Ali Ibn Mohammad. (1994). *Al. Kitab Al-Ta'rifat*. Dar Al-Nafais. Lebanon.

Sex change is turning a man into a woman and vice versa.⁵⁹

تَبْدِيلُ الْجِنْسِ قَدْ يَحْصَلُ بِطُرُقِ الْجِرَاحَةِ الطَّبِيبَةِ الْحَدِيثَةِ امْكَانَ أَنْ يَتَحَوَّلَ الرَّجُلُ إِلَى امْرَأَةٍ

[و] أَنْ تَتَحَوَّلَ امْرَأَةٌ إِلَى رَجُلٍ وَهُوَ الَّذِي سَمِينَاهُ بِتَبْدِيلِ الْجِنْسِ فِي الْعَنْوَانِ

Transforming sex sometimes is done by an advanced medical surgery as a man turning into a woman and vice versa, that we dominate it “transforming sex.”⁶⁰

In that stand, the term transforming itself is described as

تَبْدِيلُ الْجِنْسِ وَ نَرِيدُ بِهِ هُنَا تَحْوِيلَ فَرْدٍ نَفْسَهُ مِنَ الذَّكَوْرَةِ إِلَى الْأُنْثَوْتِهِ أَوْ بِالْعَكْسِ

Transforming sex means; a person turns himself/herself into a man or woman and vice versa.⁶¹

In Transsexual discussion, the term “Sex” means genitals and it does not refer to gender identity. In other words, sex change does not mean change gender identity, as it does not mean change of nature or *Fitrah*⁶². But it means, reforming or modification of a wrong genital through surgery; changing a male genital to female genital or vice versa, in order to make congruent between genital and gender identity.

Thus, sex change is never done merely to replace a genital with a cavity, or vice versa in order to make a man similar to a woman or vice versa, in order to have sexual intercourse as some authors assumed such as Raha Bahreini, 2008⁶³. It is done on those who have sexual,

⁵⁹ Mohseni, M A. *Al-Fiqh Va Al-Masaelu Tebbiyyah*. Volume 1. Page 111.

⁶⁰ Sadr, M. (1996). *Ma wara 'al-fiqh*. Vol 6. Dar al-Adwa. Beirut.

⁶¹ Sadr, M. (1996). *Manhaj Al-Salihin*. Volume 3. Page 642.

⁶² Haneef, S. S. (2011). *Sex Reassignment in Islamic Law: The Dilemma of Transsexuals*. International Journal of Business, Humanities and Technology. Vole 1. No: 1.

⁶³ Bahreini, R. (2008). *From Perversion to Pathology: Discourses and Practices of Gender Policing in the Islamic Republic of Iran*. Muslim World Journal of Human Rights. Volume 5. Issue 1. Article 2.

physical or psychological problems as diagnosed by professional physicians and sex reassignment surgery is recommended as the most successful treatment for them.

Contrary to the popular misconception that anybody can undergo sex reassignment surgery, both legal and medical experts allow only 2 groups to legally do so.

The first group is known as “*Khuntha*” in classical Islamic jurisprudence and “*Hermaphrodite*” in English Language, while the second group is referred to as “*Mukhannath*” or “*Transsexual*”. Since sexual disorders are natural, it happens to all creatures.

3.5 Kinds of “Sex Change”

Since transsexuality is a birth defect and can occur in all mammals, sex change is possible in both humans and animals. Researches further discovered that sex change can occur in various kinds of plants⁶⁴.

Furthermore, sex change is done legally to *Khuntha* and *Mukhannath*; it is also done to normal people and animals although it is illegal unless it is beneficial in the case of animals. This is discussed as follows:

3.5.1 “Sex change” in “Plants”

Plants like humans and animals can also have change in their sex in ambient environment. Some researchers have discovered that a large number of plant species, such as dioeciously and sub dioeciously can change their sexual state in response to changes in the environment or changes in size or age⁶⁵.

⁶⁴ Borges, R. M. (1998). *Gender in plants; why do plants change sex?*. General article

⁶⁵ Freeman, D. C, Harper, K. T. Charnov, E. L. (1980). *Sex change in Plants; Old and new observation and Hypothesis*. *Oecologia*, Volume 47. Number 2. P: 222-232.

3.5.2 “Sex change” in “animals”

There are some studies about changing sex in animals. According to Allsop, D.J & West, S.A. (2004), sex change takes place in different species of animals including fish, echinoderms, crustaceans and mollusks.⁶⁶ Also, according to a research on Gray Herbarium of Harvard University," sex change is a normal anatomical process in many fish species such as coral reef fishes, Clownfish, wrasses, moray eels and other fish species as well as frogs⁶⁷.

The subject of sex change which is usually debated is about humans, but sex change in animals is also possible. Sometimes this change is done artificially through surgery and sometimes by nature as in Chinook fishes in the Pacific Ocean⁶⁸. Since jurisprudence is concerned about human behavior and nature, any unnatural situation is therefore out of the scope of jurisprudence.

There are less jurisprudential discussions by experts in the field of sex change in animals. Now is it legal to make sex change in animals or not?

Sunni scholars, mainly, have remarked castration of animals (*khasa al-heyvan*) relying on the verse of the Holy Quran which says:

فَلْيَعْبِرْنَ حَلْقَ اللَّهِ

Surah al-Nisā'4:119

Thus, they change Allah Creations.

⁶⁶ Allsop, D.J. West, S.A. (2004). *Sex ratio evolution in sex changing animals*. Evolution, 58:1019-1027.

⁶⁷ Policansky, D. (2004). *SEX CHANGES IN PLANTS AND ANIMALS*. Gray Herbarium of Harvard University. Cambridge. Massachusetts. 02138. / DAVID, J. ALLSOP1, STUART A. WEST. (2004). *SEX-RATIO EVOLUTION IN SEX CHANGING ANIMALS*. Institute of Cell. Animal and Population Biology. University of Edinburgh. King's Buildings. West Mains Road. Edinburgh. EH9 3JT. United Kingdom.

⁶⁸ Nagler, J.J., Bouma, J., Thorgaard, G.H., Dauble, D.D. (2001). *High incidence of a male-specific genetic marker in phenotypic female Chinook salmon from the Columbia River*. Environ. Health Prospect. V: 109, 1, 67–69.

Most of them believe; if the castration of animals is done with a rational motive, such as improving or enhancing the meat of a kosher (*halal* meat) animal, it is allowed⁶⁹.

An-Nawawi believes that change in animals is permissible in order to improve their meat, but it is not permissible in other animals. He said:

لا يجوز خصاء الحيوان لا يؤكل في صغره و لا في كبره و يجوز إخصاء المأكول في صغره
لأنّ فيه غرضاً و هو طيب لحمه و لا يجوز في كبره

Old or so young animals which are not eaten shouldn't be allowed to castrate, but it is allowed to castrate the animals that are fleshy at an early age, because it has a purpose which is improving animal's meat and it is not permissible to castrate the fleshy animals that are old.⁷⁰

Nevertheless, Muhammad Jamal al-Din al-Qasimi believes that the animal's castration is forbidden by reference to that verse and some narratives as follows:⁷¹

Ibn Asaker quotes from Ibn Umar

روى ابن عساكر عن ابن عمر قال: نهى رسول الله (ص) عن الاخصاء

Prophet (PBUH) has prohibited the castration of animals.⁷²

امام احمد عن ابن عمر: نهى رسول الله (ص) عن خصاء الخيل و البهائم

Imam Ahmad quotes from Ibn Umar:

⁶⁹ Zamakhshari, Abu al-Qasim (Jar Allah). (2005). *Tafsir Al Kashaf*. Dar Al Marefah; Nizamuddin nishapoori. *Garaeb al quran wa ragaeb al furqan*. Muhammad Al-Hussein Bin Masud Baghvi. *Tafseer Al-Baghvi*.

⁷⁰ Muhyi al-Din Abu Zakariya Yahiya bin Sharaf al-Nawawi. *Sahih Muslim bi-sharah al-novi*. Dar Al Marefah. Beirut.

⁷¹ Muhammad Jamal al-Din al-Qasimi. (1958). *Tafsir al-Qasimi*. Dar Ihya al-Kutub al-Azabiyah. Egypt.

⁷² Ibid.

The Prophet has prohibited the castration of horses and cattle.⁷³

Shiite scholars mainly believe that sex change in animals is permissible. As Seyyed Muhammad Sadr said:

إذ قد يخطر في البال وجود المصلحة في تحويل جنس الحيوان ايضاً

Sometimes it seems that there is a benefit in sex change of animals.⁷⁴

One of their reasons is that, look at animal's genitals is allowed while look at the human's genitals is not permissible. In addition, people are allowed to enjoy more of animal's benefits. One of the most important benefits of kosher meat animals' castration is improving and enhancing their meat. Therefore, if there is any rational motive or need to change sex of animals, it can be done.

As Seyyed Mohammad Sadr, states:

تبديل الجنس الحيوان جائز مطلقاً، لأنّ النظر إلى عورته جائز مطلقاً، كما أنّ إضراره

بشكل غير معتد به غير محرم شرعاً

Sex change in animals is absolutely permissible, because look at the genitals of animals is absolutely permissible as, anomalistic harming of animals is not forbidden.⁷⁵

Some contemporary Shiite scholars such as Seyyed Abdul Ali Sabzevari disagree with sex change in animals and they relied on the above cited verse of the Holy Quran⁷⁶.

⁷³ Ibid.

⁷⁴ Sadr, M. (2008). *Manhaj Al-Salihin*. Volume 3. Page 642.

⁷⁵ Ibid.

⁷⁶ Sabzevari, S. A. A., (1993). *Mavaheb Al- Rahman Fi Tafsir al-Quran*. Vole 9. P: 305.

3.5.3 “Sex Change” In “Normal People”

Human beings are subsumed into two different sex groups, male and female as it is mentioned in the Holy Quran.⁷⁷ Normal individuals are most often the people who do not have any physical or mental problems and in fact, they are men or women and their biological sex and physical symptoms are compatible with their gender identity and sexual orientations. If these people want to change their sex, it is conceivable just for erotic behaviors or temporary sexual tendencies because they do not suffer from any physical or mental disease and there is no justification and logical reason for changing their sex. This rare change is forbidden both medically and legally.

3.5.4 Sex Change in *Khuntha* (Hermaphrodite)

The lexical meaning of “*Khuntha*” is soft, lean and impartial. It literally means hermaphrodite and according to the Islamic jurists *Khuntha* refers to those who have only one genital in their body but a layer of skin covers it or who has both male and female sexual symptoms. As Jurjis Jurjis says:

الخنثى مَنْ يَجْمَعُ فِي تَكْوِينِهِ الْجَسَدَ بَيْنَ الذُّكُورَةِ وَالْإُنْثَى

Khuntha is a person with both male and female genitals.⁷⁸

Or it refers to everyone who has male and female genitals or basically lacking both genitals as Jurjani said:

الخنثى فِي الشَّرِيعَةِ شَخْصٌ لَهُ آلَتَا الرِّجَالِ وَالنِّسَاءِ، أَوْ لَيْسَ لَهُ شَيْءٌ مِنْهَا اصْطِلَاحًا⁷⁹

⁷⁷ The Qur’an 51:42

⁷⁸ Jurjis, Jurjis. (1996). *Muljam al-muṣṭalahāt al-Fiḥriyyah wa-al-qānūnīyah*. P: 154.

⁷⁹ Jurjani, Ali Ibn Muhammad. (1971). *At-Ta’rifat*. Ad-Daru Tunesiyato An-Nashr. P 124.

According to Sikandar Shah Haneef (2011), *Khuntha* in jurisprudence means an intersex or someone with gender ambiguity upon birth⁸⁰. Similarly Ibn Qudamah defined *Khuntha* as follows;” “*Khuntha* is a person with both male and female organs or with an opening in place of a sexual organ from which he urinates”.⁸¹” Muhammad Hashim Kamali defines *Khuntha* as persons who combine the characteristics of both sexes: transgender and hermaphrodites⁸². Having seen the definitions of *Khuntha*, literally and jurisprudentially, as stated above one could offer a definition of *Khuntha* as a person with both male and female sexual symptoms or has none of them.

Khuntha are divided into two general types in Islamic jurisprudence; whether his or her sex would be obvious by judicial symptoms; this is called non-problematic *Khuntha* (*Khuntha gheire mushkil*), or it is difficult to determine masculinity or femininity through judicial symptoms; it is named problematic *Khuntha* (*Khuntha mushkil*)⁸³.

We shall examine two explanations of the two sub groups of *Khuntha* made by Sikandar Shah Haneef (2011) and Muhammad Hashim Kamali (2002). Sikandar is of the view that the Non-problematic *Khuntha* is the one with two determinable genitals while the problematic *Khuntha* is the one with indeterminable combination of two genitals.

According to Muhammad Hashim Kamali (2002), *Khuntha Ghayr mushkil* is a person who has both masculine and feminine sexual symptoms, but one of them is dominant. In fact, this is a woman with masculine tendencies or a man with feminine tendencies and it is easy to determine their rights according to rules of fiqh. While the problematic *Khuntha* is whose sexes are indeterminably combined or lack both sex symptoms.⁸⁴ In other words,

⁸⁰ Haneef, S. S., (2011). *Sex Reassignment in Islamic Law: The Dilemma of Transsexuals*. International Journal of Business, Humanities and Technology. Vole1. No 1.

⁸¹ Ibn Qudamah. *Al-Mughni*. vol.6. 221.

⁸² Kamali, M. H., (2002). *Freedom, equality and justice in Islam*. Islamic Texts Society. Cambridge.

⁸³ Ibid 3 and 4.

⁸⁴ Kamali, M. H. (2011). *Transgender and justice in Islam*. New Straits Times. Accessed Aug 15. 2013 from <http://www.nst.com.my/nst/articles/16kamalia/Article/#ixzz1UggyhmD1>.

“Hermaphrodite upon birth is left in limbo until they can be absorbed into any one of the binary gender system upon puberty or else would be regarded as problematic.⁸⁵”

The difference between the two definitions is on the problematic *Khuntha*, while Sikandar did not add those without any of the genitals Kamali did.

There are conflicting views on considering the transgender (*Khuntha* and *Mukhannath*) as third sex. Some authors like Noraini⁸⁶, Teh Yik Koon⁸⁷ and Salamah. K opined that transgender people are third gender. This is a minority view. Majority of scholars relayed on verses of the Holy Quran which provides that Allah created only two genders and therefore, according to them, there is no third gender. As the author of *Jawahir-al-Kalam* said:

الخنثى التى هى إما ذكر او أنثى فى الواقع، لعدم الوسطة المستفاداة من تقسيم الانسان،
بل مطلق الحيوان الى الذكر و الانثى فى جميع الصناف فى الكتاب و السنة على وجه
لايستطاع انكاره

Since based on Quranic verses and traditions, human beings and all animals are divided into male and female.⁸⁸

Therefore, the Holy Quran explicitly recognizes only two sexes, and the assumption of the existence of the third gender is certainly rejected. The verses relied upon by the second argument are as follows:

⁸⁵ Haneef, S. S., (2011). *Sex Reassignment in Islamic Law: The Dilemma of Transsexuals*. International Journal of Business, Humanities and Technology. Vole1. No 1.

⁸⁶ Noraini, M. D., Jamil, F., Ahmad, A. A. R. N., Hazizan, B. M. N., Shukran, A. R. (2005). *Sexual identity: effeminacy among university students*. Kuala Lumpur, International Islamic University Malaysia.

⁸⁷ Teh, Y. K. (2011). *The Mak Nyahs (Male Transsexuals) in Malaysia: The Influence of Culture and Religion on their Identity*. The international Journal of Transgenderism. Vole 5. No 3.

⁸⁸ Najafi, M. H. *Jawahir-al- Kalam*. Vol 39. P 277-278.

وَالَّذِي خَلَقَ الْأَزْوَاجَ كُلَّهَا وَجَعَلَ لَكُم مِّنَ الْفُلُكِ وَالْأَنْعَامِ مَا تَرْكَبُونَ

Az- Zukhruf, 43:12

That has created pairs in all things, and has made for you ships and cattle on which ye ride.

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِّن ذَكَرٍ وَأُنْثَىٰ

Surah Al-Hujurat 49:13

People, we have created you from a male and a female.

وَأَنَّهُ خَلَقَ الذَّكَرَ وَالْأُنثَىٰ

Surah al-Najm 53:45

And that he created pairs, the male and the female.

Having perused the argument on both sides, it is reasonable to hold the view that creating a third gender is inconsistent with the provisions of the Holy Quran as stated above and therefore null and void.

Although the words *Khuntha* and *Mukhannath* are never used by the Holy Quran, these terms have been used in traditions and legal literature as well as scholarly sermons and responses to questions by Imams. It is interesting to note that classical and traditional early Islamic jurisprudence have discussed about the legal details of the status of these individuals.

The problem of *Khuntha mushkil* (problematic hermaphrodite) is now solvable with the modern medical technology which goes beyond the physiological function of genitals as it looks up to the composition of sex chromosomes and gonad as well as testosterone etc.⁸⁹.

“*Sex reassignment surgery*” is not considered as “*sex change*” in *Khuntha* at all, whether on those who have only one genital, but it is covered with a layer of skin, or on those who have both male and female genitals.

Because in the first one, (*Khuntha Ghayr mushkil*) sex reassignment surgery is done in order to reveal the real sex, and in second one – someone with both male and female genitals-, sex reassignment surgery is done to remove one of the genitals, in order to enforce the dominant genital. In this situation, *Khuntha* will be turned to one sex of male or female, so, he/she can meet his/her needs.

Furthermore, the rule of prohibition and permission does not apply to sex reassignment surgery unless it is feared that not doing so would lead to committing illegalities such as behaving contrary to their dominant sex.

Although sex reassignment surgery is permissible in *Khuntha* (hermaphrodite), but it is not obligatory for them; for instance for those who cannot afford the medical bill and those aging (on medical grounds).

3.5.5 “Sex Change in *Mukhannath* (Transsexual)”

It is cogent to revisit the definition of *Mukhannath* [Transsexuality] before discussing the validity or otherwise of sex exchange in such people.

⁸⁹ Haneef, S. S. (2011). *Sex Reassignment in Islamic Law: The Dilemma of Transsexuals*. International Journal of Business, Humanities and Technology. Vol. 1. No 1.

The word *Mukhannath* originated from the Arabic verb *Khanatha* which lexicographically or etymologically means folding back the mouth of a water skin for drinking.⁹⁰ *Khanatha* is a derived term of bending, pliability, and delicacy and suppleness concepts.⁹¹ Later the word *Mukhannath* was defined by lexicographers as a man who imitates women in softness and tenderness of voice, but they never referred to dress.⁹² Then, *Mukhannath* in general means “*Effeminate*” without difference between intentional and unintentional behavior and does not refer to transvestism⁹³.

“*Mukhannath* literally means a man whose voice tone resembles woman’s voice.”⁹⁴ It refers to those who are anatomically male or female but their behavior and inherent tendencies is of the opposite gender.⁹⁵ They must be indifferent to women's bodies in order to enter women's private places as servants.⁹⁶ They are also called "Psycho-sexual", “The Third gender” and “Effeminate” and in terms of gender, they are known as “identity crisis.”⁹⁷

There are considerable evidences of the existence of *Mukhannathun* or effeminate men in pre-Islamic and early Islamic Arabian societies. They had played a prominent role in development of music especially in *Mecca* and *Medina*. Since they are not considered as male and it is assumed that they are indifferent on women’s body and have any arousal to women, they were allowed to associate with women freely. They also acted as marriage brokers and go-betweens. According to historians they were acknowledged and had

⁹⁰ Rawson, E. K. (1991). *The Effeminate of Early Medina*. Journal of the American Oriental Society. Vol 111. No 4. pp. 671-693.

⁹¹ Ibid. Ibn Mansur. *Lisān al-'Arab*. Cairo.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Haneef, S. S. (2011). *Sex Reassignment in Islamic Law: The Dilemma of Transsexuals*. International Journal of Business, Humanities and Technology. Vol 1. No 1.

⁹⁵ Noraini, M. D., Jamil, F., Ahmad, A. A. R. N., Hazizan, B. M. N., Shukran, A. R. (2005). *Sexual identity: effeminacy among university students*. Kuala Lumpur: International Islamic University Malaysia.

⁹⁶ Malik, F. (2003). *Queer sexuality and identity in the Quran and Hadith*. Retrieved Sep 27, 2014 from: <http://www.well.com/user/aquarius/Qurannotes.htm>.

⁹⁷ Haneef, S. S. (2011). *Sex Reassignment in Islamic Law: The Dilemma of Transsexuals*. International Journal of Business, Humanities and Technology. Vol 1. No 1. P: 98-107.

exceptional prestige in the early periods of the *Umayyad* musical circles. This fantastic position ended with unexpected and violent end in the reign of caliph Suleiman.⁹⁸

During the time of the Prophet Peace be Upon Him (PBUH), a group of men who demonstrated feminine tendencies on the use of henna and clothing and jewelry were known as *Mukhannath*. The situation changed even during the time of the Prophet (PBUH). Different opinions emerged among the jurists concerning the hadith which stated that: Allah cursed male that imitate female and female that imitate male.

The condemnation of the Prophet Muhammad is only dealing with those who have deliberately imitated the opposite sex and they deviate from the norm and gender that they are born with. Most commentators like Ibn Hajar have expressed the view that the prophet's condemnation is not related to all types of transsexuals but all those erotic type.

In this line those who innately suffer from this kind of abnormality are not included in the mentioned Hadith⁹⁹.

Based on the prophetic Hadith some jurists gave views strongly condemning those erotic *Mukhannath*. They opined that such people should not be allowed to enter into the women realm neither should they be allowed to marry women, etc.¹⁰⁰ In spite of this opinion, they were never subjected to arrest, torture and prejudice. They were equally not considered as homosexuals, however, a very few of them were seen as corrupt in morals.

⁹⁸ Rawson, E. K. (1991). *The Effeminate of Early Medina*. Journal of the American Oriental Society. Vol 111. No 4.

⁹⁹ Ibid.

¹⁰⁰ Haneef, S. S. (2011). *Sex Reassignment in Islamic Law: The Dilemma of Transsexuals*. International Journal of Business, Humanities and Technology. Vole1. No 1. P: 98-107.

Jurisprudentially, there are varying definitions and points of view about *Mukhannath* based on the orthodox schools of thought. To Maliki and Shafi'i schools, *Mukhannath* refers to a man who behaves and talks like a woman. On the other hand, it refers to those who do not have any arousal for women and are even allowed to associate with women freely. But in Hanbal and Hanafi schools of thought, *Mukhannathun* are of two types; the first are those who have women voice but having no inclination to woman and do not do any anti-social behavior.

The second group consist of those who are morally and physically perverse and do not have any physical problem.¹⁰¹ They, unlike *Khuntha* are involved in deliberate opposite sex behavior which is illegal.¹⁰² As al-Nawawi said: "*Mukhannath* is the one ("male") who carries in his movements, in his appearance and in his language the characteristics of a woman. There are two types; the first is the one in whom these characteristics are innate; he did not put them on by himself. Accordingly, there is no guilt as long as he does not perform any (illicit) act or exploit it for money as a prostitute. The second type acts like a woman out of immoral purposes and he is the sinner and blameworthy. The difference between these two groups of *Mukhannath* is not obvious and scientific evidence only will be a helpful means of differentiating the two, although classical jurisprudence recognizes the difference between them to a great extent.¹⁰³

According to Shiite Jurists, *Mukhannath* are those who have a strong sense that their inherent tendencies do not match with their biological sex and they feel strongly that they are trapped in the wrong body. Unlike transvestite people that are those who choose to wear the

¹⁰¹ Ibid, Muhammad Ibn Mukrim Ibn Manzūr. *Lisān al-Arab* (Beirut: Dar Sadir, n. d). 2,145.

¹⁰² Kamali. M. H. (2011). *Transgender and justice in Islam*. New Straits Times. Retrieved Aug 15, 2013 from: <http://www.nst.com.my/nst/articles/16kamalia/Article/#ixzz1UggvhmD1>

¹⁰³ Retrieved from: <http://wislam.org/Concepts/Mukhannath?from=Topics.Eunuchs;>
[http://www.aahlalheeth.com/vbe/showthread.php?t=12611,](http://www.aahlalheeth.com/vbe/showthread.php?t=12611)

opposite gender's clothes and they do not necessarily change their sex, they do attempt to change their physical sex in order to agree with the gender they want.¹⁰⁴

From the Shia scholars view, the “transe” in transsexuals is the change in external physical sex and not a change in gender identity and since sex reassignment surgery is done for uncovering a person's true gender, it is necessary in some cases. But according to the Catholics, transsexuals are individual with psychic disorders that make them mistakenly think they are a member of the opposite sex and since sex is fixed at birth and sex reassignment surgery is an external and superficial operation, it is not a proper treatment for them.¹⁰⁵

Nowadays, the discussions rise over the legality of medical treatment for transsexuals among the Ulama and contemporary jurists. Some of them, being the majority of Sunni jurists, disputed sex reassignment surgery for transsexuals as a medical treatment and they consider it as cosmetic while they validated it in the case of hermaphrodite individuals. Their argument is based on the prophetic Hadith which states that “Allah curses men who voluntarily resemble women and women who intentionally resemble men”. Qur'an, An-Nisa 4: 119, has equally been cited as dealing with the issue of prohibition of medical treatment for transsexuals. Accordingly, they claimed that sex reassignment surgery is a manipulation God's creation and that is considered as satanic act, and it is done for cosmetic motivation and not for medical reason.

Unlike this group, most Shiite scholars and some Sunni jurists have believed that transsexuality is an inborn defect which is caused by sexual feeling contrary to their

¹⁰⁴ Bucar, E. M. (2011). *Bodies at The Margins; The case Transsexuality in Catholic and Shia Ethics*. Journal of Religious Ethics. 38, No: 4, P: 601-15.

¹⁰⁵ Ibid.

biological sex and sex reassignment surgery is a remedy for transsexuals and is not considered as change in Allah's creation. It is lawful under jurisprudential principle which says: "Necessity overrides prohibition"¹⁰⁶.

In this regard, an Iranian sex change surgeon, *Professor Bahram Mirjalali* said:

"The patients who are suspect to above mentioned disease must be cured by various therapy periods including psychoanalysis and psychotherapy. Similarly, they must accept their current sex or by failure of these various therapy periods. Thus, they are referred to a surgeon by psychiatrists in order to turn their body into their psychic."¹⁰⁷

So, according to the foregoing discussions, it can be concluded that transsexuality is an inborn defect that is rooted in biological disorder and sex reassignment surgery is not only considered as change in one's nature and cosmetic operation or tampering in God's creation, rather, it is a malformation restoration that has been recognized as the only remedy for this biological abnormality.

In the other words, the term "*Sex change*", in general, means reforming or turning sex in both (*Khuntha*) or hermaphrodite and (*Mukhannath*) or transsexual. But in particular, it is the turning of a male sex into female sex and vice versa only in transsexuals. So, jurisprudential definition of sex change must include both groups as follows:

"Sex change is turning a male into a female, or a female into a male, or turning a neutral into a male, or a neutral into a female, or turning a male into a neutral or a female into a neutral."¹⁰⁸

¹⁰⁶ "المحظورات التي حالها عذورات"

¹⁰⁷ Mirjalali, B. *More about trans-sexuality disease*. Shorts Notes, P 2.

¹⁰⁸ Al- Sadr. M. B. *Al-Tahlequah al Manhaj al-Salihin*. Dar al-Ta'aruf. Lebanon.

Of course, it's necessary to mention that the two latter cases occur less than the other one, and there is no rational motivation to accomplish this kind of change sex; it occurs in faulty process of sex reassignment surgery.

However, it seems that the terms "*sex modification*" and "*sex determination*" are better than "*Sex change*". This is because Sex reassignment surgery on *Khuntha* is "*sex determination*" not "*Sex change*", as these individuals have been men or women before the surgery which modified them into their right physical status. In transsexuals, it is called "*sex modification*" not "*Sex change*" because physicians believe that changing sex from a perfect man to a perfect woman and vice versa and that patient has no any defect is impossible. The significant point which should be mentioned here is that most of the psychologists believe that transsexuals' identity is opposite of their physical sex from the time they were born. So by reassignment surgery their sex will be changed back to their real identity.

3.6 Transsexuality According to the Primary Sources of the Shariah

As it is mentioned before, the primary sources of the Shariah are the Holy Qur'an and the traditions of the Prophet (PBUH). Riskuwa A. S. said:

"Qur'an is a complete guide to our affairs, there is no short cut about that. It is the divine message for complete guidance to mankind from the Almighty Allah (SWT) through His Noble Prophet (SAW).¹⁰⁹"

The Holy Quran is the *Kitab Allah* that was sent to the last prophet Muhammad (PBUH) and it is the guidance for human life and the light to show the right way and it is the remedy for all human wrong and the ahadith leave no stone unturned in providing panacea for any sort of societal and human matters including the Transsexuals and their legal status

¹⁰⁹ Riskuwa A. S., the Vice Chancellor; Usman Danfodio University, Sokoto, Nigeria in 2003 at the Glorious 27th National Quranic Recitation Competition in Gusau.

in inheritance, marriage etc. Religious duties have been examined by Islamic scholars on the basis of the Sources of the Sharia.

3.6.1 Transsexuality According to the Holy Quran

Allah created human beings and all living creatures into two sexes; male and female. It is clearly mentioned in the following verses of the Holy Qur'an:

وَمِنْ كُلِّ الثَّمَرَاتِ جَعَلْنَا فِيهَا زَوْجَيْنِ اثْنَيْنِ

Surah al-Najm 53:45

Every kind of fruit being made in pairs.

وَمِنْ كُلِّ شَيْءٍ خَلَقْنَا زَوْجَيْنِ لَعَلَّكُمْ تَذَكَّرُونَ

Surah Adh-Dhariyat, 51:49

And of everything We have created pairs, that you may remember

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا

رِجَالًا كَثِيرًا وَنِسَاءً

Surah An-Nisa, 4:1

O mankind! Be careful of your duty to your Lord who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women.

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا

Surah Al-Hujurat, 49:13

O mankind! We created you from a single (pair) of a male and a female.

This matter has also been expressed in the first testament of the Holy Bible:¹¹⁰

So God created the man in his own image, in the image of God he created him, male and female he created them.”(1:27) ¹¹¹

Therefore, the Holy Qur’an explicitly recognizes only two sexes, male and female and if there was any other sexes it would likely to be referred to by the Holy Quran. So, the assumption of the existence of the third sex is certainly not probable as implied by the following verses:

وَالَّذِي خَلَقَ الْأَزْوَاجَ كُلَّهَا وَجَعَلَ لَكُم مِّنَ الْفُلُكِ وَالْأَنْعَامِ مَا تَرْكَبُونَ

Az-Zukhruf, 43:12

That has created pairs in all things, and has made for you ships and cattle on which ye ride.

وَلَهُ مُخَقَّقَاتُ الرُّوحِ وَالنَّفْسِ

Surah An-Najm, 53:45

And that He created the two spouses, the male and the female.

There are some verses in the Holy Quran which affirm the existence of abnormal and ineffectual people. These verses refer to people with queer sexuality and various sexual tendencies and gender. In the story of Lut, the Holy Quran refers to males that come to their fellow males in lust, instead of females which according to Faris Malik these people refer to

¹¹⁰ William E. May, Michael J. McGivney. (2001). *MARRIAGE AND THE COMPLEMENTARITY OF MALE AND FEMALE*. The Catholic University of America. Washington, D.C. 20017. USA.

¹¹¹ Gen 1:27

“Gay” in contemporary time. Their act is considered as sin of Lawa’t and the Holy Quran scorns them in the following words:

إِنَّكُمْ لَتَأْتُونَ الرِّجَالَ شَهْوَةً مِّنْ دُونِ النِّسَاءِ

Surah Al A’raf, 7:81

Indeed you approach males in lust excluding women...

The Holy Quran admits that Allah makes whomever He wills to be barren (aqeem {قَعِمَ}), when Allah says:

لِلَّهِ مُلْكُ السَّمَاوَاتِ وَ الْأَرْضِ يَخْلُقُ مَا يَشَاءُ يَهَبُ لِمَنْ يَشَاءُ إِنَاثًا وَ يَهَبُ لِمَنْ يَشَاءُ الذَّكَورَ

Surah Ash-Shuraa, 42:49

To Allah belongs the dominion over the heavens and the earth. It creates what it wills. It prepares for whom it wills females, and it prepares for whom it wills males.

أَوْ يُزَوِّجُهُمْ ذَكَرًا وَ اُنْثَىٰ وَ يَجْعَلُ مَن يَشَاءُ عَاقِبَةً لِّهٖ يَخْتَصِمُ

Surah Ash-Shuraa 42:50

Or it marries together the males and the females, and it makes those whom it wills to be ineffectual, indeed He is the Knowing, the Powerful.

There are considerable points in these two verses that should be studied more consciously. In the phrase: “لِيَخْلُقُ مَا يَشَاءُ”, “Allah creates what He wills”, when it uses the word “What”, it refers to the kinds and sorts of creation that Allah wants to create. So, the translation and interpretation of the phrase “لِيَخْلُقُ مَا يَشَاءُ” to “He bestows female to whom he will and He bestows male to whom he will” as offspring or children

(daughter and son) is more considerable, as some translator did it.¹¹² And the translation of this phrase to “He prepares for whom He wills female, and He prepares for whom He wills male”, is closer to the concept of two verses that refers to kind of creation, as the expression of Faris Malik¹¹³ and Seyyed Sikandar Shah Haneef¹¹⁴ also indicate this subject.

Starting the second verse with “أو”، this means “Or”, means that the second verse is a continuation of the first verse. Following the translation of "الذَّكَرَ وَالْأُنثَى" as daughter and son in the first verse, the phrase of "أَوْ يُزَوِّجُهُمْ ذُكْرَانًا وَنِسَاءً" is also has translated variously. It has been translated as “He bestows both males and females¹¹⁵”, meaning that; He bestows both daughter and son to whom He wills. But, since this phrase starts with "أَوْ يُزَوِّجُهُمْ", it cannot mean “bestow or give to whom He wills”.

The phrase "أَوْ يُزَوِّجُهُمْ" has been translated as; “He couples them, male and female” by Qarib Quran translation¹¹⁶ and Seyyed Sikandar Shah Haneef (2011)¹¹⁷, and Faris Malik (2003) translated as: “It marries together the males and the females”.¹¹⁸

But what is coming through the concept of these verses, and considering the concept of the second part of this verse which points out to the other sort of sexual orientation and gender, the term "أَوْ يُزَوِّجُهُمْ" is not likely to predicate to marriage or couple. It is obvious that it is mentioned in order to produce both male and female. Pickthall and Shakir also referred to it in their translation. So, the phrase "أَوْ يُزَوِّجُهُمْ ذُكْرَانًا وَنِسَاءً" refers to other sort of gender that is

¹¹² Shakir's. *Pikthal's and Usufali's Quran Translations*.

¹¹³ Malik, F. (2003). *Queer sexuality and Identity in the Quran*. URL accessed 5 December 2008, Retrieved from: <http://www.well.Com/user/aquarius/Qur'annotes.Htm>

¹¹⁴ Haneef, S. S. (2011). *Sex Reassignment in Islamic Law: The Dilemma of Transsexuals*. International Journal of Business, Humanities and Technology. Vole1. No 1. P: 98-107.

¹¹⁵ Yusuf Ali, trans. (2010). *The Qur'an: Translation*, 26th US edition, ed. S. Smith. New York, Tahrike Tarsile Qur'an, Inc.

¹¹⁶ English Hassan Qaribullah and Ahmed Darwish Quran Translation. 2001.

¹¹⁷ Ibid 4

¹¹⁸ Ibid 3;

combination of male and female, which this combination can be physically as *Khuntha*, which have both male and female genital in their body, or can be psychic and mentally, which refers to people that their psychic and their physical outlook do not match together, their body is opposite of their sex and this people called *Mukhannath* in ancient times and traditional jurisprudence and are known as transsexuals in modern time.

In the phrase "وَيَجْعَلُ مَن يَشَاءُ عَقِيمًا" Quran recognized the other type of gender as "Aqeem". *Aqeem* "عقيم" means barren and unproductive. Literally it means without any useful results, and biologically it refers to land or soil that has no plants growing on it, and tree or plant that does not produce fruit or seeds and also to those who cannot produce children or baby¹¹⁹. Jurisprudentially it refers people that are neither male nor female¹²⁰, which are known as *Khuntha* in classical and modern jurisprudence.

There are some noticeable points in these verses is worthy of consideration. Firstly, the Holy Quran describes the different sorts of gender which Allah wants to create through these verses very consecutively and wisely.

Secondly, In these two verses, when Quran says "Allah creates what He wills" and it is repeated as "To whom He wills" and "Allah makes whom He want", in fact, the Qur'an intends to emphasize that Allah himself wants to create some people abnormal and barren, as He wants to create some male and female. In other words, these verses are reaffirmation that these people with queer gender and sexuality are an outcome of Allah's unquestionable will, not as a result of God's mistake or due to the behavior of these people and they are not considered wrong doers due to their sexual abnormality. And finally, it can be said that, the

¹¹⁹ Long man Dictionary.

¹²⁰ Malik, F. (2003). *Queer sexuality and Identity in the Quran*. URL (accessed 5 December 2008): Retrieved from: <http://www.well.com/user/aquarius/Qur'annotes.htm>

purpose of these verses are that, Allah intends to make people aware of the existence of these abnormal people and make us conscious about their rights as rightful part of the society.

Although the previous verses describe various sorts of gender and abnormality in general, the following verses also refer to abnormality in males who are, according to prominent erudite exegetes “*Ghayr uli al-irbah*” without any arousal or feelings towards women and termed as effeminate men or male and transsexuals in modern time.¹²¹

عَجْرَ أُولَى الْأَرْدَةِ مَنْ لَرَجَلٍ

Surah An-Nur, 24:31

Without the defining skills of males

Some authors, relying on the verse cited below, consider aged women’s infertility as transsexuality but this research proves otherwise.¹²² The Qur’an states

وَالْقَوَاعِدُ مِنَ النِّسَاءِ الَّتِي لَا يَرْجُونَ نِكَاحًا

Surah An-Nur, 24:60

Women that are past childbearing who have no hope of marriage

There is a general belief among Muslims that we must be satisfied with what Allah has intended for us and we are not expected to protested against or try to change what Allah created. Of course, this belief is derived from the previous verses and the concept expressed in the verse saying “Allah created what he wills; ...”¹²³ Some jurists argue that these verses prohibit any medical treatment for transsexuals, even in problematic *Khuntha*¹²⁴. But as it is

¹²¹ Muhammad ibn Jarir al-Tabari. *Jami` al-Bayan fi Tafsir al-Qur`an*. (Beirut: Dar al-Fikr al-Marefah).

¹²² Malik, F. (2003). *Queer sexuality and gender identity in the Holy Quran*. Accessed December 15, 2008, retrieved from: <http://www.well.com/user/aquarius/Qur`annotes.htm>

¹²³ The Qur’an 42:49-50

¹²⁴ Shirazi, S. S. *Al-Masael At-Tebbiyyah*.

explained before, the acknowledgment of existence of these people and emphasis on their creation according to Allah's wishes should not be seen as a reason for prohibition of medical treatment *Khuntha*.

Prohibiting any change in divine creation is the biggest obstacle against treatment for transsexuals and occasionally hermaphrodites that is presented by some Islamic assemblies and prominent Islamic jurists, majority of which are Sunni jurists. The council of Islamic Fiqh Academy of the Muslim World League, stated in Mecca regarding sex change operations in February, 1989, thus;

Surah An-Nisa, 4:119

The change is not legally permissible if the person (male or female) has complete male or female sex organs. This is because this person would be seeking to change Allah's creation, which is forbidden by Allah Almighty as in the verse in which Allah reports Satan as saying: "...and surely I will command them and they will change Allah's creation.

But this council has positive attitude towards hermaphrodites and stated:

The change is permissible if a person has sex organs that carry the features of both the male and female sex (a hermaphrodite). In this case those in charge should decide if the organs tend to be more feminine, then the person should be helped either by surgery or hormonal treatment to be confirmed into the female gender, and vice versa. The change in such a case is considered a means of treatment to help a sick person overcome his illness, not a change of Allah's creation.¹²⁵

Sheikh `Abd Al-Karim Al-Khudayr states:

¹²⁵ Scott Boran, M. (2004). *The Saudi orthodox*. The Organization of the Islamic Conference (OIC).

Changing one's sex is a kind of tampering with the creation of Allah and following the way of the Satan who vowed that he would misguide the sons of Adam in this way and in others, as clarified in the verse: **“And surely I will command them and they will change Allah's creation.”** (Surah An-Nisa': 119) We pray to Allah to keep us safe and sound.¹²⁶

The argument is that, since Allah creates human beings in two sexes of male and female, any change in Allah creation is forbidden and is considered Satanic. So sex reassignment surgery is forbidden because of change in Allah creation. Verse 119 of An-Nisa is the basis of this assertion and will be discussed comprehensively in the following discussion.

For more understanding of the meaning of change in God's creation and the purpose of this verse, we should refer to the three previously mentioned verses.

Verse 116 refers to the unforgivable sin of Shirk and is considered a severe obliquity:

إِنَّ اللَّهَ لَا يَغْفِرُ أَنْ يُشْرَكَ بِهِ وَ يَغْفِرُ مَا دُونَ ذَلِكَ لِمَنْ يَشَاءُ وَمَنْ يُشْرِكْ بِاللَّهِ فَقَدْ ضَلَّ

ضَلَالًا بَعِيدًا

Surah An-Nisa, 4:116

Surely Allah dose not forgive that anything should be associated with him, and he forgives what is besides this to whom he pleases; and whoever associated anything with Allah, he indeed stray off into a remote error

And in the verse 117, the glorious Qur'an describes the Shirk to Allah which is the worship of idols and idolatry or it can be as following of Satan and going astray.

¹²⁶ Islamic ruling on sex change, by Islamonline.net, Retrieved from: www.zawwaj.com. March 7, 2002.

إِن يَدْعُونَ مِن دُونِهِ إِلَّا إِنَانَا وَ إِن يَدْعُونَ إِلَّا شَيْطَانًا مَّرِيدًا

Surah An-Nisa, 4:117

They do not call besides him on anything but idols, and they do not call on anything but a rebellious Satan.

Also in the same verse 118 Allah says:

لَعَنَهُ اللَّهُ وَقَالَ لَأَتَّخِذَنَّ مِنْ عِبَادِكَ نَصِيبًا مَّفْرُوضًا

Allah has cursed him; and he said: Most certainly I will take of thy servants an appointed portion.

In this verse, in retaliation for being damned by Allah, Satan said: “I will take a certain proportion of your (God’s) slaves.”

وَلَا ضَلَّلْنَاهُمْ وَلَمْ نَمْنِنَنَّاهُمْ وَ لَمْ نَكُنْ لَكُمْ إِيَّاهُ فَكَيْفَ يُعْرَضُونَ خَلَقَ اللَّهُ وَ مَنْ

يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِنْ دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرَانًا مُّبِينًا

Surah An-Nisa, 4:19

And most certainly I will lead them astray and excite in them vain desires, and bid them so that they shall slit ears of the cattle, and most certainly I will bid them so that they shall alter Allah's creation; and whoever takes the Satan for a guardian rather than Allah he indeed shall suffer a manifest lost.

What can be understood from the concept of the above verses is that; these verses refer to *Shirk* and Tawhid (monotheism and polytheism) and *Shirk* to God is a great error, is idolatry and following the Satan and the following of Satan contains misleading of servants, tempting to vain desires and change in Allah’s creation. Change in Allah’s creation in these verses applies to both physical and spiritual changes; Physical change is like the traditional

cutting of the ear of cattle and removal of the eye of animals, while spiritual change is the act of misleading people and taking them away from God. However, both types of changes are towards the direction of the devil.

Therefore, any changes and alteration that is done with sinister motives is indecent. As it pointed out in this verse, during the *jahiliyya* (ignorance) period, when a camel breeds a few more, they cut or slot its ear or remove its eye and put it for the idol. They devote the camel to idols and would neither slaughter nor ride on it. These practices were forbidden by the Qur'an and described as change in God's creation. The act is satanic not just because of the cutting of the ear or removing the eye, but also due to the sinister motives and evil intentions that are behind of these acts. The purposes of creation of animals are for the use their meat and riding. These kinds of beasts are created for men to use them in order to have the ability to pray and worship Allah. The author of *Al- Tafsir Al-Furqan* says¹²⁷:

“Cutting off the camel’s ear is not considered just as the devil's work but if you cut off the ear as a sign of sanction or, as the idol worship, it is forbidden”.

Furthermore, if any change in divine creation is prohibited, then most of our daily affairs will be prohibited. This is because our daily life involves numerous changes in Allah's creations, for instance, turning wheat into flour to make bread, turning wood into charcoal and all similar changes. Also, there are some changes in human being that are permitted and even enjoined such as circumcision, cutting the umbilical cord, removing the superfluous hair and cutting the hair of the head. Thus, it is not all kind of change in Allah creation that is forbidden and considered as following of the Satan. Rather the prohibition of the verse is

¹²⁷ Tehrani, M S. (1985). *Tafsir Al-Furqan*.

not on the useful change in Allah's creations but changing the nature and Fitrah which leads to transgression.

Some jurists refer to this verse and believe that since sex reassignment surgery is a change in divine creation, it is forbidden and considered Satanic. In response to this view, it can be argued that indeed the humanity of man will not be changed by any superficial change or physical change. This is because a change in the natural state of a human being affects his identity and indeed his rights and obligations.

It is worthy to mention that most Sunni and Shiite commentators have argued that the word creation "khalq" in "فَلْيُحَرِّزْ لِحُكْمِ اللَّهِ" gives the meaning of religion and order (*Hukm*) and change of God's creation means change in God's order and change in God's religion, and this is confirmed by verse 30 of Sura Rome:

فِطْرَةَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لَا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقَائِمُ

In this verse "لا تبديل لخلق الله" means "لا تبديل للدين" and the meaning of change in God's creations, is in the sense of boycotting the lawful things and analyzing the forbidden things. The reason behind this is that Allah has created human beings in a state of *fitrah* (pure monotheism) which is difficult to change.

Most of Shiite commentators Sheikh Tabarsi in *Majma Al Bayan*, Sheikh Tusi in *Tebyan*, Mohammad Hussein Tabatabaei in *Al-Mizan*, Mohsen Fayz Kashani in *As Safi*, Tabarsi in *Javame-ol-Jamea*, Mohammad Javad Moghniye in *Al Kashif* and Seyyed Ali Sabzevari in *Mavaheb Ar-Rahman* have argued that change in God's creations means change in God's order and change in God's religion that the *Fitrah* and the purpose of change in

God's creation is boycotting the lawful things and ascribing to the forbidden things. In other words, change in God's creation meanings coming out from divine nature and divine Fitrah.

They relied on the following traditions of Imam Jafar ibn Muhammad al-Sadeq (as) and Imam Mohammad Al Bagher (A.S):

عن ابى جعفر (ع) فى قول الله: «و لآمرئهم فليغيرن خلق الله» قال: دين الله.

عن ابى جعفر (ع) فى قول الله: «و لآمرئهم فليغيرن خلق الله» قال: أمر الله بما امر به¹²⁸.

And they referred to verse 30 of Sura *Rum* to solidify their views. According to Shiite commentators, any superficial change in humans, animals and plants is not unlawful and not considered as a conflict or opposition to God's creation, as there are some changes that are approved by the *Shariah* such as circumcision, cutting of nails and cutting or removal superfluous and rotten body organs. But they are unanimous on this fact that any change that leads to coming out of their creation route and affects divine Fitrah, is considered as change in divine creation and is extremely unfair and indecent.

Almost all Sunni commentators have noted the meaning of change in Allah's religion. *Muhammad ibn Jarir al-Tabari* in *Tafsir Jami Al-Bayan*, *Fakhr al- Razi* in *Tafsir Al- Kabir*, *Sheikh Muhammad Abduh* in *Tafsir Al-Manar*, *Imam Ahmad Shalaby* in *Tafsir Al-kasyaf Wa Al-Bayan* and *Jamal El-Din Al-Qasimi* in *Tafsir Mahasin Al Tawil* refer to change in Allah's religion and change in God's order in the meaning of change in Allah's creations.

From their point of view the "Change of Allah's creation" means "change in the religion of Allah" and this meaning is like "لا تَبْدِلْ لِحَقِّ اللَّهِ" that means "لا تَبْدِلْ لِحَقِّ اللَّهِ". Moreover, the Sunni commentators have stated several meanings and have provided

¹²⁸ Tabatabaei, M. H. (1952-1972). *Al-Mizan Fi Tafsir Al-Quran*. Ismaeilian- Darul Kotob Al Islami, Vole 5

examples of the forbidden change in Allah's creation, such as human castration, tattooing, cutting the animal's ear, gouging the animal's eye out, boycotting the halal meat or animal, worshipping the moon, sun and etc.

Some Sunni commentators insist that all the above meanings can be a manifestation of the meaning for "change in Allah's creation" that is every change in Allah's religion and therefore, a general rule could be mentioned here: Anything that include boycotting the halal things and permitting the unlawful (*haram*) should be considered as an evil act and is an example of the change in the religion of God. Therefore, it can be concluded that the change in Allah's creation means disobedience to God and obedience to the Satan.

Basically this verse is not a clear proof for the prohibition of sex reassignment surgery as a treatment or any physical and cosmetic change, but is an expression of a general rule that anything contrary to God's commands and any changes with evil motive that leads to keeping out of divine nature amounts to change in Allah's creation.

Moreover, if citing this verse is to be considered as the reason for prohibition of any change in Allah's creation, it would be necessary to forbid all changes and conversions that happens in human life and will be considered as example of evil act, such as: digging tunnel in the mountains, occupying the forest, entering to the depth of earth and so many changes that occur in nature due to human acts.

Apart from what was mentioned, Islam as a divine religion and a complete guideline for human life, is a religion of compassion and kindness in line with human nature. It will therefore never place on an individual beyond his ability, the Quran says:

لَا تُكَلِّفُ نَفْسٌ إِلَّا وُسْعَهَا

Surah Al-Baqarah, 2:233

God makes no soul responsible for what is beyond its capacity

The Qur'an states further

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ

Surah Al-Baqarah, 2:286

Allah does not impose upon any soul a duty but to the extent of its ability; for it is (the benefit of) what it has earned and upon it (the evil of) what it has wrought

Allah is aware of the dilemma of transsexuals and Islam never advocates hardship and adversity and forbids any persecution, harm and torture and always encourages forgiveness and leniency. Verifying this claim, the following verses have a crucial role in reducing transsexual's problems.

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

Surah Al-Hajj, 22:78

And hath not laid upon you in religion any hardship

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

Surah Al-Baqarah, 2:185

Allah wants ease for you and does not want hardship for you

Nevertheless, we are witnesses to the harassment, persecution, arrest and torture of transsexuals and these people suffer this kind of punishment due to their gender identity. Certainly, the creation of mankind is based on pure divine Fitrah, and that must be respect by all. The physical identity of an individual must not be a reason for disrespect of an individual's dignity and his right to equality must equally be respected. Allah says:

لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ

Surah At-Tin, 95:4

Certainly, we created Man in the best make

Now, we are certainly cognizant of the role of the primary sources of Shariah in appreciating the problems of the transsexuals. Islam has taken cognizance of these problems and solutions provided by Islam will undoubtedly be a solution. In this vein traditional jurisprudence also formulated religious duties in detail. Therefore, it is necessary to look for the solution in the Quran and Hadith since they serve as perfect guide to mankind in all affairs.

3.6.2 Transsexuality According to Sunnah

Sunnah is an Arabic term that lexically means “*path*”, “*road*” and “*practice*”. In the language of the Prophet (PBUH) and companions, it means any religious, ethical and social practices and speech relating to acts of religion and that is derived from the Prophet PBUH).¹²⁹ Technically, and in the terminology of Fiqh it refers to any saying, deed and approval that is issued by the Prophet Muhammad.¹³⁰

After the Holy Quran, Sunnah is the second source of the primary sources of Shariah that each one of these two indispensable sources of Islam is not intelligible without each other. Sunnah is the practical example of the implementation of Quranic directives by prophet Muhammad (PBUH) and in fact it is the explanation and interpretation of Quranic rules.

¹²⁹ Haddad, J. F. (2006). *The Binding Proof of the Sunnah*. AQSA Publications, UK, WARDA Publications, Germany, Retrieved December 25, 2013 from: http://www.sunnah.org/fiqh/usul/meaning_sunnah.htm

¹³⁰ Ibid

As mentioned before, transsexuals who have been known as *Mukhannath* had been there from the beginning and the traditional Islamic jurisprudence provided a special regulation and law for them and modern communities have accepted them as a part of the society. With respect to the hermaphrodites, in addition to acceptance, their treatment had also been approved by traditional and modern Islamic jurisprudence.

But, the treatment for their treatment can become controversial due to a new form of medical treatment applied on sex reassignment surgery and this treatment can also be used on people without any known problem. With the contemporary medical developments, today's, doctors are able to remove the wrong genitals of the body and improve it by replacing the symptoms and signs of the opposite sex. It is a remedy that can be applied to other medical treatments in any part of body such as congenital deformity. This type of medical treatment was impossible in the past.

In addition, Islam always encourages Muslims to seek for treatment of their ailments and there are some Hadith about treatment. The Prophet Muhammad (PBUH) urged patients to search for the cure for their ailments, he said:

النبي صلى الله عليه وسلم قال: "ما أنزل الله داء إلا أنزل له شفاء

There is no disease that Allah has created, except that He also has created its treatment.¹³¹

قال النبي صلى الله عليه وآله وسلم: "تداووا يا عباد الله، فإن الله لم يضع داء إلا وضع

له شفاء، إلا داء واحدا الهرم

¹³¹ Muhammad Bin Ismail Al Bukhari Al Ja'fai. *Sahih Al-Bukhari Fi-Tebb*. 5678; Ahmad Ibn Ali ibn Hajar Al Asqalani. *Fathul Bari Fi Sahih Bukhari book of Tebb*. 5354; *Sahih Muslim*;

Cure your ailment Allah has never created a disease but created its treatment, except death.¹³²

These traditions have clearly pointed out the fact that Muslims are encouraged by the sharia to seek for treatment in cases of ailment. Since sex reassignment surgery has been recognized as the best treatment for transsexuals, if done according to medical standards and under professional physicians, it would be in line with Islamic legal principles and will not be seen as contrary to Islamic morals. Indeed, it is not only permissible to undergo surgery to reveal the true sexual identity, but also, it is obligatory to do it when it is considered as a treatment, under trustworthy physician. Whoever, seeks to treat his problem of sex identity disorder through sex change surgery cannot be said to have done a wrongful act.

In addition to verse 119 of Sura An-Nisa, the only reason that has been argued for condemnation of transsexuality are two ahadith of the Prophet Muhammad (PBUH) which has been quoted in many Hadith books and which states thus:

عن عبد الله بن عباس رضي الله عنهما قال: "لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَتَشَبِّهِينَ
مِنَ الرِّجَالِ بِالنِّسَاءِ وَالْمَتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ

The Messenger of God, peace be upon him, cursed men who simulate women, and women who simulate men.¹³³

This Hadith had been quoted by most of Islamic scholars such as Al- Bukhari, Abu Dawud, At Tirmidhi, An-Nisaea, Ibn Majah and Al- Tabarani with a slight difference in the interpretation of imitation. What is obtained from the interpretation of this Hadith in scholars'

¹³² Muhammad Ali Al-bar, (1996), "The Revival of Prophetic and Herbal Medicine", this narrative had mentioned in Masnad of Ahmad Ibn Hanbal; Sahih Bukhari and in Sahih Muslim.

¹³³ Bukhari, LXXII, 61, 773, see also Malik. F. (2003), *Queer sexuality and Identity in Quran*.

opinions is that this Hadith refers to cross-dressers and transvestism. Al-Tabarani, Al-Bukhari, Ibn Majah, An Nisaea and Abu Dawud have stated that this Hadith made reference to imitation in dressing¹³⁴ and this opinion has been reaffirmed by Al-Munajjid¹³⁵.

There are other interpretations on this issue, Ibn Hajar said that: Al-Tabari has interpreted the imitation in dress and ornament for women,¹³⁶ and Ibn Hajar has stated also in speaking and walking¹³⁷. These imitations in the ahadith relate to dress, movement, ornament and softness in speech habitually or naturally said al-Mawsoo'ah al-Fiqhiyyah.¹³⁸

Thus, according to the mentioned scholars' opinions, this Hadith refers to those whose appearance and external behavior is of the opposite gender habitually and deliberately, and does not extend to transsexuals whose behaviors is according to their nature and Fitrah as Faris Malik and Seyyed Sikandar shah Haneef have pointed out.¹³⁹

The other prophetic Hadith that has been argued for condemnation of transsexuality is the hadith that states:

عن عبد الله ابن عباس رضى الله عنهما قال:

لَعَنَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُخْتَلِثِينَ مِنَ الرِّجَالِ وَالْمَتَرَجِّلاتِ مِنَ النِّسَاءِ وَقَالَ: أخرجوهم

من بيوتكم، قال: فأخرج النبي صلى الله عليه وسلم فلانا، وأخرج عمرُ فلانة

Bukhari, LXXII, 62, 774

¹³⁴ Jasad Al-Saqafah; <http://aljsad.com/forum9/thread111051/#ixzz2Rkwb64d0>

¹³⁵ Muhammad Saalih Al-Munajjid. *Al-Fiqh wa-usulih, Habits*, (Dress, ornament, faces)

¹³⁶ Ibn Hajar Al Asqalani. *Fath Al-Bari*. Book dress. 2, 279.

¹³⁷ Ibid.

¹³⁸ *Al-Mawsoo'ah al-Fiqhiyyah al-Kuwaitiyyah. Jumhur Ulama*. Wizarah al-Awqaf wa al-Syu'un al-Islamiyyah, Kuwait. 1427.

¹³⁹ Malik, F. (2003). *Queer sexuality and identity in the Quran*; Haneef, S. S. (2011). *Sex Reassignment Surgery in Islamic Law; the Dilemma of Transsexuals*. International Journal of Business. Humanities and Technology. Vol. 1. No.1

It is narrated on the authority of Ibn Abbass “The Prophet peace be upon him, cursed the effeminate men, who are males, and the male-pretenders, who are women, and he said: Evict them from your houses, and the Prophet, peace be upon him, evicted such-and-such and 'Umar evicted such-and-such”¹⁴⁰

This hadith directly deals with issues regarding transgender people and is narrated in many authentic ahadith books and most Islamic scholars have opined that *Mukhannathun* in this hadith generally refer to men who imitate women in clothes, speech, behavior, manners and appearance. According to Faris Malik “*Al-Mutarajjilat*” (male pretenders)¹⁴¹ refers to women who imitated men in behavior, manner and appearance¹⁴².

There are two points, textually and conceptually in this hadith that that needed discussion and analysis.

The textual point, which has been referred to by Faris Malik, is that; grammatically the word “*Mukhannathin*” (Effeminate male) refers to masculine gender in Arabic language because of its ending by the “Masculine plural pronoun¹⁴³”, and also the word of “*Al-Mutarajjilat*” - the male-pretenders- refers to feminine gender because of its ending with the “Feminine plural pronoun”. Thus, since the pronouns would be of Men and women, these words have been used for emphasis and are stressing that the curse is directed to men and women not to effeminate and male pretenders.

So, the curse of the Prophet (PBUH) does include the effeminate –male who in fact is not a man-and female pretenders who in fact is not woman.

¹⁴⁰ Ibid.

¹⁴¹ Malik, F. (2003). *Queer sexuality and identity in Quran*. URL (accessed 5 December 2008): Retrieved from: <http://www.well.com/user/aquarius/Qur'annotes.htm>

¹⁴² Sahih Bukhari. Sunan Ibn Majah. Sunan Al-Tirmidhi. Sunan Abu Dawud and Masnad Ahmad Ibn Hanbal.

¹⁴³ In Arabic language the pronouns of “ون وبن وبن” are using for “Masculine plural” and the pronoun “ات” is using for “Feminine plural”.

Beside the textual points that are mentioned above, the conceptual point is assuming that the curse of the Prophet (PBUH) refers to *Mukhannathin*, this was answered by *An-Nawawi* and *Ibn Hajar* in their respective opinions about *Mukhannath*.¹⁴⁴ According to them, *Mukhannathun* are two groups. The first group is those who imitate women in clothing, speaking, walking, behavior and manners according to their creation. They are not sinners and not to be blamed or punished because their behavior is innate and inherent. The other groups are those who imitate women in appearance, cloths, speech and behavior deliberately. In fact they are men that deviate from their natural essence and divine fitrah. This theorem is also true in women.

In the light of the above mentioned prophetic ahadith, different opinions are presented by Muslims and Islamic scholars about transsexuals. Unlike popular perception, the curse here is not regarding the *Mukhannathin* and it is directed to men and women who imitate the opposite gender deliberately.

Also according to scholars' definition of *Mukhannathun*, the early scholars pointed out the difference between erotic and deliberate *Mukhannathun* and natural and inherent *Mukhannathun*. If non erotic *Mukhannathin* that are transsexuals are diagnosed by professional physicians and can be remedied by medical treatment it is lawful and there is any restriction on them. So sex reassignment surgery is a legal treatment for them and they have to remedy their condition through medical treatment. That is not considered as manipulation of Allah's creation and as following the Satan.

Also Prophet Muhammad (SAW) said in a famous Hadith that:

¹⁴⁴ Sunan Al Tirmidhi, Fath Al-Bari, Sahih Bukhari, Sunan Ibn Majah and Sunan Abu Dawud

قال رسول الله (ص): رُفِعَ عَنْ أُمَّتِي تِسْعَةٌ: الْخَطَأُ وَالْإِنْسِيَانُ وَالْإِكْرَاهُ وَمَا لَا يَعْلَمُونَ وَمَا لَا يَقْدِرُونَ وَمَا الضَّرُّ عَلَيْهِ وَالْحَسَدُ، وَالطَّيْرَةُ وَالتَّفَكُّرُ فِي وَسْوَسةٍ فِي الْخَلْقِ مَا لَمْ يَنْطِقْ

بشفة

nine things have been taken from my Ummah (nation); mistake, forgetfulness, forced action, what they do not know, what they cannot tolerate, what is distress for them, jealousy, divination and tempting ideas about people until it is not said.¹⁴⁵

Based on this hadith, the permissibility of sex reassignment surgery can be inferred from two aspects. Firstly, with regards to the content of the hadith of the Prophet (SWA), if a person does something that he or she does not have knowledge about, he will not be reprimanded.

Secondly, according to this hadith when someone inevitably does an illegal thing, he will not be punished. Therefore by extension, sex reassignment surgery was forbidden in normal condition, when there is necessity and urgency in cases where a person is suffering from severe physical and psychological disorder and a specialist opines that surgery is the only way for treatment, sex reassignment surgery would be lawful and permissible.

Finally, some narrations reported in several books of hadith is worthy of mention. For example:

Once upon a time, Shoraih Qazi who was appointed by Imam Ali (As) to be a judge, a man entered into the court and said to him, I'm complainant. "What's your complaint?" the judge asked. "I complainant of you", the man

¹⁴⁵ Muhammad ibn Ya'qūb al-Kulaynī, *Usūl al-Kāfī*, Vol 2, P: 463, Hadīth No: 2; Ibn Babawayh (Al-Shaykh al-Saduq), Al-Khisal, Man la yahduruhu al-Faqih, Vol 2, P: 417; *Mohammad Bagher Majlisi*, Behar-ul-Anwaar, Vol 2, P: 280.

answered. "I have both male and female symptoms", the man explained to the judge. "in such cases, Imam Ali (As) calls him/her a male or a female with regards to the urination tube", the judge said. "I urinate of both male and female genitals!" The man said. "Do you urinate of both genitals simultaneously?" the judge asked. "Yes", the man answered. "It's so surprising", the judge wondered. "More surprising that I married my cousin and we have a child. But then, I had a sexual intercourse with my servant, and becomes pregnant!" the man continued. Being a mother of her cousin children, On the other hand, being a father of his servant child. As a result, she divorced his cousin. After listening to the man, the judge went to Imam Ali (As) and relayed the story. Therefore, Imam Ali (As) called her cousin and then he ordered to Dinar who was a eunuch man accompanying with two women to count his ribs. Consequently, there were 12 ribs on the right and 11 ribs on the left. Meanwhile, Imam Ali (As) called him as a man loudly and put on him a male clothe. "You couldn't have done that", her cousin said to Imam Ali (As) protesting. "I did that according to father, Adam, and my mother, Eve. Since God created Eve from left side of Adam body, thus, the number of left ribs in male is one rib less than right side. However, the numbers of left and right ribs are equal in female. Ultimately, I called him a male", Imam Ali (As) replied ¹⁴⁶

¹⁴⁶ Mohammad Ibn Hassan. Al-Hurr Al- Aumeli. (1991). *Vasileh Shia Ela Tahsil Masaelu shariah*. Beirut. Daru Ihya al-Tarasu Al –Arabia.

«إن شريحتي القضي عن م هوى من لسان قضيء اذا نكته امرأته فقالت: على القضي قضيتي ومن خصمي فقيل له: و من خصمك فقالت: أنت، قل فلرجول فدهي فقيل له: م طلائك كفقالت: إن لي طلق رجل و طلائس. قل شريح فإن اهرلك مؤمن بجي اله سلام يقضي على ال مبل، قلت فلي أبيول به م جيع ويكمن م ع. قل شريح: والله من معت باع جب من هذا، قلت: و أعجب من هذا، قل: و م هو؟ قلت: ج م عي زوجي فليدت فيه، و ج م عي جوتي فليدت في. فضررب شريح احدى يديه بجي الاخرى فم عي. ثم جاء لي اهرلك مؤمن بجي اله سلام قل: اي اهرلك مؤمن لقيت ورد بجي شيع من معت باع جب في ه م عي قصه لام را قفس له. اهرلك مؤمن على ه سال م عن لك فقالت: موك م كرفق ل: و من زوج كفقالت فقيل غدا ع ه فقيل: بل عرف مذه فقيل ان عم ه و زوجتي فسوال ه عم. قلت فقيل: موك كفقول له اهرلك مؤمن بجي اله سلام: لأت أجراً من ركب الأسد، جي شتقدم بجي ه بدهه ل جل بتم قل: يقنير أدخ ه وقت مع امرأتك فم عي فقيل له: اي اهرلك مؤمن لا آمن بجي و رجلاً و لا طائ من بجي و امرأة.

فقيل اهرلك مؤمن بجي اله سلام: بجي بوذرك خسي – و كين من بصل حي الكوفة و كين بجي به فقيل له: باوذن أدخ ه وقت، و عر و من شيهه، و مر و ان شيد ه زراً و عد فم عي و فم عي و نر لي ك، و كين فم عي و سبعة ع م رسيع قسي القيين و بجي قسي القيس و بجي ه ال م شوبال رجل و لك قسي و الن فم عي و القى على ال رداء و ل حق ال درج ل فقيل ز و ج: اي اهرلك مؤمن بنت عمي و قد ليدت في يتيق و ل رجل؟ فقيل: لي حكمت بجي ه بكلم الله، ان الله تبرك و بجي طلق حواء من بصلع آدم القيسر القصي و فم عي ال درج ل فقيل و فم عي اللبس م.

This narration is famous among Sunni and Shiite scholars. Most of them narrate it in their books¹⁴⁷ and some of them passed the fatwa according to it, such as; Mohammad Bin Mohammad, Seyyed Murtadha, Ibn Idris, Allameh Helli in Sara'er, Mohammad Hassan Najafi author of Jawahir al-Kalam, and Imam Khomeini in Al-Tahrir Al-Vasileh.

3.7 Transsexuality according to Jurisprudential principles

Although the Holy Quran contains all knowledge and is a best guidance for men for all time to come but, responding to changing conditions and current needs of human life, there are some principles and fundamentals of jurisprudence that is utilized for statutory solutions in contemporary law and judicial processes. These principles are the main sources of Shariah after Holy Quran and Sunnah and of course are derived from the main sources of the Shariah; Quran and Sunnah. The jurisprudential principles are, in fact, "The study of the rules to be used in deducing the Islamic laws"¹⁴⁸

Now this research will attempt to examine and discussed transsexuality according to some of these relevant principles and fundamentals as follows:

3.7.1 Jurisprudential Principle of Permission (Isalatul Ibahih)

عن سعدة بن صدقة عن امام صادق (عليه السلام): كُلُّ شَيْءٍ هُوَ لَكَ حَلَالٌ حَتَّى تُتَعَلَّمَ

أَنَّه حَرَامٌ بِعَيْنِهِ¹⁴⁹

Everything is permitted unless there is an explicit prohibition reason by Quran and traditions.

¹⁴⁷ Majlesi, M. B. *Ruzatul Muttaghin*. Vol.11. P.364; Sheikh Tusi. *Tahdhib*. Vol.9. P.354. Hadith.5; Sheikh Hour Aumeli. *Masa'elu Shiite*, Vol.17, P.575, Eunuch Heritage Chapter, Part 2, Hadith3; Mohammad Ibn Mohammad, *Ershad*, Vol.1, P213;

¹⁴⁸ Martyr Mutahhari, Ayatollah Murtadha, " *Jurisprudence and it's principles*" , translated by: Salman Tawhidi,

¹⁴⁹ " الاصله الباحه "

This jurisprudential principle is one of the famous jurisprudential principle among Islamic jurists, that contains all things in this world and there are some traditions and narrative about it¹⁵⁰.

This jurisprudential principle is known as “*Isalatul Ibahih*” (الصلوة الابحہ) or “*Al-Qaedat Al-Ibahih*” “permitted according to Islamic Law”. According to this principle, by default, everything in this world is permitted (*Halal*) unless there has been a substantial reason from the Holy Quran or Sunnah that proves it is forbidden (*Haram*). If we don’t have any proof that something is forbidden, and in the situation of suspicion and hesitation whether something is permissible or not, it is deemed permissible according to this principle until the contrary is proved.

Thus, since there is any reason on prohibition (*Hurmat*) of transsexuality or sex reassignment surgery, it is lawful and permissible according to this jurisprudential principle.

Behaviors like homosexuality, sodomy and adultery are prohibited and unlawful, because the Quran explicitly prohibited them. But, in this particular case, not only there isn’t any substantial evidence on prohibition of sex reassignment surgery, but also since it is considered as a medical treatment same as other medical remedy, it is encouraged by the Holy Quran and Sunnah.

3.7.2 Jurisprudential principle of Authenticity (الصلوة لصحة)

يَحْمَلُ عَمَلِ الْمُسْلِمِ عَلَى الصَّحَّةِ

Muslim acts should be considered as truth.

¹⁵⁰ Hure Ameli. *Vasaal Al-Shiah*. Vol 1. P: 59. Hadith 1& 4.

1) (عبدالله بن سرنن عن أبي عبدالله ع) قل لكل شىء فيه حلال و حرام فمولك حلال أبداً حتى تعرف الحرام فيه بيّن فتدعيه؛
2) (عبدالله بن سرنن عن أبي عبدالله ع) قال: سألت أبا عبد الله ع عن الرجل يفتق قول كل من فيه حلال و حرام فمولك حلال حتى تعرف الحرام فيه بيّن فتدعيه؛

According to this Jurisprudential principle, Muslim's actions should be seen as accurate and correct, unless there is a reason on being unlawfulness. So, since sex reassignment surgery has been recognized as the best treatment for transsexuals under trustworthy Muslim physicians, it should be considered as legitimate. As, Ayatollah Seyyed Mohsen Kharrazi in a response to a question on legitimacy of transsexuality said:

مُقْتَضِي أَصَالَةُ الْحَلِيَّةِ وَ أَصَالَةُ الْبِرَاءَةِ هُوَ الْجَوَازُ

The content of the presumption of innocence and authenticity principle is permitted.

3.7.3 Jurisprudential principle of "Mastery"

النَّاسُ مُسَلِّطُونَ عَلَى أَمْوَالِهِمْ وَ أَنْفُسِهِمْ

People dominate on their money and themselves.¹⁵¹

Based on this jurisprudential principle; as people dominate over their properties, they also dominate over their body (themselves), of course a rationalistic possession in body. It means that people can do any logical and rational operation on their bodies; of course, for treatment or improvement and more satisfaction. So, since according to medical science and World professional Association for Transgender Health (WPATH) sex reassignment surgery is a medical treatment that improve the health of transsexual individuals and return them to a satisfactory condition, it should be considered as a permissible treatment.

3.7.4 Jurisprudential principle "Compulsion"

كُلُّ حَرَامٍ مُضْطَرَّرَ إِلَيْهِ، فَهُوَ حَالِلٌ

¹⁵¹ ق عده التقي الط

Any unlawful would be lawful if there were compulsion and necessity to it.

“Compulsion” is a situation and condition that is difficult to bear and unbearable. As

Muhaqiq Ardabili has defined it as:

الإِضْطِرَارُ مَا لَمْ يُمَكِّنِ الصَّبْرُ عَلَيْهِ مِثْلُ الْجُوعِ

Compulsion is what it is not possible to wait¹⁵²

So it is a condition that has been allowed for some unlawful things to be done, which in normal condition, are forbidden. This principle contains all difficult condition and unbearable situation that people are located on it. This principle is derived from many verses and reliable traditions as follows:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

Surah Al-Hajj, 22:78

And hath, not laid upon you in religion any hardship

أَمَّا حَرَّمَ عَلَيْكُمْ الْمَيْتَةَ وَالْدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهْلِيَ بِهِ لَعَيَّرَ اللَّهُ فَمَنْ اضْطَرَّ غَيْرَ بَاغٍ وَلَا عَادٍ

فَلَا إِثْمَ عَلَيْهِ

Surah Al-Baqarah, 2:173

He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.

يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَ لَا يُرِيدُ بِكُمْ الْعُسْرَ

¹⁵² Muhaqiq Ardabili. *Zubdatu Al-Bayan Fi Ahkam Al-Quran*. P: 363

Surah Al-Baqarah, 2:185

Allah intends for you ease and does not intend for you hardship

مَا يُرِيدُ اللَّهُ لِيَجْعَلَ عَلَيْكُمْ مِنْ حَرَجٍ

Surah Al- Al-Ma'idah, 5:6

Allah does not intend to make difficulty for you

According to these verses and based on diagnosis of professionals about the transsexuals that they suffer from a severe gender identity disorder and mental illness, which it is intolerable for them, as far as they are willing to tolerate such difficult surgery, sex reassignment surgery is permissible and lawful for them even if it is assumed as a unlawful action. The acceptance of this difficult treatment process is considered as a reason for distinguishing between real transsexuals and erotic or non-transsexuals. This is done because sex reassignment surgery is a medical treatment that Islam encourages Muslim to do as explained earlier.

3.7.5 The principle of “No harming No reciprocating harm”

عن ابى سعيد سعدبن سنان الخدرى رضى الله عنه عن رسول الله(ص):

"لَا ضَرَرَ وَ لَا ضِرَارَ فِي الْإِسْلَامِ"

There should be neither harm nor reciprocating harm in Islam ¹⁵³

According to this Hadith all form of harming is forbidden and unlawful, either in us or in others. Also this Hadith has interpretation to there is no any causing to harm others¹⁵⁴. In other words, there is harming rule in Islam, as we are not allowed to harm ourselves or others.

¹⁵³ This Hadith has narrated by: Ibn Majah, ad-Daaraqutnee, Al-Tirmidhi, Malik in al-Muwatta.

¹⁵⁴ Dr. Jamal Ahmed Badi, Muslims in Japan; Retrieved from: <http://muslimjapan.com/331.html>

Maybe someone may argue based on this Hadith, that since sex reassignment surgery causes pain to the body it is forbidden. In response to this argument it can be answered that there are exceptions to every general rule and this reasonable surgery is one good exception. If someone as a result of a mental or physical disease, such as other medical intervention, has to remove an organ of his/her body, it is a treatment and, therefore, not prohibited.

As, according to medical and psychological science, Transsexuals are often unhappy and alone and suffer from a deep depression and anxiety, as far as, they sometimes are at risk to attempting suicide. One of the findings of this study is that sex reassignment surgery significantly decreased the depression and anxiety in these patients and improvements the behavior, relations and their satisfaction of their lives. Therefore if the government or the Scholars do not allow these people to be treated, they can cause harm and damage to these people and that is forbidden in Islam through this Hadith.

In addition, this jurisprudential principle reinforces the principle of permission the prohibition acts. In other words, every prohibited and illegal act will be permissible and legitimate under emergency situations as the following jurisprudential principle confirms this subject:

الضرورات تبيح المحظورات

Every prohibited and illegitimate act under emergency terms will be permissible and legitimate.

According to the foregoing, since transsexuality is considered an ailment, sex reassignment surgery as a cure is impeccable, legal and thus permissible under Islamic jurisprudence.

3.8 Transsexuality among Muslim Thinkers

In the light of all the previously mentioned facts, now this question is raised; is sex reassignment surgery allowed among contemporary Islamic jurists or not?

So far, the existence and acceptance of the transsexuals has been elaborated. It is now clarified that their status varies from time, societies and Islamic schools who argue based on the verses of Holy Quran, Sunnah and Islamic jurisprudence.

Now the debate is over the treatment of these people. Is sex reassignment surgery has done by trustworthy physicians as the effective medical treatment for transsexuals and is it permissible in sight of the Ulama [Islamic jurists]?

Paul Sanders (1991), a medieval Islamic thinker, had accurately and transparently portrayed the social and jurisprudential situations of the treatment for hermaphrodites and transsexuals.¹⁵⁵ He described the dilemma of neutrals in medieval gender boundary societies and explained the determining of the gender role for these individuals, the alteration in their body was allowed by prominent Islamic thinkers such as Abu Bakr Al Razi and Ibn Sina¹⁵⁶.

The remarkable point is that, even the medieval European medical scientists like *Galienus* have given this chance to these individuals to determine their true sex; and more interestingly, if gender was undetermined this ambiguity could be considered as a social problem not as a sign of sin or moral deviation.¹⁵⁷

In contemporary jurisprudence, the first Islamic discussions about the treatment of transsexuals were made by *Ayatollah Khomeini* in 1963, when he wrote his book “*Tahrir A*

¹⁵⁵ Sanders, P. (1991). *Gendering the Ungendering Body: Hermaphrodites in Medieval Islamic Law*. Women in Middle Eastern History. P:74-95

¹⁵⁶ Ibid.

¹⁵⁷ Bucar, E. M. (2010). *BODY AT THE MARGINE The case of Transsexuality in Catholic and Shia Ethics*. Journal in Religion Ethics. Vol 38. Issue 4. PP: 601-615.

l-Vasileh.” He is the first Islamic Jurist in contemporary age that explicitly declared that there is no religious restriction on sex change. His outspoken comment is as follow:

الظَاهِرُ عَدَمَ حُرْمَةِ تَغْيِيرِ جِنْسِ الرَّجُلِ بِالْمَرْأَةِ بِالْعَمَلِ وَ بِالْعَكْسِ، وَ كَذَلِكَ لَا يَحْرُمُ الْعَمَلُ فِي
الْحَثِّي لِتَصِيرُ مُلْحَقًا بِأَحَدِ الْجِنْسَيْنِ، وَ هَلْ يَجِبُ ذَلِكَ لَوْ رَأَتْ الْمَرْأَةُ فِي نَفْسِهَا تَمَائِلَاتٍ
مِنْ سِنَخِ تَمَائِلَاتِ الرَّجُلِ أَوْ بَعْضَ آثَارِ الرَّجُولِيَّةِ أَوْ رَأَى الْمَرْأَةُ فِي نَفْسِهَا تَمَائِلَاتِ الْجِنْسِ
الْمُخَالَفِ أَوْ بَعْضَ آثَارِهِ؟ الظَّاهِرُ عَدَمَ وَجُوبِهِ إِذَا كَانَ الشَّخْصُ حَقِيقَةً مِنْ جِنْسٍ وَ لَكِنْ
أَمَكَنَ تَغْيِيرُ جِنْسِيَّتِهِ بِمَا يُخَالَفِهِ.

Apparently, there is no prohibition against changing the sex of a man into a woman, or a woman into a man, with a surgical operation. Also there is no prohibition against changing sex in hermaphrodite for join them to one of two sexes male or female. Is such an operation necessary if a woman sees in herself tendencies which are male, or if she sees in herself certain traces of masculinity; or if a man sees in himself traces or certain tendencies of the opposite sex? The apparent ruling is that the surgical operation is not obligation if the person knows his/her true gender, but the change of his/her sex into opposite sex is possible.¹⁵⁸

There are some considerable points in *Imam Khomeini's* viewpoint which will be referred to. Firstly, he absolutely has stated the Hukm of sex change, then, he immediately bought the Hukm of hermaphrodite or *Khuntha*, he realized that the permission of sex change here is not refer only to hermaphrodites, rather is contains non-hermaphrodites as well. Then in question and answer sessions [*fatwa*] he specified that the non-hermaphrodites are those who saw in herself/himself certain traces or tendencies of the opposite sex and hereby he connotes indirectly that the permissible does not include healthy people.

¹⁵⁸ Imam Khomeini, R (2000). "*Tahrir Al- Wasila, Changing of Sex*". Mu'assasah Tanzim va Nashr Aasar Imam Khomeini. Qum. Issue 1 and 2.Vol 2. P: 596-598.

Also he explicitly stated that the sex change operation is not obligatory for hermaphrodites and transsexuals because mere “neutrality” and mere “the possibility of sex change”, is not the cause of doubt in the current task. Accordingly, neutrals can remain on their current status and they do their religious duties according to their real gender that they believe to belong. They are legally assigned the predominant sex which guides them towards the discharge of their religious duties.

Imam Khomeini also explained some other issues related to sex change in his book and responding to a letter of a transsexual question about Islam’s rule in sex change, he had issued a fatwa in 1985 which was the first fatwa about sex change in contemporary Islamic world as follow:

Changing gender under trustworthy physician prescription is legitimate and with no objection. I hope you will be healthy and good Luck.¹⁵⁹

After Khomeini’s fatwa, sex reassignment surgery was allowed by most Iranian scholars like; *Ali Khamenei, Mohammad Reza Golpayegani, Mohammad Fazil Lankarani, Yousef Sanei, Seyyed Yusuf Madani* etc. Some of them have distinguished between problematic neutrals and have opined that sex reassignment surgery is obligatory on them due to their religious duties such as *Mirza Javad Tabrizi, Nasser Makarem Shirazi* and *Hussein Ali Montazeri* as *Ayatollah Hussein Ali Montazeri* states:

Sometime sex change is necessary. For example, sometime neutrals inflected with a strict mental and physical disorder that this situation is so difficult for them and their family as sex change is diagnosed as only treatment for them. In addition, there is another necessity for real bisexuals that it is the real bisexuals have many problems to do their provisions and

¹⁵⁹ Imam Khomeini. R. (1985). Imam Khomeini office. Istifta’at section.

religious duties, such as privacy, marriage, prayer, etc. The only way out of this bottleneck is to change the gender to the join to men or women¹⁶⁰.

Only, one of Iranian jurists *Seyyed Sadeq Shirazi* disagrees with sex change even in problematic neutrals and believes sex reassignment surgery is forbidden even for discovery of the true sex or for revealing the hidden gender and it is permissible only in animals. He was asked:

How is their situation for the marriage?

He replied:

They can choose one gender for themselves. In other words, they have right to selection and choosing a gender. So if they choose the male gender can marry with a woman and if they choose the female gender can marry with a man.”

The second Fatwa on sex change was passed by *Sheikh Muhammad Seyyed Tantawi* the Egyptian Grand Mufti of *Al-Azhar* University, concerning a controversial case of sex change operation from a medical student of *Al Azhar*, *Seyyed Abdullah*, in 1988. This is the story of this Fatwa:

In 1982, Seyyed Abdullah was 19 years old and a medical student in Egyptian Al-Azhar University. One day called a psychiatrist; Salvo Jeri's Labib and consulted the psychiatrist with his severe depression and disappointment. After some examinations, the psychiatrist diagnosed that he suffers from a sexual disorder. In other words, he was “mental psychic Neutral”. He was exposed to male Hormone therapy in order to strengthen his male sexual orientations for 3 years. But it was failed.

According to professionals, Hormone therapy is possible only before maturity. He believed that it is impossible to cure it after maturity age. So, Jurjis stopped his Hormone therapy and referred him to a surgeon, Gerbil.

¹⁶⁰ Montazeri, H. A. *Medical judgments*. P: 113.

Having more confidence, Gerbil referred him to the other psychiatrist so called Hani Najib. Also, Najib conclusion was the same as the previous surgeon. Ultimately, he suggested changing sex surgery as the only treatment to him.

Therefore, Najib exposed the patient to female Hormone therapy for one year and dressed him in a female dress in order to test his psychical and social behavior. The patient spent this therapy period successfully. In 1988, January first, Seyyed Abdullah signed changing sex application form in order to change his sex into a female by surgery. Thus, the surgeon made him a female synthesized genital and urination tube according to modern medical standards. This was done successfully and the patient was happy with this new sex. Thanks to acknowledge the first psychiatrist, the patient named /called herself “Sally”.

But then, faculty headmaster rejected her and didn't let take the exams. On the other hand, Egyptian civil status organization didn't accept her as female. In 1988 April 4th, in an interview with Al-Azhar newspaper, Sally not only criticized Al-Azhar authorities and civil status organization, but also she exposed her case to Egyptian public judgment. In responding to this interview, Al-Azhar by a statement claimed that it has constituted a special commission to consider her comments 2 months before surgery and it has concluded that Sally is absolutely a male one by no doubt and this commission is ready to review her comments once more.

Replying to above mentioned matter, Sally claimed there is no reason to review her case because she is a girl and wants to marry a man soon. Also, Sally's exciting behavior, her interview with the press, and Al-Azhar reaction to her effected on Egyptian press and public.

Therefore, the surgeon was accused of a crime in this case by al-Azhar University. However, medical Syndicate representative accompanied by other three professional selected by syndicate reviewed Sally's case and concluded that the surgeon has done a medical real mistake. In 1988 May 14th, sending a letter to Egyptian Islamic leader, Syndicate wanted him to give an Islamic verdict about “psychical Neutral” and they asked him

whether psychic neutral is accepted by Islamic religion viewpoint or not. By an indirect answer, Egyptian Islamic leader gave an Islamic verdict as follows;

“If a reliable professional diagnosis surgery as an only treatment, surgery will be legitimate.”

Not only this Islamic verdict wasn't the answer of syndicate question, but also it made another problem. In this case each of parties interprets this Islamic verdict on behalf of themselves. In 1988 12 June, this case was sent to the court by Al-Azhar in order to punish the surgeon under the Egyptian punishment law, Article 240.

By consulting professional, Egyptian attorney began to research and concluded Sally is a man physically and she is a woman psychically in accordance with professionals' viewpoint, and also, surgeon made no mistake in Sally and has done anything according to modern medical current standards. Thus, he was declared innocent. By rejecting this conclusion, Medical Syndicate invalidated surgeon membership and penalized anesthetist. At least, in 1989 October, Sally's Identity Card was reformed and she could confirm her sex to Egyptian government. According to news and Egyptian Journal reports, there have been such cases in Egypt, but Sally's case has become historical and well-known because of Al-Azhar interferences/stances. However, with respect to its history/background in Islamic and western law, changing sex and its condition will be surveyed.

To answering the Syndicate's letter about *Seyyed Abdullah* sex change operation, Tantawi started the answer by referring to narrations of prophet concern cure any disease narrated by *Ibn Hanbal* and *Ibn Majah* and at *Tirmidhi* and allowed this operation and by referring to a narration of prophet about cutting the vein of *Abu Ibn Cab* by a physician, Tantawi declarations that this operation is incumbent if is considered as a treatment.

According to *Seyyed Tantawi fatwa*, sex reassignment surgery is not only permissible for changing a man into a woman or vice versa for reveals the true sex, but also is obligatory

for them if it is considered as a treatment under trustworthy physician. In this fatwa, the Grand Mufti of Egypt stated;

It is permissible to perform the operation in order to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so on the grounds that it must be considered a treatment, it is, however, not permissible to do it at the mere wish to change sex from woman to man, or vice versa.¹⁶¹

Also in the 11th season of the Islamic Fiqh Council in Mecca on 19-26 February of 1989, the subject of sex change from a male into a female and vice versa has been discussed and the following results was decided:

They distinguished between sex change in transsexuals and hermaphrodites and stated: The change of complete male sex into a female sex and the change of complete female sex into a male sex are forbidden, as it would be considered tempering in God creation and following of Satan according to the Quran and would be punishable as a crime. They argued to a Hadith of Prophet Muhammad for their opinion of prohibition on sex change. But in hermaphrodite persons, those who have both male and female genitals, the dominant sex would be strengthened by removal any sign of the opposite sex and since these individual would be considered as a patient, it would be as a medical treatment and it is permissible.¹⁶²

¹⁶¹ Skovgaard, J. P. (1995). *Sex Change in Cairo: Gender and Islamic law*. The Journal of the International Institute, Vol 2, No 3.

¹⁶² - The Islamic Fiqh Council. 11th session. Mecca. 19-26 February 1989 (13-20 Rajab 1409)

«والذكور الذي كلفت أعضاء تكويره، والفتيات التي كلفت أعضاء أنثويتها إلى رجل أو امرأة، وما حول ذلك من أجل إجراء عملية تكوير في الذكور أو الإناث، فقد حرم به جنه هذا للتكوير، قبلت في حق من مضرا عن قول الله طين : (وَلَا تُدْرِكُنَّ الْمَوْتِ حَيْثُ رَزَقَهُنَّ اللَّهُ) النساء : 19 وإذ جاء في صحيح مسلم، عن ابن مسعود أنه قال : (لعن الله الواشمة والمختوشة، لأن مصبت ولت من مصبت، ولت من جنت للحسن، المغيرات في حق الله عز وجل ثم قال : إلا أن قال عن رسول الله ؟ ووه في كفتب الله - عز وجل يجرى قوله) وَمَا بَدَأَكُمْ إِلَّا ذُكُورًا وَمَنْ لَهُنَّ مَخْرَجٌ فَتَبَّ عَالِي حَشْرٍ : 7

تقريباً : أم من المغيرات كلفت أعضاء تكويره علامت النساء ولا رجل فينظر في ه إلى كفتب من طينه فإن كفتب في هذه الكفيرة جز علاج طبي به فيقول المشبه في تكويره، ومن كلفت في ه المبت لثوية، جز الوجه طبي، به فيقول المشبه في أن يثبت سواء الكين ال ج بالجر اجحة أم باله مونت لن هذا مرض، وإل العيق قد يكتشف في ه وليس في غير ذلك خلق الله عز وجل .
وصل إلى الله في بيده من حمد، وفي لاه وص به ويرد يتسرى المغيرا ولا حمد لله رب العالمين.»

With regards to the mentioned verses and Prophet Muhammad's Hadith and due to different interpretation of these sources by Islamic scholars, there are different points of view pertaining sex reassignment surgery among contemporary jurists. The proponents of sex reassignment surgery that are approximately most of Shiite jurists permitted it in transsexuals as a medical treatment under reliable and trustworthy physician. Their main reasons are the verses of the Quran that don't allow any difficult and hardship in Islam Authentic Hadiths that encourage Muslims to seek treatment for ailments also the medical diagnosis of transsexuals as an illness with gender identity disorder which curable with sex reassignment surgery as the best treatment for them. They believed sex reassignment surgery is a treatment such as other medical treatments that done with change or modification on sexual organs and the nature and humanity of Man is not changeable by any physical and superficial change.

Most of Sunni scholars disagree with sex reassignment surgery and they permitted it only in neutrals or hermaphrodites as *Ahmad Muhammad Kana'n* said:

فقد حرّم الشارع تغيير الجنس لما فيه من مخالفة للفطرة الالهية، و استثنى من هذا التحريم بعض الحالات كالحنثى التي تختلط فيها اعضاء الذكورة و الانوثة بدرجات متفاوتة فتؤدى الاضطرابات عضوية و نفسية، ففي مثل هذه الحالات يجوز إجراء الجراحة لتغيير الجنس إلى الجنس الذي يوافق الحالة حسبما يراه أهل الطب.

Divine legislator has forbidden the change of sex, because changing sex is the opposite of divine nature. But some states have exceptions same as neutral who have both of male and female genital. This causes anxiety in body and soul of neutrals. In these cases the changing sex is allowed if a physician diagnosed it.¹⁶³

¹⁶³ Mohammad Kana'n. A. (2000). *Al-Musouatu At-Tebiyatu al-Fiqhiyyah*. Beirut. Daru Al-Nafas. P: 285.

Although in this opinion sex change is permissible for neutrals and also it is used absolute for both problematic and non-problematic naturals, but some of Sunni jurists believed that sex change is obligatory for naturals like *Seyyed Tantawi*.

The main Sunni jurists' reasons for permissible sex change operation in naturals are that; neutrals are patient and the reasons of permissible treatment, allowed doctors to treat them by surgery and since this treatment is required and necessity for them it is an exception and not considered as change in God creations. Not permissible of this operation for neutrals and their toleration on their current situation leads to many hardship and difficulties that not allowed by Islam. So this operation is permissible for them.¹⁶⁴

But most of Sunni jurists prohibited sex reassignment surgery in transsexual such as *Sheikh Yusuf Al-Qaradawi* and *Ahmad Muhammad Kana'n*, *Abdullah Mubarak Al-Najjar* and considered it as change in Allah creation. *Ahmad Muhammad Kana'n* said:

أما ما ظهر فى بعض المجتمعات المنحرفة عن فطرة الله تعالى من جراحات لتغيير الجنس عند اشخاص اسويا الخلقة فهو حرام قطعاً، لما فيه من تغيير لخلق الله تعالى دون ضرورة مشروعة، و لأنه إستجابة لدعوة الشيطان الذى توعدّ باغواء بنى ادم بمثل هذه الأفعال المحرمة، فقال: وَلَا مُرْتَهُمَ فَلْيَعْيُرَنَّ خَلْقَ اللَّهِ

Some societies have deviated from the divine nature, healthy people change their sex that it certainly is forbidden; because, firstly this is change in Allah creation, while there isn't any necessity for it. Secondly, this is actually a positive response to the Satan invitation to the devil that promised, divert

¹⁶⁴ Mansur, Muhammad Khalid. *Al-Ahkam Al-Tebbiyyah Al- Mutalliaqah bi An-Nisa Fi Al-Fiqh Al-Islam*. Darul Nafis. Beirut.

human through these forbidden things. Satan said, “certainly will command a study of Adam, then they will change God creation.”¹⁶⁵

They believed sex reassignment surgery is change in God creation and in Islam is not permissible for anyone to do any change in their body as it would be as unlawful things.¹⁶⁶

Sheikh M. S. Al-Munajjid, as a Saudi Islamic lecturer states:

Sex change from a male into a female and vice versa is prohibited and Muslims should be satisfied with what God has decreed for them as people don't know what is suitable for them, and what Allah creates for them is the best thing as Allah says we created you in the best situation¹⁶⁷.

And also *Sheikh `Abd Al-Karim Al-Khudayr* stated about the prohibition of sex change as follow:

The change of sex is tempering in God creation and is considered as following of Satan.”

3.9 Conclusion

This chapter was aimed at examining transsexuality from the Islamic perspective with particular emphasis on the two primary sources: the Qur'an and the Sunnah. This chapter examined various translations and interpretations of the Qur'an and ahadith. The findings revealed that transsexuality as a gender identity disorder is an inherent sexual abnormality and the Qur'an explicitly acknowledges the existence of these people (Qur'an, 42:49-50). Sex reassignment surgery is recognized as an effective treatment for transsexuals, as Islam always encourages Muslims to seek treatment for their illnesses. This surgery is just like any

¹⁶⁵ Kana'n, A. Mohammad. *Al-Mosuat Al- Tebbiyyah Al-Fiqhiyyah*. P: 284-285.

¹⁶⁶ Yusuf Qaradawi. *Al-Halal va Al-Haram Fil Islam*. P: 155-156.

¹⁶⁷ http://www.zawaj.com/straight_talk.html

other medical treatments and should not be considered as a deliberate act to change Allah's creation. As can be seen in the above explanation, change in Allah's creation means an attempt to mislead His servants, which is prohibited by the Qur'an (30:30). Also, the curse of the Prophet (PBUH) affects men and women who have imitated the opposite sex deliberately, not transsexuals who suffer from a severe gender identity disorder. If these individuals are not allowed treatment, they will be vulnerable to societal afflictions and adversity as well as sexual misconduct which are against Islamic morals. So, if sex reassignment surgery is done according to medical standards – diagnosed and performed under the supervision of trustworthy professional physicians – it would be in line with Islamic rulings and therefore a necessary treatment (Rehman and Polymenopoulou, 2012). In conclusion, it is cogent to mention that this paper represents the use of analogical deduction (*qiyas*) by Islamic scholars to develop the Shari'ah to be in tune with all times.

CHAPTER 4: TRANSSEXUALITY IN THE MAJORITY MUSLIM COUNTRIES

4.1 Introduction

The male and female genders are the globally accepted types of gender. Any attempt to introduce another form of gender or identity outside this will always be viewed with caution. In fact, the attempt to identify transsexuals as individuals suffering from gender identity disorder that can be cured through sex re-assignment surgery has resulted in hot debate across the Muslim world.

Transsexualism is a global phenomenon and exists in almost every country. Although this topic is in the headlines of popular press worldwide, there isn't a comprehensive scientific understanding of this phenomenon and the biological and psychological status of these individuals are still unknown. Recent developments on Transsexualism do not mean that Transsexualism is a new phenomenon; it appeared for the first time in the third edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-III)*.¹⁶⁸

Transsexuality has become popular in recent years due to the fact that many countries have legalized it and people are allowed to undergo sex reassignment surgeries. It is a fact that Islam prohibits homosexuality and prescribes severe sanction to persons found guilty of the offence. Indeed, some view transsexuality as a leeway for promoting homosexuality and must be discouraged. Further, Islam prohibits males from acting and cross dressing like females and vice versa.

Muslim majority countries take different approaches to the issue of transsexuality. While some consider it as un-Islamic hence illegal, others consider it as a form of gender identity disorder which Islam allows sex reassignment surgery to be a solution.

¹⁶⁸ Haneef, S. S. (2011). *Sex reassignment in Islamic Law: the dilemma of transsexuals*. International Journal of Business, Humanities and Technology. Vol 1. Issue 1, 98-107 .

This chapter therefore intends to examine transsexuality in some Muslim countries in view of the fact that it stands as a very controversial subject amongst Muslim scholars. While some look at sex reassignment surgery a cure to transsexuals, others look at it as an attempt to change the natural state of Allah's creation. The chapter will limit itself to Saudi Arabia, Turkey, Pakistan, Egypt, Indonesia, Malaysia and Bangladesh.

4.2 Transsexuals in Modern History

Indeed, the issue of transsexuals has been as old as the history of man and there had been historically no society without people with sexual abnormality. Peoples who were out of sexual normative and suffering from discordance between gender identity and physical sex. They are considered as neither men nor women and sometimes called as magic and exotic individuals. They do not conform to conventional notions of male or female gender, but combine or move between the two.¹⁶⁹ These individuals were often labeled as deviant in some societies due to their biological disorders. They suffer different degrees of segregation, stigmatization and harassments from societies.¹⁷⁰ Their vulnerabilities, frustrations, and insecurities have been historically overlooked by most societies.

These individuals have been called by different terms in various communities. They are known as *bakla* in the Philippines, *xaniths* in Oman, *serrers* among the Pokot people of Kenya, and *Hijra*, *jogappas*, *jogtas*, or *shiv-shaktis* in South Asia, *Waria* in Indonesia. The *Hijra* also called 'third gender' or "eunuch-transvestites" in the Indian sub-continent (Jami, 2005).¹⁷¹

¹⁶⁹ Jami, H. (2005). *Condition and status of hijras (transgender, transvestites etc.) in Pakistan*. Islamabad. Pakistan: National Institute of Psychology. Quaid-i-Azam University.

¹⁷⁰ Conway, L. (2002). *How Frequently Does Transsexualism Occur?* Retrieved Oct 24, 2004, from URL: <http://www.lynnconway.com>.

¹⁷¹ Jami, H. (2005). *Condition and status of hijras (transgender, transvestites etc.) in Pakistan*. Islamabad. Pakistan: National Institute of Psychology. Quaid-i-Azam University.

However, there have been different approaches and attitudes about this issue all over the world and these individuals are still stigmatized and isolated from societies. They experience various degrees of segregation, harassment and discrimination in the enjoyment of primary rights such as housing, education, employment and human services. This scenario is probable due to the lack of laws that seeks to protect them in view of their vulnerability.

4.3 Transsexuality in the Majority Muslim countries

Islamic countries also were not excluded from the subject of transsexuality. Historically, all societies had experienced the issue of transsexuals and there had been different attitude and views on these individuals. Early Islamic history had indicated that the Arabs had experienced cases of individuals with ambiguous gender. They are neither considered males or females. A prominent Musician in the Arabian society is believed to belong to this group. Hermaphrodite and individual with gender identity disorder had been issue of discussion among early Muslim thinkers who allowed surgery in order to address such defects. Prominent among the scholars and thinkers that allow alteration of gender are Abu Bakr Al Razi and Ibn Sina.¹⁷²

This subject has suffered neglect from researchers especially as it touches on the aspect of Muslim countries hence there is need for this research.

4.3.1 Saudi Arabia

The official position

Saudi Arabia as the Kingdom of Saudi Arabia is located in Western Asia and it is the largest Arabian state after Algeria in the Arab World. It was founded by Ibn Saud in 1932, through

¹⁷²-Sanders, P. (1991). *Gendering the Ungendering Body: Hermaphrodites in Medieval Islamic Law*. Women in Middle Eastern History. New Haven and London. Yale University press.

the conquest of Riyadh that began in 1902. The state of Saudi Arabia is an absolute monarchy a completely hereditary dictatorship and the dominant feature of Saudi Arabia culture is Wahhabi Islam. According to the Basic law of Saudi Arabia, the king must agree with the Quran and Shariah and the constitution of this country is the Quran and the Sunnah.

Saudi Arabia is also known as the birth place of Islam due to the two holiest places in Islam Al-Masjid al-Haram, the place of the annual Hajj pilgrimage in Mecca and Al-Masjid an-Nabawi, the burial location of the Prophet Muhammad in Medina. Saudi Arabia is the largest producer and exporter of oil in the world and categorized as a high income economy country with a high Human Development Index. The country is an active member of the Organization of Islamic Cooperation.¹⁷³

Transsexualism in Saudi Arabia

The constitution of Saudi Arabia is based on Sharia Law. The general interpretation of Shariah law about sexuality is that, any sexual relations outside of marriage is illegal. Sexual minorities in Saudi Arabia are persecuted. Any homosexual intercourse strictly forbidden under the Sharia Law and homosexuals are punished by the death penalty as is the case in other two Middle East countries that is Iran and Yemen (Fellmeth 2008).

Religious and Political leaders in the Middle East consider homosexuality as a Western attempt to destroy Islam. Shaikh Saleh Bin Hamid a respected figure in Saudi Arabia defines homosexuality as an illness in 2014, he stated that homosexuality “*Seeks to strip man of his humanity ... darkens and covers the soul ... violates the sanctity of Allah, kills chastity,*

¹⁷³ Vogel, Frank. E. (2000). *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia*, Brill, Leiden, Boston, Koln.

and slaughters virtue,” He argued further that it is not compatible with “*normal souls.*”¹⁷⁴ He asserted that homosexuality is forbidden under all religions. Most of LGBT population suffers from the effects of the lack of public health such as herpes, gay bowel syndrome and HIV/AIDS and a sense of inferiority and humiliation that can lead to suicide or homicide (Lucas Kurrim 2015; Weinberg 2014).

A research conducted by Nadya Labi 2007 known as "The Kingdom in the Closet" indicates that what is reflected in the law is different from the popular public opinion. This finding is based on the interview that took place with gays and lesbians in the big cities of Saudi Arabia such as Riyadh, Jidda etc. She asserts that due to strict segregation between men and women and also the prevention of pre-marital sex between men and women, the homosexual sex is easier than heterosexual sex and the gay and lesbian life thrives in many places in Saudi Arabia (Labi 2007).¹⁷⁵

Actions of the Saudi Arabian state against transsexuals are unambiguous. While the government and healthcare system allowed intersex people to have sex reassignment surgery, transsexual are not allowed to undergo this operation. One of the very few discussions about transsexuality is the BBC News article, "Gender correction for Saudi girls." It reported that five sisters had undergone sex reassignment surgery in Saudi Arabia. The doctor who performed the surgery asserted that the five sisters were intersexes that are allowed to undergo gender correction and he would not have performed the surgery if they are transsexuals. At the time of publication in 2004, the doctor had performed more than 200 surgeries on intersex individuals (Usher 2004).¹⁷⁶

¹⁷⁴ Currim. L. Monk. D. B. Khan. N. (2015). *Practices and Policies of State Legitimation & Minority Repression: A Comparative Analysis in the Case of LGBT People in Saudi Arabia and Iran.* This is submitted in P-CON Colgate University.

¹⁷⁵ Ibid

¹⁷⁶ Ibid.

These reports and observations provide the situation of sexual minorities and their everyday problems in Saudi Arabia. Medical treatment for transsexual individuals is banned in Saudi Arabia based on the views of Sunni jurists related to the Assemblies of Fiqh. The reason for the ban is that it is considered as manipulation in God's creation.

They argue that, medical treatment for transsexuals is the same as castration and it hides the true identity of the individual. Both of them are forbidden by the Prophet. Furthermore, sex reassignment surgery hurts and mutilates the body that is forbidden in Shariah law.¹⁷⁷ This position is not accepted by most Shia scholars and some Sunni jurists that consider proper treatment for transsexuals through surgery and hormone therapy. They hold that sex reassignment surgery for transsexuals is not an attempt to change God's creation, but rather it is a medical treatment for these individuals who suffer from a peculiar gender identity disorder. (Haneef, 2011).

Some scholars argue that the intolerance of sexual and gender minorities treatment in the Middle East is as a result of the antagonism between the civilization in the Middle East and that of Europe and American (██████████; Whittaker 2006).

Nevertheless, Luke Currim (2015) asserted that, although sexual minorities are not welcomed in Saudi Arabia by the policies of government and the opinions of jurists, there is however a thriving growth of gay activities in the urban centers.

4.3.2 Turkey

The official position of Turkey

Turkey is a democratic, secular, unitary, parliamentary and constitutional republic. It has a diverse cultural heritage and is located in Eurasia, largely in Western Asia. The culture of

¹⁷⁷ Ibid.

Turkey is connected to the ancient Greek, Roman, Byzantine, Persian and Ottoman empires. Turkey has been inhabited since the Paleolithic age, including ancient Anatolian civilizations, Aeolian, Dorian and Ionian Greeks, Thracians, Armenians and Persians.

The official state religion of Turkey is Islam and differed considerably with the folk Islam of the Anatolian tribal people and villagers, even in the Ottoman State. Popular religious practices had become institutionalized in the form of Sufi orders. Turkey has a vast majority Muslim population (99%). The greater population of Turkey follows Sunni Islam, with Alevis making up the largest religious minority.

Turkey is one of the very first Muslim countries that encountered the modern West and attempted to respond to the challenges posed by Western power and civilization.¹⁷⁸ Turkey is a member of many international organizations such as UN, OECD, OIC, NATO and the G20¹⁷⁹. Turkey's growing economy and diplomatic initiatives have led to its recognition as a regional power. is an international forum for the governments and central bank governors from 19 countries and the European Union.

Transsexuality in Turkey

The family bonds in Turkey are very tight and the family structure attaches great social values to children. The sex classification is so strict and the family structure controls the sexual desire and gender behavior of children. Since individuals with gender identity disorder are isolated and stigmatized from society in Turkey, the family as a small unit of society reflects

¹⁷⁸ Yilmaz, I. (2005), *State, Law, Civil Society and Islam in Contemporary Turkey*, The Muslim World, Volume 95, Electronic copy available at: <http://ssrn.com/abstract=1777222>.

¹⁷⁹ - G20 is an international forum for the governments and central bank governors from 19 countries and the European Union.

mostly this negative attitude because any problematic gender identity display and sexual anomalies is considered as a threat to the normative gender classification.¹⁸⁰

In Turkey, individuals with gender identity disorder often become the object of scorn and scold for breaking the cultural barriers of gender behavior. Indeed, the family in Turkey has a progressive gender hierarchy with distinct codes of conduct for male and female as any deviation from these behavioral codes creates tensions in the society.

It is not acceptable for young people in Turkey to leave home except for a small group that live in big cities, so most of transgenders in Turkey are living with their families and they are dependent on them economically. This good relationship with parents is also important for treatment and it is considered as an essential requirement for psychological and social adaptations.

Individuals with gender identity disorder and their families always face challenges in Turkey. Generally, the mass media presents this issue as a cultural anomaly and depicts these individuals as low class people or prostitutes. Their behavior is portrayed as social anomaly and consequently they experience vilification, harassment and exclusion and their family complain of negative attitude from their community and even their close relatives¹⁸¹.

Sahika Yüksel the first researcher and advocator of transsexual right in Turkey said: Transsexuals display a unique population in Turkey. Male to female transsexuals in Turkey is more than female to male and where there are conflicts with the other categories of

¹⁸⁰ Aslihan, P. Sahika, Y. Aysun, G. D. Handan, Meteris. INT'L. J (2005). *PSYCHIATRY IN MEDICINE*. Vole 35(4): 383-393.

¹⁸¹ Lockwood, D. M. (2007). *Negotiating the Boundaries of Sexed Identities: The Status of Transsexuals in Turkey*. A Master Thesis Submitted to Utrecht University.

transgenders like homosexual and transvestite, they often find themselves in prostitution. It is due to miserable situation of homosexuals in Turkey and their difficulty for acceptance in prostitution communities on the one hand, and increasing demand for male to female transsexuals and pay higher price for them from their male customers on the other hand¹⁸².

As Yüksel noted, due to this situation, most male to female transsexuals have to undergo illegal procedures by incompetent physicians. Consequently, Turkish law recently had made things difficult for male to female illegal surgeries.

The validity of transsexuals claim is another important point of debates in Turkey. There is suspicion that those who claim that they have gender identity disorder are sexual deviants or suffer from moral disorder, especially, where homosexuals attempt to hide their conditions under the umbrella of transsexuals.

Identity card is an important matter in Turkey as well. Everyone needs to show identity card which carries his gender in almost all affairs. In Turkey, identity cards for male and female are designed in different colors; pink and blue. Transsexual individuals are faced with many problems in their daily affairs as Kandioti wrote in her article "Pink Card Blues". However, a different identity card is necessary in order to accommodate transsexuals since they do not fall under any of the two conventionally accepted genders.¹⁸³

The other main problem that transsexuals in Turkey face is the conflict between the sex reassignment surgeries with Islamic principles. In Turkey, like other Islamic countries,

¹⁸² Sahika, Y. Kulaksizoğlu, I. B. Türksöy, N. Sahin, D. (2000). *Group Psychotherapy with Female-to-Male Transsexuals in Turkey*. Archives of Sexual Behavior. Vol. 29. No. 3. p. 279-290.

¹⁸³ Kandioti, D. The everyday of modern, pink card blues: Trouble and strife at the crossroad of gender. Presented in "Workshop on Fragments of Culture": Middle East Technical University. 20-21 March 1998, Ankara, Turkey.

all kinds of acts of cross-dressing and injection of hormones of opposite sex and sex reassignment surgery are forbidden. Only heterosexuality and hermaphrodites are allowed to undergo sex reassignment surgery. Also religious burial rites demands that the body of a female can be bathed only by another female and for those who undergo sex reassignment surgery. It is another subject that is concern to the transsexuals.

The legal proceedings and laws concerning transsexuality in Turkey

The first debate on the legality of transsexuality dates back to the 1980s. Before that, there was no law pertaining to sex reassignment surgery in Turkey. The first demand for change of the birth certificate and civil records was submitted to Turkish court in 1982 by Bulent Ersoy but rejected. After 6 years, on May 4, 1988, the Turkish courts allowed change of birth certificate for those who had sex reassignment surgery and obligated the state to legally recognize their new sex according to the Law 3444, Article 29 of the Turkish Civil Code:

All the necessary changes shall be made in the civil status of the transsexual in case of any sexual conversion which occurs after birth provided it is proved by a medical report. In all cases, for the correction of these records, action is brought against the spouse if the transsexual person is married. The same court shall indicate in its judgment to whom custody of the children shall be given. The marriage is automatically dissolved on the civil status record...After the court's decree the changes brought about are to be entered in the transsexual's civil status records by adding such details to the original record so as to update the data concerning sex on the birth certificate and identity papers, and by authorizing a subsequent change of forename."¹⁸⁴

¹⁸⁴ Lockwood, D. M. (2007). *Negotiating the Boundaries of Sexed Identities: The Status of Transsexuals in Turkey*. A Master Thesis Submitted to the Utrecht University.

It should be noted that, the role of medical and psychological experts and their relationship with judicial system influenced the change brought about by Article 29. Foucault also noted this in his studies. The experts were considered a trustful agent of the court to ensure that the transsexuals are trustful and they are really suffering from a disease and sex transition is a compulsory treatment for them.

The court then declares that the individuals that had undergone sex reassignment surgery are permitted to change their name based on the new sex and grants them the right to marry with a person of the opposite sex of their new sex. Of course, the change of the birth certificate became more restrictive by revising this amendment in 2002.

After the rejection of Ersoy's initial demand for change of birth and civil records by court prior to 1982, she sent a formal question to the court that, 'what is the legal status of those who remove their genitals whether by applying to the court or not?'

Despite Ersoy's submitted documents of operation in London in 1981, endorsement of doctors and testimony for four witnesses testifying to her new sex as a woman, the court was not convinced by these medical and scientific evidence and ultimately rejected her request that there isn't any law to give the right to individual to choose their own sex and also according to the beliefs, nobody is allowed to change his own sex arbitrarily. Due to the court's decision, Ersoy was not allowed to be a real woman and could not be considered as a real man because of the cutting of her genitals and she lost personhood.

The court's rejection was based on four reasons; firstly, although Ersoy has undergone sex reassignment surgery, but she could not considered as a real woman. Secondly, the individual does not have the right to change their sex at will. Thirdly, in the sight of the court, the phenomenon of transsexuality is not considered as a legitimate disorder

and consequently, sex reassignment surgery is not considered as a viable medical treatment and finally, allowing sex reassignment surgery can be considered as a threat to social structure. The court argued that, the medical reports only stated that Ersoy looked like a woman and it is not sufficient for sex change surgery. Also sex is not questionable and it is determined by doctors at birth and nobody can choose his or her own sex.

The court's argument was based on semantics and that according to Ersoy's defense in the court: "she had lived as a woman for four years". In fact, she was a real man and was not a real woman. So, the transition was that of looking like a woman, but what about the feelings? Does he feel like a real woman? Ersoy defense was that everything about me seems like a woman. The court asserted again that, "seems" does not stand as "is".

At least, the court concluded that, allowing sex change would threaten the social structure and will cause imbalance in nature and public confusion. Also due to the fear that transsexuals act according to their personal desire, the court ruled that only the individual with damaged organs, where a mistake is made on the original documents, or any medical problem that happen with biological sexual development of the individuals were allowed for such changes and can apply to the civil registry and change their birth records. Actually, in the opinion of the court, transsexuality was not considered as a disease and also sex reassignment surgery was not recognized as a treatment for it.¹⁸⁵

Such particular procedures are important for the court. They determine a significant discursive shift, not only to provide some important argument to the court's reasoning, but also, for demonstrate the policies enacting the rule and law by acknowledge the social and medical situation of transsexuals.

¹⁸⁵ Ibid

Despite all these reasons, a question always remained for the court thus; is there one true sex beyond the one assigned at birth and what is the status of transsexuals? Once again, in 1986, the court revived the previous decision and asserts that changing sex cannot be a personal choice. The court expressed deep regret over the biological and sexual problems of the transsexuals and stated that in the opinion of the court, an individual's birth anatomy is the basis for identifying a sexual identity and transsexuality cannot be considered as a convincing reason and legitimate basis for sex change.

The court argued that, nobody has the right to damage his body arbitrarily, because it can be considered as threat to the natural unity of society. In addition, from the cultural and social point of view, the court is obliged to protect the sex classification in order to maintain social order. There was also an additional concern that, by legitimizing sex change, some may take advantage of sex reassignment surgery to seek for divorce, avoid military duty or take advantage of retirement.

Ultimately, in 1986, some judges acknowledged the undeniable truth about sexual identity disorder. Some medical publications stated that a man can be trapped into a woman's soul and *vice versa*. Also, a court pointed out that, not only the physical body, but also the soul determines the sex. Although, it was the time to rethink the law, it took up to two years for the courts to accept to change the law relating to sex change.

Finally, the court found out that it is necessary to some rules and regulations about the medical practice, especially in the major cities as Ankara and Istanbul that transsexuals were rapidly increasing. So, it issued Article 29 of the Turkish Civil Code in 1988. Several legal criteria were established by Article 29 in order to change sex for transsexual individuals including providing a confirmation certificate from a Medical Commission. The presented document must indicate that the person can undergone sex reassignment surgery and if the

applicant or individual is married, his or her spouse must be given notice that his or her partner will undergo sex reassignment surgery and after the completion of sex change procedure, their marriage must be nullified by the court.

After 14 years, Article 29 was replaced by Article 40 of the Turkish Civil Code with two steps. The first step states:

A person who wants to change his or her sex has to apply to the court personally and ask for permission for a sex reassignment. For this permission to be given, the applicant must have completed the age of 18 and must be unmarried. Besides he or she must prove with an official health board report issued by an education and research hospital that he or she is of transsexual nature, that the sex reassignment is compulsory for his/her mental health and that he/she is permanently deprived of the capacity of reproduction.”

The second step states:

If it is confirmed by an official health board report, that a sex reassignment operation was effected based on the permission given and in accordance with the purpose and medical methods, the court will decide the necessary changes to be made in the civil status register.”¹⁸⁶

This Article reconsidered the previous Article about same sex marriage and also added two permissions from the court, the first permission before applying for sex reassignment surgery and the second one, after undergoing surgery and before the change of their legal status. The applicants should not be married and should

¹⁸⁶ Ibid

exceed the age of 18. They need to present a confirmation document of an expert from an educational and research hospital funded by the government that state that the applicant is an individual with a true transsexual problem and sex reassignment surgery is compulsory for him/her and she/he is deprived of reproduction permanently.

The court cases of transsexuals in Turkey show that there is a deep relationship and complex dynamics between the law and medicine and the social structure and sexual identity. Sex reassignment surgery is performed according to assessment by physicians, psychiatrists and the judiciary and the treatment procedure include hormone therapy, experience in new and real life, surgery upon permission of two clinicians and the permission be given after three months of psychiatric treatment.

According to Turkish law, a medical certificate providing this surgery is necessary for this patient and this certificate can be prepared by any physician according to his own criteria. The Turkish National Health Service does not bear the cost of this surgery and patients who have undergone sex reassignment surgery have right to change their birth certificate and get married.¹⁸⁷

4.3.3 Pakistan

The general position

Pakistan is a sovereign country located in South Asia. It is the sixth most populous country with 199 million people. Pakistan was the home of several ancient cultures such as; Mehrgarh

¹⁸⁷ Yüksel, S. Kulaksizoğlu, I. B. Türksoy, N. Şahin, D. (2000). *Group Psychotherapy with Female-to-Male Transsexuals in Turkey*. Archives of sexual behavior, Vole 29. No.3. available at: Group Psychotherapy with Female-to-Male Transsexuals in Turkey

of the Neolithic, the Bronze Age Indus Valley Civilization. It was home to kingdoms ruled by people of different faiths and cultures include: Hindus, Muslims, Indo-Greeks, Turco-Mongols, Afghans and Sikhs.

Pakistan is a federal parliamentary republic consisting four provinces and four federal territories. It is a country with various ethnic and linguistically diverse as well as variation in its geography and wildlife. The official religion of Pakistan is Islam and it is the second most Muslim populous nation after Indonesia. The Constitution of Pakistan refined for several time and finally reinstated in 1885 that, it is the foundation of the current government of Pakistan.

Transsexuality in Pakistan

Effeminate behaviors by men in Pakistan are referring to a form of gender role that are known as *Hijra*. The term of *Hijra* is an umbrella used for men who are out of normal sexual behaviors and behave as women such as eunuch, hermaphrodite, transgender, transvestites, bisexual, intersexual (Jami. 2005, Sharma. 2000). This term refers to all physical and psychological ambivalence men and often attributed to any kind of abuse to men who are ineffective, whimsical, and womanly or effeminate. The women who behave like men or wear cloths such as men are not under the title of Hijra. (Jami. 2005. P: 3).¹⁸⁸

All these groups are known as *zananay*. Hermaphrodite is known as *khusra*. Transgender and those who are castrated are known as *Narban*. Homosexuals, transvestites, and even those who are involved in sex business and moral deviants, claim that they are born with sexual deformity and a female soul trapped in their body (Jami. 2005). They have joined Hijra category, because they usually were rejected by their family and their friend. Only 1%

¹⁸⁸ Jami, H. (2005). *Condition and Status of Hijras (Transgender, Transvestites etc.) in Pakistan*. National Institute of Psychology. Quaid-i-Azam University. Islamabad. Pakistan.

of all Hijra community has born with sexual deformity which they are hermaphrodites and are known as *khusra* in Pakistan (Coway. 2002).¹⁸⁹

Since Hijra physically and psychologically are considered ambivalent they hide their sexual identity, so they considered as freaks (hiding the sexual identity) in Pakistan. They claiming that they are third gender, therefore they often established a marginalized community (Jami. 2005).

According to Jami, majority of people in Pakistan believed that Hijra are those who are born with sexual deformity. But, according to Zafar (2004) only 1% of Hijra are born with sexual deformity which they are hermaphrodites.

Although Hijras behave and wear like women, they prefer to mention male sex in their identity documents. It is for two reasons; first Pakistan is a patriarchal and male dominated society. Having male child is more honor than having female child for family and Hijras can participant in son's wedding and mail child birth celebration only. So they prefer to identify themselves as male in their identify documents. Second, Pakistan is an Islamic country and rich Muslims are required to perform pilgrimage (Haj). As a religious compulsory, women cannot performing Haj alone, and they must be accompanied with a male relative as Mahram. Therefore Hijras prefer to remain as a male sex in their identity documents for doing Hajj (Jami. 2005).

Reason for becoming Hijra in Pakistan is another important point that has investigated by researchers. According to Jami (2005), there are some reasons behind being Hijra or joining in Hijra community. Make up like women, interest in dancing and sexual interests in men that were acceptable by Hijra community are the large number of reasons for becoming

¹⁸⁹ Ibid

Hijra in Pakistan. Unemployed and low financial situation are the other reasons for joining the young people to Hijra community. Because they apparently see Hijra earns money easy. The family encouragement to act and behave like women in childhood or sometimes the rough behavior of the families compelled them to join to Hijra Community. Curiosity and interesting in homosexual activities, due to sexual abuse in childhood, is another important reason to becoming a Hijra in Pakistan.

Although, according to a case report¹⁹⁰, the procedures of castration which is carried out by "gurus", is the serious outcome of gender identity disorder in Pakistan (Yousafzai, Abdul Wahab. 2007)

The cultural perspective of Hijras in Pakistan is rooted in *Khawjasara* culture that traced to the age of *Mughal*. On that time, khawjasaras were hermaphrodites or eunuch men that were employed as guard for the harems of Mughal rulers. They played a prominent role in the different affairs (Gwinn, Peter & Goetz, 1990, p. 598; Sharma. 2000; Jami. 2005. P: 9).

Pakistan is an Islamic country that it is mandated to respect sharia and religious commandments. In the sight of the Constitution, sex and gender is classified to male and female and hermaphrodite individuals are accepted as people with the sexual deformity. Therefore, intersexes or hermaphrodite individuals are equal in the sight of the right with other people. Homosexuality is forbidden in Pakistan and is considered as a great sin in Islam (Jami. 2005).

¹⁹⁰ Yousafzai, A. W. Bhutto, N. (2007). *Gender identity disorder. Is this a potentially fatal condition?*. J Ayub Med Coll Abbottabad. Vol 19 (4): 136-137.

According to Jami (2005), although, some Indian researchers tried to trace a religious concept for Hijras in Hinduism, but there is no the religious connotation about Hijras in Pakistan. They are equal in rights and social obligations and there isn't any legal restriction in enjoying their rights and normal obligations except some social and cultural barriers.

Sex Reassignment Surgery in Pakistan

Sex Reassignment Surgery is unlawful under Pakistani Law. Not only there isn't any legal assistance to those who wants to change their sex, but also, if any of Hijras undergone sex change voluntary, either by auto-castration or with the help of any other Hijras or doctors, they will be punished under Pakistani law because the voluntary castration might hurt them and endanger their life and it is not allowed in Islam (Yousafzai. A.W. Bhutto N. 2007).

There is any legal cover to change the identity documents in Pakistan. Sexual identification in any age is based on sex in the birth certificates. Homosexuality in men and same sex marriage are considered as unnatural offences and punishable under Pakistani law.¹⁹¹

General attitude towards Hijras is negative and discriminatory. It is due to Hijras' absence behavioral patterns. It caused they were deprived from any chance to employment and opportunity to take education. They carry out castrations without the primary medical and psychological assistance and treat themselves arbitrary, even without prescription.

According to a research by Syeda Kaniz Fatima Haider (2008) the main problem of Hijras in Pakistan and also transsexuals in many of other countries is the lack of awareness and knowledge about this issue and the conditions of these individuals. Most of people are not able to identify individuals with gender dysphoria and have less knowledge and

¹⁹¹ Ibid.

information about transsexuals. Sometimes we blame them due to their behavior or their appearance performance but indeed we have no proper knowledge of their problems and awareness of the true nature of their conditions.¹⁹²

She was interested to investigate that whether the people with the highly education, knew the concept of the local term of Hijra and the meaning of gender dysphoria? Whether their knowledge, awareness and education about these people cause to change their behavior regard these individuals?

She asserts there is a lack of awareness and proper information about Hijras even among these professional scholars. There wasn't a clear concept of gender dysphoria among the highly educated scholars and there were totally misinformed about the causes, type and the true nature of *Hijras* condition. According to his research, the exact meaning of *Hijra* was difficult and there are different opinions among different scholars. They obtained information through various sources such as social interaction, newspaper, magazines, book, television and movies.

Haider, SK. (2008) concludes that the misconception and the lack of awareness about transsexuals is the most reason for the social stigma, discriminations, bias and deprivations again these individuals. The most important point is the significant role of parents in understanding the children and the awareness of the true nature of the condition. He points out, when the educated class of our society in an under development country such as Pakistan, have no much information about the concepts of gender dysphoria and there is still no a

¹⁹² Haider, S. K. (2008). *Point Of View of University Scholars about Male-To-Female Gender Dysphorics in Pakistan*. J.R.S.P., Vol. 45, No. 2, P. 135- 148.

satisfactory image of transsexuals in their mind, how we can understand and treat these marginalized group?¹⁹³

Due to the social stigma attached to transsexuals, they usually hide their sexual status, so there is not the exact statistic of Hijras in Pakistan. According to Abdul Wahab Yousafzai (2007) there is only one published case report of sex reassignment surgery in Pakistan. Of course, some sex reassignment surgeries are performed out of medical standards and even without anesthesia. These surgeries performed by removing penis and scrotum by sharp knife that usually lead to bleeding and death of many people as a result of hemorrhage and sepsis (Abdul Wahab Yousafzai 2007).¹⁹⁴

4.3.4 Egypt

The general position

The Arab republic of Egypt is the most populous country in the Arab World and North Africa. It is located in the northeast corner of Africa and southwest corner of Asia. This country as one of the world's first nation states, has the longest histories of any modern country. The ancient Egypt as a cradle of civilization had experienced the earliest development of writing, urbanization, central government, organized religion in history. Modern Egypt with significant political, cultural and military influence in the Muslim world, Middle East and North Africa is considered as a middle power and regional.

The legal system of Egypt is based on Islam, civil law and judicial review by a Supreme Court that accepts obligatory International Court of Justice. The main source of

¹⁹³ Haider, SK. (2008). *Point Of View Of University Scholars About Male-To-Female Gender Dysphorics In Pakistan*. Nurture. 2(1): 12-6. Accessed 9 May 2010 <<http://chek.edu.pk/NURTURE2008.pdf#page=16>>.

¹⁹⁴ Yousafzai. A. W. Bhutto, N. (2007). *Gender identity disorder. Is this a potentially fatal condition?* J Ayub Med Coll Abbottabad. Vol 19. Issue 4.

legislation in Egypt is Islamic Jurisprudence. Sharia courts and judges are licensed by the Ministry of Justice. The personal status Law is governed by Sharia.

According to Baudouin Dupret (2009), there is no reason to assume that the judicial system in contemporary Egypt is directly returned to the intellectual and historical of Muslim societies. There is a biographical communication between the modern Egyptian Law and Islamic fiqh. Also when people refer to fiqh in contemporary age, it does not necessarily mean that they are dealing with Islamic law in its classical sense. The adoption of a legal system based on the civil law family, the Egyptian law evolution and the practical ways in adjudication of Egyptian judges, all indicate the caution of Egyptian judges in implement the relationship between modern Egyptian law and fiqh (Dupret 2000a).¹⁹⁵

Transsexuality in Egypt

The story of transsexuality trace back to 1982 in Egypt, when a 19 years old medical student name Seyyed Muhammad Abd Allah from Al Azhar University, complained to a psychologist for his strict depression stream. After some examination, Salwa Jirjis Labib as a psychologist discovered that he is a psychological hermaphrodite (*Al-Khuntha an-nafsiyah*) that suffers from a sexual gender disorder. After three years hormone therapy and all possible efforts to reform a male sexual identity to him, it was not successful. Finally she referred him for sex change operation. Sex reassignment surgery was done very well on 29 of January 1988. After recovery he began to lives happily with her new satisfied female identity and he changed his name from Seyyed Muhammad Abd Allah to Sally, but it was not the end of the story. The story aroused a much noise in mass media and a vast interest in people and

¹⁹⁵ Dupret, B. (2002). *Sexual Morality at the Egyptian Bar: Female Circumcision, Sex Change Operations, and Motives for Suing*. Islamic Law and Society. Vole 9. Issue 1. P: 42-96.

involved some authorities, even Muhammad Seyyed Tantawi, the grand mufti of Al –Azhar University.¹⁹⁶

Refusing the final exam and entrance in the Medical girl Faculty by the Dean of the Medical Faculty, was the first step of her story. Apparently, she needed to an official document for recognition of her new name and new gender. She applied to the Administration of Civil Matters for change her name from Seyyed Muhammad Abd Allah to Sally. On April 4, 1988 she put her problems on public opinion judgment through an interview by Al-Ahram. Responding to her remarks, a special committee was arranged by Al-Azhar for investigation her case. The result of the committee examinations by the Doctors' Syndicate was that he was one hundred percent male and he and her surgeon had committed a grave medical crime and should be punished.¹⁹⁷

The Doctors' Syndicate sent a letter on May 14, 1988 to the grand Mufti, Seyyed Muhammad Tantawi, asking him the religious' viewpoint on the subject.

Responding to the Doctors' Syndicate letter, Seyyed Muhammad Tantawi, the grand Mufti of Egypt, has passed a fatwa that if a trustworthy doctor attests that sex change operation is the only cure for this disease, this operation as a medical treatment is permissible. However, this surgery is not permissible for mere wish at all, for male to female or vice versa.

Seyyed Muhammad Tantawi opined:

It is permissible to perform the operation in order to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so on the grounds

¹⁹⁶ Skovgaard, Peterson. J. (1995). *Sex change in Cairo: gender and Islamic law*. Journal of the International Institute. Vol 2. Issue 3.

¹⁹⁷ Ibid

that it must be considered a treatment...It is, however, not permissible to do it at the mere wish to change sex from woman to man, or vice versa."¹⁹⁸

This fatwa considered as turning point for acceptance the Muslim transgender movement within the framework of the Islamic faith. After that, many sex reassignment surgeries performed in Egypt and according to the Ministry of justice; the judicial procedure of sex change is done in Egypt.

The surgeon is acquitted by the public Prosecutor on December 29, 1988, because the final report confirmed that, this surgery had been performed according to the standards of care. Finally, Sally received her certificates with new name and new gender as female after one year. She still had problem with her education. Al-Azhar still did not recognize her as a female and did not allow her to enter to the Medical Faculty for girls. After one and half years, the Administrative Court repealed her expel and allowed her to enter to any university in order to finish her education. This was the most controversial and famous case of sex reassignment surgery in Egypt.¹⁹⁹

There are some significant points in the story of Sally. The first point is that this case became a forum of debates between various domains of political, governmental, psychological, medical and religious communities. Both of the partisans and opponents have brought supportive and critical comments, although the opponents were in the majority. The interesting point is that, there is any positive assessment of the operation in any Islamic newspaper.

All debates, was the struggle on the Sally's sex. The general opinion was that this case is a public issue and Sally is not able to decide on herself. Also there was a different opinion

¹⁹⁸ Ibid

¹⁹⁹ Ibid

between psychologists and Al-Azhar University. According to psychologists, Sally was a woman, but suffered from a psychological disorder, whereas Al-Azhar don't accept this opinion and claimed that she was a man and will remain as a man forever. According to Al-Azhar, everybody has a true sex that can be diagnosed by close examinations and the body cannot lie.²⁰⁰

For Al-Azhar, that is located in one of the earliest Muslim societies, the distinction between two sexes; male and female is very important. All societies are founded upon this fundamental distinction. So, these controversial subjects are considered as a threat to the social order and should be more scrutinized.

There are strict rules regarding the relationship between two sexes in Islamic societies. Any legal relation between two different sexes is possible through marriage and all contacts of male and female took place inside the families. Any relation outside of these legal relations, is illegal and are bound to punishment.²⁰¹

Fatwa on Sex Change Operation in Egypt

Egyptian Muftis were asked immediately for Islamic verdict on sex change operations upon breaking news related to this subject. The mufti of the High Council for Islamic Affairs and the president of Al-Azhar's Fatwa Council published their fatwas on their institutions before the Mufti of Republic of Egypt. Because they were consulted by the journalists immediately when some details of the Sally's case published. Both of them declared that, sex change operation could be performed if a trustworthy physician diagnosis the surgery is the only cure

²⁰⁰ Ibid

²⁰¹ Veneuse, M. J. (2010). *The Body of the Condemned, Sally... Paths to Queering anarca-Islam*. *Anarchist Developments in Cultural Studies*. 1:217-239.

for this disease. Since the Mufti of the High Council denounced sex change operation, therefore he don't published a fatwa until October 1988.

Responding to the official letter of the Doctors' Syndicate, asking for a fatwa in the subject, the grant Mufti of the Republic of Egypt passed a much longer fatwa in May 1988 as below:²⁰²

To the honored general secretary of the Doctors' General Syndicate, This is an answer to the Syndicate's letter number 483 of May 14, 1988, asking for the opinion of religion on the matter of a student of medicine at the al-Azhar university, who has been subjected to a surgical operation (removing his male organs) in order to turn him into a girl.

We find that cUsama ibn Sharik tells:

"A Bedouin came to the Prophet and said, 'O, Messenger of God, can you cure?' And He said, 'Yes, for God did not send a disease without sending a cure for it, knowing it from His knowledge...'" This [hadith] is told by Ahmad [ibn Hanbal]. There is another version: "Some Bedouins said, 'O, Messenger of God, can you cure?'. And He said. 'Yes. God's servants can cure themselves, for God never gave a disease without providing a cure or a medicine for it, except for one disease.' They asked, 'O, Prophet of God, what disease is that?' He said, 'old age.'"²⁰³

As for the condemnation of those who by word and deed resemble women, it must be confined to one who does it deliberately [*tacahhada dhalika*], while one who is like this out of a natural disposition must be ordered to abandon it, even if this can only be achieved step by step. Should

²⁰² Skovgaard-Petersen, J. (1995). *Sex change in Cairo: gender and Islamic law*. Journal of the International Institute. Vol 2. Issue 3.

²⁰³ This version is related by ibn Maja Abu Dawud, at-Tirmidhi, and others. (*Muntaqi l-Akhbar Wa Sharhan nayl al-Awtar*, v. 8, p. 200, and *Fath al-Bari bi Sharh Sahih al-Bukhari*, by al-Asqalani, v. 9, p. 273)

he then not comply, but persist [in his manners], the blame shall include him, as well— especially if he displays any pleasure in doing so.

The person who is by nature a hermaphrodite [Mukhannath khalq] is not to be blamed. This is based on [the consideration that] if he is not capable of abandoning the female, swinging his hips in walking and speaking in a feminine way, after having been subjected to treatment against it, [he is at least willing to accept that] it is still possible for him to abandon it, if only gradually. But if he gives up the cure with no good excuse, then he deserves blame.

At-Tabari took it as an example that the Prophet (God bless him and grant him salvation) did not forbid the hermaphrodite from entering the women's quarters until he heard him giving a description of the woman in great detail. Then he prohibited it. This proves that no blame is on the hermaphrodite for simply being created that way.

That being so, the rulings derived from these and other noble hadiths on treatment grant permission to perform an operation changing a man into a woman, or vice versa, as long as a reliable doctor concludes that there are innate causes in the body itself, indicating a buried [matmura] female nature, or a covered [maghmura] male nature, because the operation will disclose these buried or covered organs, thereby curing a corporal disease which cannot be removed, except by this operation.

This is also dealt with in a hadith about cutting a vein, which is related through Jabir: "The Messenger of God sent a physician to Abu ibn Kacb. The physician cut a vein and burned it." This hadith is related by Ahmad [ibn Hanbal] and Muslim. What supports this view is what al-Qastallani and al-Asqalani say in their commentaries on it: "This means that it is incumbent upon the hermaphrodite to remove the symptoms of femininity."

And this is further sustained by the author of Fath al-Bari who says "...having given him treatment in order to abandon it..." This is a clear proof

that the duty prescribed for the hermaphrodite can take the form of a treatment. The operation is such a treatment, perhaps even the best treatment. This operation cannot be granted at the mere wish to change sex with no clear and convincing corporal motives. In that case it would fall under that noble Hadith which al-Bukhari relates through Anas: "The Messenger of God cursed the hermaphrodites among the men and the over-masculine women, saying 'expel them from their houses', whereupon the Prophet himself (God bless him and grant him salvation) expelled one, and cUmar expelled another one." This Hadith is related by Ahmad and al-Bukhari.

To sum up: It is permissible to perform the operation in order to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so on the grounds that it must be considered a treatment, when a trustworthy doctor advises it. It is, however, not permissible to do it at the mere wish to change sex from woman to man, or vice versa. Praise be to He who created, who is mighty and guiding. From what has been said the answer to what was in the question will be known. Praise is to God the most High."²⁰⁴

This fatwa was a response to the syndicate's letter, asking for the opinion of religion on sex change at al-Azhar University. It was very long and includes various sections. The first section as an introduction in the Grand Muftis' fatwa is referred to various versions of a Hadiths which explain that there is a cure for any disease and also for hermaphrodites.

The second part, is discussed about hermaphrodites; men who resemble women. It also refers to the various hadiths about hermaphrodites that have been recorded by the famous scholars. Tantawi explained that a hermaphrodite should not be blamed for his / her being created by this situation, because there is not any wrong to them.

²⁰⁴ Ibid

The third point is that, hermaphroditism should be treated if it is possible and if a surgical operation can discover the real and true nature of a male or female.

The fourth point referred to a hadith about cutting vine by a physician that Prophet Muhammad SAW sent to a man and this hadith is considered as a witness for permissible of remove some parts of the body through surgery.

The fifth point is referred to the hadith of Prophet Muhammad that He cursed hermaphrodites and expelled one of them from His house. Tantawi deduced that this hadith is not for a general curse on hermaphrodites. It is a prohibition against surgery for sexual wishes or sex change for the fun. So the sex change must be for treatment in order to reveal and discover the true sex.

The significant point in this fatwa is that, Tantawi is quoting a former Mufti of the Republic Jadd al-Hagg, who passed a fatwa on sex change operation in response to an inquiry from the Malaysian Center for Islamic research in 1981. Instead of referring to the elaborate fiqh debates of hermaphrodites, both of them scrutinized some of prophet's hadiths regarding this issue in order to finding out a new ruling on this new phenomenon, that it means practicing Ijtihad in legal terms. Although, there are a few hadiths about hermaphrodites and apparently all of them hostile towards them and referring to expelling the hermaphrodites by Prophet Muhammad SAW to the desert, which is the first point to gives the most general rule about hermaphrodites, Tantawi and Jadd ad-Haqq focused on that part of hadith that say Prophet SAW expelled a hermaphrodite from His house as a punishment for revealing the secret of harem. So, if hermaphrodite had not opened the secrets of the harem, they would not have been expelled. From this point, they conclude that, hermaphrodites cannot be blamed due to their nature. So, the hermaphrodites should not be blamed for their natures as

long as they try to rid themselves of this sexual ambiguity. But if they deviate from the main direction, they are to blame and should be expelled from the society as a punishment. Finally, Tantawi stress that, treatment is the best position for hermaphrodites to take away from the hermaphroditic state and medical surgery is such a treatment.

4.3.5 Indonesia

The general position

The Republic of Indonesia is a sovereign state located in the Southeast Asia and Oceania with thousands of volcanic islands, hundreds ethnic groups with many different language, the beaches, volcanoes and jungles that is the home of tigers, Komodo dragons, and elephants.

Indonesia with more than seventeen thousand islands is the world's largest island country. The population of Indonesia has estimated over 255 million people and it is the fourth most population country in the world. More than half of Indonesia's populations (51%) are in Java as the most population island in the world.

The republic of Indonesia is formed of government includes an elected legislature and president. One of the peculiarities of Indonesia is the government's stance on freedom of religion that it has recognized six official religions which are Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. Although according to date collected by the Indonesia Conferences on religion and Peace (ICRP), there are about 245 non-official religions in Indonesia.²⁰⁵

²⁰⁵ INDONESIA- INVESTMENT, <http://www.indonesia-investments.com/culture/religion/item69>

According to the 2010 census of Indonesia, 87% of people are Muslim (more than 99% Sunni, 0.5% Shia and 0.2% Ahmadis), 6.96% protestant, 2.91% Catholic, 1.69% Hindu, and 0.72% Buddhist, 0.05% Confucianism, 0.13% other and 0.38% unstated. Nevertheless, Indonesia is the most populous Muslim- majority country in the world and Islam was introduced to Indonesia in the fourteenth century.²⁰⁶

Transgenderism in Indonesia

In the contemporary age's culture, the binary opposition of sex and gender, male or female, man or woman and homosexual and heterosexual appears as a basic and universal pattern in human society. Ethnographic researches on sexual diversity in gender studies are significant in its own right. These studies enable us to think about attitudes, behaviors and identities concerning sexuality, sex and gender that we are not able to experience on our life and challenged the intellectual understanding on the nature of individual identity in modern culture. All cultures in contemporary age provide spaces for sex and gender outside of dichotomy of male and female and it is universal like binary of sex/gender. This diversity is based on culture, religion and state.²⁰⁷

According to studies, Indonesia is a country with a long history of transgender individuals and sexual diversity. According to extensive researches on ethnographic, Indonesia is an interesting sample of gender diversity in East Asia. A wide range of genders and sexualities lives with different name in different parts of Indonesia. Transvestism,

²⁰⁶ Population-Indonesia Investment, retrieved from:
<https://www.indonesia-investments.com/culture/population/item67?>

²⁰⁷ Davies, Sh. G. (2010). *Gender Diversity in Indonesia*. Routledge. 2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN.

homosexuality and cross-gender behavior have been observed for a long time among a wide range of Indonesia peoples.²⁰⁸

In Indonesian local slang, there are varieties of popularly terms used for transgender and transsexual individuals. Females who identify themselves as neither man nor woman were known as *calalai* and Males who identify themselves as neither man nor woman were known as "*calabai*" and those who have both male and female elements were known as "*bissu*".²⁰⁹ Female to male transgendered were known as "*tomboy*" or "*hunter*".²¹⁰ "*Banci*" in gay language or "*Bencong*" use for effeminate male and it distinguishes male from "*waria*".

Waria is a nationwide word using to for "third gender" in Indonesia (Andaya 2000). Although, the term of "third gender" is occasionally used for individuals with ambiguous gender, but the concept of "third-gender" is often employed and poorly defined.

According to Boellstorff (2004), the term of *waria* is derived of terms *wanita* (woman) and *pria* (man). So it can be almost translated as "male transvestite". He asserts that; while there is any English gloss for *Waria* in Indonesian language, *waria* refers to "male transvestites" not to "male transgender". He has three theoretical reasons for this claim during his studding in this area.

²⁰⁸ Davies, Sh. G. (2010). *Gender diversity in Indonesia: Sexuality, Islam and queer selves*. London. Routledge.

²⁰⁹ Graham, S. (2005). *Indonesian intersections of bisexuality and transgender*. 1st International Conference of Asian Queer Studies. Bangkok.

²¹⁰ Boellstorff, T. (2002). *Gay and Lesbi Subjectivities, National Belonging and the New Indonesia*. Women in Indonesia: Gender, equity and development. P 92-99.

The first source relates to differences in use between the terms *Waria* and the most common term *Banci* or *Bangong* in vernacular Indonesian. For this reason and since the term *Banci* is a derisive tone and many waria find it offensive, they prefer waria a government dictate and dates term from 1978.

The second source of misunderstanding originates of *waria*, in the many terms for waria linked to "ethnolocality" that is the presumed continuity of ethnicity or place. These terms includes *kawe-kawe* (Makassarese and also many Buginese), *kedo* (Javanese and Balinese, also in Sulawesi), *Wandu* (Javanese and also Sulawesi), Calabai (Buginese and also Kalimantan). These are some local terms used for *waria* in the same way.

The third source of misunderstanding of *waria* is what is termed by Boellstorff as "ethnolocated professional homosexual and transvestite subject positions" or "ETPs" to avoid using these indigenous or traditional terms for homosexuality or Transgenderism, that there have been in many part of Indonesia. The most well-known of transgenders or homosexuals are *bissu* transvestite ritual officials in southern Sulawesi also *warok* actors of the eastern Java, the region of Ponorogo. They sometime have homosexual activities with their understudies known as *gemblak*. So, as Boellstorff said, "in the case of ETPs, therefore, homosexuality or transgenderism to a specialized ritual or artistic activity; they are the first and foremost professions, not sexual or gendered subject positions." Thus, waria is not an ETP, although they can learn by training (Boellstorff 2004).²¹¹

In my opinion, Indonesia is the most difficult to studies about this issue among other countries. The diversity of linguistic, locative, ethnically and sexuality has made it most

²¹¹ Boellstorff, T. (2004). *playing back the nation: Waria, Indonesian transvestites*. Cultural Anthropology, Vole 19, issue 1, P: 159-19

complex. Due to use varies local terms for gender diversity; it is difficult to distinction between different sexual groups.

The history of *waria* in Indonesia is traced to hundreds of years ago. Since the "ethnolocalized professional homosexual and transvestite subject positions" or ETPs turned back to the 14th century, the history of *waria* returns to the early of 1800s. When it was the beginning of appear some scattered references about effeminate male in rural contexts and coastal trading centers. They have not been significant on that time and often attributed to sex worker, lowbrow entertainment and petty commodity trading.²¹²

Anything is not available from the beginning of *waria* to be seen that they limited to any one locality or ethnic group. Some newspaper reports from Batavia (present Jakarta) refers to some districts were known as haunts for *waria* that it seems to the origin of Batavia return to the late of nineteen century. They became well known by the 1960s as a sex worker and for presence in markets. Now the salience of *waria* is utterly different compared with western situations. *Waria* are now as an important cultural category and there isn't any law against them. They fall into three economy classes; some of them have own salon so they can be quite healthy, some work in salons and some of them living as a sex worker.

Nowadays *waria* as a third gender are salient members in contemporary Indonesian society. They don't consider themselves apart from Javanese culture or Balinese culture or Ambonese culture. *Waria* consider themselves as elements of national culture. They express explicitly that they are belonging to national society not to local. According to Boellstorff (2004), "Understanding *waria* as a third gender would position it as equidistant from "male" and "female", eliding the fact that *Waria* being life as men and tend to see themselves as

²¹² Ibid

feminine men through their lives." Thus, most scholars have difficulty with this claim that *waria* are as third gender. ²¹³

The protection of transgender individuals in Indonesia was enacted by the Human Rights Law No. 39 of 1999. According to Article 3, paragraph 3, "Everyone is entitled to the protection of human rights and basic human freedoms, without discrimination". Although this Article provide a strong legal basis for Indonesian transsexuals to obtain fair behaviors from the state, actually, the government of Indonesia have not been granted their accessibility to basic public services and they have not treated such as other Indonesian citizens.²¹⁴

While sexual activities and gender diversity not prohibited by Indonesian Law, transgenders might be discrimination by most communities like other countries on South Asia. Oetomo (2004) asserts that transsexuals usually rejected from social life due to their biological status. They considered as abnormal or anomalies. Yuliani and Demartoto (2006) refer to some discrimination against transsexuals in accessing public services in Surakarta. They have problem to get identification card with identity as transsexual. It is difficult to take acceptance from personal and public institutions for education or employment. They also have problem to utilize public facilities like public transport or public toilet and often exposed to violence verbally, physically and sexuality abuses. ²¹⁵

There is a lot of sexual diversity in Indonesia; Gay, lesbian, bisexual, and effeminate male and masculine female. In this situation, distinguish between these sexual diversity is inappropriate. Indonesia is the fourth most populous nation for gay and lesbian after India,

²¹³ Ibid

²¹⁴ Yuliani, S. (2012). *Discrimination Against Transsexuals in Accessing Public Services: A Review from The Perspective of Human Governance*. ASPA-IAPA Annual Conference. Brawijaya University Malang 12-14 June 2012.

²¹⁵ Ibid.

China, and United States as it titled "The Gay Archipelago" by T Boellstorff 2005. Bugis and south Sulawesi are the centers of Indonesian gender diversity.²¹⁶

Based on a behavioral surveillance for HIV and STI testing among 1,150 Waria in Indonesia; Java, all transgenders had sold sex, median duration 10 years. As a result, the prevalence of syphilis was 26.8%, HIV was 24.4% and rectal gonorrhea was 47.0%.

Consistent condom use during unprotected receptive and anal sex with clients has reported by 35.9% *waria*. They considered being at high risk for HIV infection. Syphilis was associated with HIV infections and as a result, Indonesian population is in a concentrated HIV epidemic with high risk behavior such as sex between men, female sex workers and injecting drug users. These finding compelled the Indonesian Ministry of Health to strengthen HIV prevention services for about 21000 waria in Indonesia in 2002.²¹⁷

Although, studies are focused on sexual diversities and non-normative genders, outcome of these studies are described the ideal notions of gender. While, studies have concentrated on various dimensions of homosexuality, transgenders and transsexuality, in fact, they can provide a useful framework for heterosexuality and a meticulous meaning of men and women. In Indonesia, the ideals for gender broadcasted through a different sources like curriculum of schools, religion and government ideology. Dissemination and promoting of these ideals means that there is a stable pressure to adapt to gender expectations in

²¹⁶ Boellstorff, T. (2005). *Gay and Lesbi Subjectivities, National Belonging and the New Indonesia*. Women in Indonesia: Gender, equity and development.

²¹⁷ Prabawanti, C. Bollen, L. Palupy, R. Morineau, G. Girault, Philippe, Mustikawati, Dyah Erti, Majid, Nurholis, Aditya, Erlian Rista, Anartati, Atiek Sulistyarni, Magnani, Robert. (2011). *HIV, sexually transmitted infections, and sexual risk behavior among transgenders in Indonesia*. AIDS and Behavior. Vol 15. Issue 3.

society.²¹⁸ The statistic of Male to female (*waria*) is more than female to male in Jakarta, Surabaya and Bandung. The ratio is 5.1.²¹⁹

4.3.6 Malaysia

The official position

Malaysia or Federation of Malaysia is a federation country and has a constitutional monarchy. It has 13 states and three federal territories and it is located in Southeast Asia. Malaysia is a multi-ethnic and multi-cultural country and Islam is the state religion and freedom of religion is allowed for all people. The legal system in Malaysia is based on common Law and the governmental system is similar to that of the Westminster parliamentary system and Islamic civil and criminal law also operates (Shah 2009).

Based on the Population and Housing Census 2010, approximately 61.3% of the Malaysian population practice Islam, 19.2% practices Buddhism, 9.1% practices Christianity, 6.3% practices Hinduism and 2.6% practices Confucian/Taoist (traditional Chinese religion). The Sunni Islam of Shafi'i School of jurisprudence is the dominant branch of Islam in Malaysia²²⁰.

The social status of transsexuals in Malaysia

Transsexuals in Malaysian literature are termed by different terminology. The term "Mak Nyah" was coined by male transsexuals in their attempt at self-definition in 1987. Mak Nyah is derived from Mak meaning "Mother" (Honey, 2005). This term emerged from two streams. Firstly, they wanted to separate themselves from other sexual minorities as cross dressers, transvestites, gay and drag queens. Second, they wanted to define for themselves a superior

²¹⁸ Davies, Sh. G. (2010). *Gender diversity in Indonesia: Sexuality, Islam and queer selves*. London. Routledge.

²¹⁹ Hutauruk, Indah S, Psi, M. Responses of Male Transsexuals to the Drawing Completion Test.

²²⁰ Shah, Sh. (2013). *The Malaysian dilemma: negotiating sexual diversity in a Muslim-majority Commonwealth state*. Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalization and Change.

social status and a higher level of dignity, rather than the improper position and degree that has drowned for them by the society of Malaysia (Ali S. Masroor 2005, Khartini 2005).

The term Mak Nyah often refers to male to female transsexual, those who have sex reassignment surgery as well as to those who have not. Teh, Y. K. (2002) notes that female to male transsexuals are named Pak Nyah. The term Pak, meaning "father". Sometimes they are mentioned as "abang" meaning man or brother, but commonly they are called "tomboys"(Jeffery Jessie, 2005).²²¹

In 2003, the term *lelaki lembut* "soft men" and *wanita keras* "hard women" was interpreted for individual with gender identity disorder by the larger Malaysian people. Of course, there is a slippage between the terms *Lelaki lembut* and "gay" and male to female transsexuals and even heterosexual men (Shah 2005).²²²

It has been estimated that there are about 10,000 Mak Nyahs in Malaysia. About 70% to 80% are Malay and the rest are Indian, Chinese and other minority ethnic groups. The majority of Malay Mak Nyahs are Muslims (Teh 2004, Jeffrey Jessie 2005& Khartini 2005). The Malaysian Bar has estimated that the proportion of Mak Nyahs could be as one in every 200 individuals (The Malaysian Bar, 2005).

The social status and living situations of Mak Nyahs in Malaysia is not satisfaction and the official position is usually hostile towards them. They are living in an improper situation. Most of them live below the poverty line and often employed as sex workers. Only 4% of them can obtain higher education degrees. The community has a high level of stigma

²²¹ Jeffrey, J. (2005). *Recognizing Transsexuals by Honey Tan Lay Ean*. Malaysian Bar, 17 Nov 2005.

²²² Shah, Sh. (2013). *The Malaysian dilemma: negotiating sexual diversity in a Muslim-majority Commonwealth state*. Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalization and Change.

and discrimination against them. There is limit to their ability of getting job and this leads to their relative impoverishment.²²³

In the community of Mak Nyahs, firstly, a sex change operation is not needed. This was due to the high costs of sex change operation and the poor economic status of Mak Nyah. Secondly, in the 1983 conference of Rulers in Malaysia, sex change operation was prohibited for all Muslims and also cross dressing, except for hermaphrodites. This fatwa has had a massive impact on the lives of the Muslim Mak Nyah. They were deprived the right of performing Hajj. They were also not allowed to pray in mosques. Any contact with the religious authorities is prohibited for them and that exposed them to persecution.²²⁴

Mak Nyahs, who have undergone sex change operation, were not allowed to change their documents in order to reflect their new gender for example in their birth certificates. They cannot change their gender in the National registration Identity Cards and could only add their new name beside the old one on their identity cards.²²⁵

In response to information request about the treatment of sexual minorities in Malaysia in 30 August 2005, an Immigration and Refugee Board of Canada indicates that: while there are no laws prohibiting sex reassignment surgery or gender reassignment therapy, no laws allow Malaysian Mak Nyahs to officially change their gender on public documents. The Council of Rulers, immediately prohibited sex reassignment surgery for Mak Nyahs and it applies to all Muslims in Malaysia.²²⁶ Furthermore, a quote of the Prophet Muhammad (PBUH) has been relied upon by religious scholars which states, "Prophet Muhammad cursed the male who appears like female and vice versa". With this hadith, Mak Nyahs have to bear

²²³ Teh, Y. K. (2002). *The Mak Nyahs: Malaysian male to female transsexuals*. Marshall Cavendish Academic.

²²⁴ Honey, T. L. E. Jeffrey, J. (2005). *Recognizing Transsexuals by Honey Tan Lay Ean*. Retrieved November 17, 2005, from: <http://www.malaysinbar.org>

²²⁵ Teh, Y. K. (2002). *The mak nyahs: Malaysian male to female transsexuals*. Marshall Cavendish Academic

²²⁶ Ibid

the double burden of discrimination. One is discrimination by the Malaysian society and secondly being described as deviants by religious scholars (Teh 2004, Khartini 2005).

The fatwa that was issued by Conference of Rulers in 1983 had a great impact on lives of the Muslims who are Mak Nyahs. Some of them accepted the fatwa and surrendered to the will of Allah while others went abroad for sex change operation.

In addition to the current and permanent problems of Mak Nyahs such as, the constant persecution and harassment from the religious authorities and police, burial rites problems based on their religious beliefs, job restrictions and the deprivation of the right of marry. They equally have the problem of lack of an official gender status. They have problem for using health insurance, due to the contradiction between their identity cards and their physical organs. Creating bank account, any request for immigration and showing their identity cards when they were asked are from other their problems. These pressures, has affected the quality of Mak Nyahs life (Teh, 2004).

These critical situation of Mak Nyahs with the high level of mental problems, increase the suicidal risk among untreated Mak Nyahs.²²⁷ Their current problems along with the marginalization and rejection by the society, contributed to self- destructive behaviors like drug abuse among the Mak Nyahs.

According to Teh, in 2003, half of the Mak Nyahs population and about 80 percent of sex workers who are Mak Nyahs in Malaysia are addicted to drugs. About 14 percent of them are at risk of committing suicide. If this deplorable condition of Mak Nyahs is ignored, the situation will get worse (Teh, 2002).²²⁸

²²⁷ Syed Masroor, A. (2013). *Gender Identity Disorder is Not Simply Two in One*. The International Medical Journal of Malaysia. Volume 12. Issue 2.

²²⁸ Teh, Y. K. (2002). *Country Report: Malaysia*. Transgender ASIA Research Centre. University of Hong Kong website.

According to Teh (2004) the Mak Nyahs had a better treatment during the colonial days compared to the present time. They were less as sex workers and usually were taken to act as bride's attendants, cooks, dancers and artists. Actually, "They were left to be who they wanted to be" and the society accepted them as they were and the Police never harass them.

Sex change operations had been performed in Malaysia before 1983 and the Hospital of University Malaya was one of the few hospitals that had performed this surgery. But due to the lack of qualified surgeons, few surgical procedures were performed. The university Hospital had performed these operations very meticulous procedures such as two years pre-operation counseling to confirm that the patient wants the operation and two years post-operation counseling to adapt to the new gender role.²²⁹

Some of Mak Nyahs went overseas for sex change operation due to their good financial standing. Those who underwent sex change operation could change their new name and gender in their identity cards.²³⁰

Recently, with more advocacies from human right bodies and Non-Governmental Organizations such as the Malaysian People Voice (SUARAM), the woman's Aid Organization and the Malaysian Bar, there has been a growing support for sexual diversity in Malaysia.

During the last 10 years, a growing numbers of individuals have been identifying themselves as bisexuals, lesbians, gays and transsexuals. These sexual minorities are working and getting the support of some rights-based organization that is sympathetic to these

²²⁹ Ibid.

²³⁰ Taylor, J. K. (2007). *Transgender Identities and Public Policy in the United States The Relevance for Public Administration*. Journal Administration & Society, Volume 39. Issue 7, P: 833-856.

individuals in Malaysia. It is apparent that the post 1998 generation of journalist and artists with sexual diverse backgrounds are more sympathetic to sexual diversity.²³¹

An obvious example of these activities was the Sexual Merdeka in Kuala Lumpur in 2008. A public festival of debate, discussion, art exhibitions and implement celebrating sexual diversity by participants of a broad base of organizations and individuals such as human rights lawyers, HIV/AIDS activities, politicians, artists, feminist groups and interested members of the public. This was viewed as an opportunity to express views about sexual diversity. This kind of forum will strongly influence accommodation of other sexual minorities. Therefore, the Malaysian Bar Council and some supportive groups such as SUARAM are openly supportive of initiatives to defend and protect the rights of sexual minorities.

The Role of Religion and Law on Mak Nyahs in Malaysia

Religion and Law as two fundamental elements have the greatest impact on the status of Mak Nyahs in Malaysia. As studies show, unfortunately, most restrictions on the life of Mak Nyahs have been imposed by religion, Law and society (Khartini, 2005).

Islam is the official religion in Malaysia. According to the Islam, any sexual behavior out of the lawful marriage is forbidden. So, cross dressing, transvestism, homosexuality and undergoing sex change operation are not allowed under the Sharia Law. Only hermaphrodites are allowed to change their sex by joining either the male or female gender.

The Malaysian history indicates that there was a more tolerant and even accepted attitude to transsexual individuals before 1980. This attitude drastically changed with the

²³¹ Shah, Sh. (2013). *The Malaysian dilemma: negotiating sexual diversity in a Muslim-majority Commonwealth state*. Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalization and Change.

injection of the Islamic values to the governmental system by the Prime Ministry of Malaysia, Mahathir Muhammad, in order to demonstrate the political power and the legitimacy of religion in Malaysia in 1980.²³²

The Shariah law as a leverage of the power by the government challenged the traditional rights of Mak Nyahs by the Malay rulers, those who have been the ultimate gatekeepers of Islam. Eventually, in 1983 the Conferences of Rulers in Malaysia decreed a rule about the fatwa on prohibition the sex change operations and cross dressing. The decision of the Conferences of Rulers imposed on all Muslims in Malaysia (Teh).²³³

Since that time, the Muslim Mak Nyahs are prohibited from sex change operations and being Mak Nyahs is considered as violation the tenets of Islam. They are considered as non-entities in Malaysia that could be charged in the Shariah courts. Increasing the harassment and stigmatization of the Mak Nyahs community, was the immediate effect of this law. The religious non-acceptance of Mak Nyahs has increased their everyday problems in addition to prohibition by the Law (Teh 2004).

They usually have been persecuted under the Minor Offences Act 1955²³⁴ and the Sharia Criminal offences Act 1997,²³⁵ by the police and religious authorities for indecent behaviors, although this Sections made no references to Mak Nyahs, but it is interpreted unjustly for imprison or to fine them.

Non-Muslim Mak Nyahs which are mainly Hindus, Buddhists or Christians are allowed to be Mak Nyahs and are able to undergo sex change surgeon outside of Malaysia if

²³² Joseph N. Goh. (2012). *Abuse of Gender Variant People and Religious Justifications for Trans-Persecution*, Transgender Day of Remembrance 2012, Kuala Lumpur.

²³³ Teh, Y. K. (2008). *Politics and Islam Factors Determining Identity*, Asia Pacific Queer: rethinking genders and sexualities. P: 58.

²³⁴ Section 21.

²³⁵ Section 28

their religion it. They are occasionally caught by the Police and charged under section 21 of the Minor Offences Act 1955²³⁶

Teh's studies show that about 55% of the Mak Nyahs respondents have been arrested by religious authorities and Police and the main reasons for arresting them were for indecent dressing, cross dressing, failing drug tests, prostitution, loitering late at night and also during Police raids. Most of them are forced to take off their clothes in front of people (Teh 2004, Khartini 2005).²³⁷

The relationship between religious and political powers in Malaysia has further helped in advancing the injustice that take place against Mak Nyahs. Consequently, many Mak Nyahs have been subjected to many physical, emotional, verbal and sexual abuses even by some officers of the Islamic religious department.²³⁸

According to Joseph N Goh 2012, certainly these injustices and hypocrisy toward Mak Nyahs is not just the use of religion that supports political power. As Muhammad Hashim Kamali noted:

"Islam identifies itself as *din al-Fitrah*, a religion that manifests harmony with human nature, which implies that Islam seeks to respond positively to the legitimate needs of people. Our natural need and reason, informed by the available guidelines in Islam and scientific evidence, should guide us in our quest to provide fair responses to issues."²³⁹

²³⁶ Teh, Y. K. (2008). *Politics and Islam Factors Determining Identity*, Asia Pacific Queer: rethinking genders and sexualities. P: 94.

²³⁷ Slamah, K. (2005). *The struggle to be ourselves, neither men nor women: mak nyahs in Malaysia*. Sexuality, gender and rights: exploring theory and practice in South and Southeast Asia. P 102-103.

²³⁸ Joseph. N. Goh. (2012). *Abuse of Gender Variant People and Religious Justifications for Trans-Persecution*, Transgender Day of Remembrance 2012. Kuala Lumpur.

²³⁹ Kamali, M. H. (2011). *Transgenders and justice in Islam*, New Straits Times. Thursday 11 Aug 2011.

As Teh Y. K (2008) notes, according to Malaysian Muslim Scholars and Malaysian Christian leaders only two genders male and female was created by God and any attempt to modify the body is considered as a sin against Allah's wishes. Both of these religions believed that any change in body should be performed to correct unclear sexual organs and people should only be categorized into male and female and that is the will of God. Many of Malaysian Muslim and Christian take influence of these religious opinions in their popular conception of Mak Nyahs.

Thus, it is not unexpected that some of those who persecute Mak Nyahs believe that they are doing Allah's work. It should be noted some Muslim and Christian leaders and scholars have softer approach to Mak Nyahs and insist that these individual must be respected and treated with kindness.²⁴⁰

It is also interesting to refer to the contribution of the courts to the legal, social and political status of Mak Nyahs in Malaysia. The duty of the courts as a part of the machinery of the government, is affirming, reinforcing, clarifying and interpreting the rules of Law. The courts, in fact, acts as an agency of the state to social control and contribute to social order.

Jeffrey Jessie has dedicated a research "Recognizing Transsexuals by Honey Tan Lay Ean" to the role of the courts to the contribution to the social and legal status of Transsexuals as an effective part of the government body in Malaysia.

Responding to a transsexual's' demand for change the birth certificate and National Registration Identity Card, after sex reassignment surgery, the Home Minister replied:

“Although the applicant and the transsexuals cannot be left to live in legal limbo but however the remedy for registration as to their current gender is

²⁴⁰ Ibid

with Parliament and not the courts as any fact changed in the registration of transsexuals must be introduced by Act of Parliament and cannot probably be made by judicial pronouncement.”(Jeffrey Jessie, 2005)

In a similar case of *J.G v. Pengarah Jabatan Pendaftaran Negara* in the High Court in Kuala Lumpur, the judge decided in favor of allowing the plaintiff’s applications and has allowed changing the last digit of the Plaintiff’s identity Card to reflect the reassigned gender on documents. It is two different decisions in one matter by two courts. Is it reconcilable between two different decisions by two respectable courts? So, what is the role of the courts in dispensing social justice when a Parliament which is reluctant to legislate on a subject? What is the role of judges in dispensing social justice when faced with a Parliament which has indicated a reluctance to legislate on this issue?

These two different decisions from the learned judges will be examined by Jeffrey as follow:

The first case (*Wong's Chiou Yang v Pendaftar Besar/Ketua Pengarah Jabatan Pendaftaran Negara*) in the High Court of Ipoh, was the application of a female that has applied to have both his Birth Certificate and NRIC after undergone sex reassignment surgery and transition to a male. His application was rejected due to an error in the entry of the register book. It was answered that the applicant was born with two sex organs.

In Wong’s case, the Claimant was registered as a female in her Birth Certificate (BC) and NRIC. And after undergoing sex reassignment surgery he applied to change his gender in both his BC and NRIC. The application was mentioned that there was an error in the entry of the register book because the Claimant was born with two sex organs. Psychiatric evaluation carried out showed that mentally the Claimant was a male though physically female. The positive situation in deciding was that there was a mistake in the sex of the

Claimant initially when the BC and NRIC was issued. The Judge did not find any evidence that the Claimant was born with two sex organs and he also held that since there is no express legislation to re-register the new sex of a transsexual, he was unable to permit the Register the current sex of the Claimant after sex surgery in the BC and NRIC.

But in the JG' case the Claimant was born male and underwent sex reassignment surgery to become a female. The Claimant was claimed that she is a female and the last digit of her identity card should be changed that reflects a female gender. In this case, the learned judge held that there was sufficient medical evidence to support her claim that she was now female.

Consequently, in both cases, the learned judge recognized that the criteria for determining the sex of the child are not sufficient for the relevant Government Department to follow and it is need to some accepted criteria and medical evidence by doctors that a court would consider.²⁴¹

The Shariah court in Malaysia needs to rethink its position on Transsexualism and on sex reassignment treatments. Because the general position in Malaysia still is hostile to transsexuals. This position is affected by the negative attitude of the religious, political and even the law organization to this issue. In fact, these individuals have a negative attitude toward the religion and the Law. But they don't have any choice except to engage with them. The mere being as transsexual, put them into a wrong path.

We cannot ignore the relation between the religion and the political power about the injustice that transsexual go through. Any change to the status of transsexuals in Malaysia is

²⁴¹ Jeffrey, J. (2005). *Recognizing Transsexuals by Honey Tan Lay Ean*. Malaysian Bar. Retrieved November 17, 2005, from: <http://www.malaysinbar.org> November 17, 2015.

closely related to the change in the religious and political views; especially the ability of transsexuals to obtain the permission for sex reassignment surgery. This ability cannot be achieved unless to give the special attention of the judicial system.

All the juridical work on this issue is considered as an effort to reconcile between the accepted norms with the essential requirements of transsexuals. Meanwhile, the Law plays the central role in the adjudication and the dispensation of justice. So it is needed to investigate the ways that the religion designed and interpreted in the way of supporting the sexual minorities. We need to discuss with the theologians and convince them that Islam doesn't justify the religious persecution.

The question now is how to achieve an effective advocacy for sexual diversity, including at the Commonwealth level? Certainly, there are some frameworks that can provide a proper basis for assistance these marginalized groups.²⁴²

Certainly, there are some frameworks that can provide a proper basis for assistance these marginalized groups. Most importantly, any attempt, to hold Malaysia responsible in its protection of sexual minorities should be considered as a cultural characteristic, especially diverse expressions of Islam. In the sight of Malaysian, any attempt or discussion on sexual diversity will be considered as a neocolonial or west orientation.

Secondly, this does not mean that a human rights approach needs to be avoided. However, the approach needs to have multiple levels of critique. For example, interpretations of Islam and Shariah that affirm the values of dialogue, freedom of expression and basic human dignity and rights should be respected. Muslims in Malaysia are diverse and hold a

²⁴² Shah, Sh. (2013). *The Malaysian dilemma: negotiating sexual diversity in a Muslim-majority Commonwealth state*. Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalization and Change.

spectrum of positions when it comes to Islam and civil liberties. So mapping 'liberal'/'fundamentalist' typologies on to Malaysian experiences of Islam is more inaccurate and dangers. According to Shah (2013) constructive engagement via Malaysian community spokespersons and HIV/AIDS organizations, the Muslim trans women community in Kuala Lumpur can engaging Muslim leaders and scholars in the everyday experiences of sexual minorities in Malaysia.

Thirdly, international and regional supports are needed to confirm that progress and reforms in Malaysia are visible and have every chance of success. Also international spotlight on the government's violent has been crucial in moderating the government's actions.²⁴³

4.3.7 Bangladesh

The General Position

Bangladesh as the land of Bengal is located in South Asia. It also called as "The land of rivers". It is the eighth most populous country in the world with over 168 million people. Bangladesh is a unity parliamentary republic with an elected parliament called Jariyo Sangshad. The largest ethnic group of this country is the native Bengalis, along with indigenous people in northern and southeastern districts." Bangladesh has a rich heritage of ancient civilization. Bangladesh's documented history spans 4,000 years. Bangladesh human history has lasted for more than 20,000 years".

The largest religion in Bangladesh is Islam. 86.6% of population is Muslim. Hinduism makes up 12.1% of population, Buddhism 0.6% and Christianity 0.3%. Most of Muslims are Sunni and a small number are Shia. Since historically, Islam was brought to Bangladesh by *Sufi*, Sufism played a prominent role in the spread of Islam in Bengal. The

²⁴³ Ibid.

legal system of Bangladesh is derived of the English common law system and still holding on strong to legacies of the British colonial common law system.

Bangladesh has a paradoxical legal structure that is according to discrimination based on belonging to a particular social group. On the one hand, Bangladesh is a member of several international conventions in protection of Human Rights such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention of Elimination of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR) and to the newly formed United Nations Human Rights Council in 2006 and re-elected in 2009 and in 2012. In these conventions, the institution of Bangladesh has guaranteed the fundamental rights and liberties to the citizens, as the article 111 of the Bangladesh constitution states clearly that, any discrimination on the ground of race, sex, caste and religion is prohibited.

On the other hand, the Penal Code 1860 section 377, prohibited carnal intercourse against the order of nature and the committing will be punished by ten years imprisonment or even extend to lifetime incarceration. These practices could not provide specific social living conditions for Hijras in Bangladesh.²⁴⁴

Hijra in Bangladesh

Bangladesh is a traditional society that the relationship between family members, traditional values and social circle is still valuable. So, liberation of the individual property is almost impossible. In addition, the notions as shame, respect and pride play a significant role in social obligations and all the mentioned above in order to safeguard the family honor. As a

²⁴⁴ Stenqvist, T. (2015). *The social struggle of being HIJRA in Bangladesh-cultural aspiration between inclusion and illegitimacy*. Malmö University

result, it can be said, the stigma of being a Hijra starts from the family in Bangladesh. Many Hijras attempts to find a place for life outside of family to protect their family honor and guard them from social stigmatization. Due to these reasons, the Hijra community in Bangladesh has been as a sexual minority group more socially marginalized than other group.²⁴⁵

In Bangladesh, the term Hijra used for those who are not confirm to straight notions of male or female but move or combine between two genders. The mainstream society in Bangladesh such as other societies does not accept the individual beyond the male or female gender. So, they are subjected to torture, abuses and harassment and their insecurities, frustrations and vulnerabilities have been neglected by mainstream society.²⁴⁶

According to the national behavioral and serological supervision in Bangladesh, most of Hijras are involving to sexual transmitted infections including HIV, due to performing unprotected sexual intercourse with numerous clients. The highest rate of active syphilis (10.4%) records among Hijras in Dhaka, the capital of Bangladesh, compared with other at-risk populations. The findings warn about the prevalence of HIV interventions for Hijras.²⁴⁷

The Hijras in Bangladesh claim that, they are not able to understand by their society. Their social exclusions and more persecution to them never have been considered and their primary sexual and human rights have been neglected.

An International Centre for Diarrhoeal Disease Research, in Bangladesh (ICDDR,B) undertook a comprehensive ethnographic research in order to understanding and analyzing

²⁴⁵ Ibid.

²⁴⁶ Islam Khan, Sharaful. [et.al.]. (2009). *Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh*. Journal of health, population, and nutrition, Vole 27. Issue 4, P: 441.

²⁴⁷ Ibid

the culture of Hijras with scrutiny on gender and sexual socialization process, discrimination, improper life's situations, and abusive incidents.

According to the finding of this center, the problems of Hijras start from the early period of childhood by the families' negligence of their children's inconsistent behaviors with the sex that they are born with. These behaviors will be unexpected by family when they reach at adolescence or even adulthood.

Their unusual behavior in school is not tolerated so they experience humiliation, loneliness and abusive treatment. Deprivation from family, school and society environment leads them to a severe identity crisis. Many of them have to play a double –life in this dichotomous gendered society to avoid discriminations. Their inability of getting a job due to lack of education, unacceptable to the working place, unusual behavior and non-conforming lifestyle, influenced Hijras in making ugly behaviors, rude remarks, sexual abuse and selling their body in public.

Thus, they are face with a strict conflict with self-identity that diminished their self-confidence and human dignity. As a result, they are discouraged to protect themselves from any danger and unknown disease such as AIDS and HIV.

The finding of International Centre for Diarrhoeal Disease Research, in Bangladesh signify that the non-recognition of Hijras as a different and separate gendered human being outside of dichotomy of the male and female, is the cause of the most exclusions in the Hijras' life. This has prevented Hijras from their positions in the society with human potential and dignity.

Khan, SI asserts that, "So far as he knows, the Constitution of Bangladesh does not discriminate any human being based on sex, gender, race, caste or religion whereas Hijra

were deprived from every citizenship rights. The state itself has rather violated their rights by bracketing them under male-female category".

In the past few years, some attempts were being operated by two Community based organization (CBOs) in term of HIV interventions and efforts to unite to enhance their voice in Bangladesh but due to the political, religious and legal complexities, the Hijras community movement, was inconclusive. Therefore, they understood any action in favor of the Hijra community should be commenced by the policy planners of the government or non-government organizations. The ultimate target of movement was a secure and supportive environment, where Hijras can live as a citizen of Bangladesh by protecting their gender, human and citizenship rights.²⁴⁸

Finally, the recent Hijras' attempts with a social constructivist movement changed the legal structure of Bangladesh in 2014. Now, Bangladesh officially recognizes Hijra as a third gender and official documents is issuing for any of these three genders. The year 2014 coined as the land mark decision for Hijra and it is said, the right of Hijras will be secured under the new Bangladesh policy. The new legislation will enable Hijra to identify their gender in official documents. After the legislative change, the law commission proposed an anti-discrimination framework to include all minority groups in Bangladesh.²⁴⁹

4.4 Conclusion

This chapter will be concluding by refer to three points around transsexual individuals as a sexual minority. First, consider the strictest social and political living of transsexuals even in

²⁴⁸ Islam Khan, Sharaful. [et.al.]. (2009). *Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh*. Journal of health, population and nutrition, Vol 27, Issue 4. P: 441.

²⁴⁹ Stenqvist Tove. (2015). *The social struggle of being HIJRA in Bangladesh-cultural aspiration between inclusion and illegitimacy*.

Islamic countries. Then, the vastly different policies and practices of Muslim states which claim that their policies has founded on a common religious source responding to their sexual minorities' citizens and finally, the recommendations and present the constructive strategies to reach an ultimate target grounded on this issue.

The finding revealed that transsexuals as a sexual minority suffering from discrimination in most Muslim majority countries. They are prevented from enjoying their primary human rights and are not equally allowed to enjoy their sociopolitical rights. They don't have a rightful space for living as a human being with dignity. This trend is due to non-recognition of them as a separate gendered human being outside of the male-female dichotomy.

For this reason, they are subjected to physical, sexual and verbal abuses and experience sociocultural deprivations, humiliations and discrimination in the society.

Extreme social deprivations put them in the most sever identity crisis and diminish their self-esteem and sense of social responsibility. As a result, they feel reluctant to protect themselves from danger and expose themselves to diseases such as AIDS and HIV.

In the sight of Islam, although it is important to understand how Islam dialed with gender identity and sexual orientation, it is also important to know, how the religious leaders and political have used Islam to interpret their claim and explain the religious explanations to the deferent responses. Due to different interpretation of religious as well as the distinctions between economic, historical and political dimensions, there are vastly different ways respond to this sexual minority as a part of citizens by each state. All these Muslim states actively oppress and persecute this sexual minority directly or indirectly. This is while

that, all these states claim that their policies are on a common religious source based on justice, equity and equality.

Despite the historical background of sexual minorities through the academic and policy literature, the justification of the states for treatment of this sexual minority in present time, the state legitimation in suppressive measures against this sexual minority is not negligible.

Researches have shown that "the most deprivations in the lives of transsexuals are grounded in non-recognition of a transsexual as a separate gendered human being beyond the male-female dichotomy".²⁵⁰ This is equally the position in most Muslim majority countries. Saudi Arabia does not give recognition to transsexuals and they are considered as sexual deviants. While Turkey and Malaysia has in recent times become softer on transsexuals though the society generally rejects it. Therefore the need for public awareness that the transsexuals are individuals that suffers from a peculiar kind of gender identity disorder. If this is made, the society will begin to reason with them and in effect respect them.

However, now is the time that, a global focus starts a dialogue for policy reforms and increasing rights of transsexuals by the states to legitimizing and reinforce their authority to recognize transsexuals as a third gender or a separate gender beyond male and female dichotomy. A social constructivism movement in favor of the transsexual must be initiated by the members of mainstream societies of the government and non-government sectors, civil society and policy planner. The ultimate target of this movement should be ensure of a congruent and supportive environment for transsexuals, where they as a citizen along with

²⁵⁰ Islam Khan, Sharful [et.al.]. (2009). *Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh*. Journal of health, population, and nutrition, Vole 27, Issue 4, P: 441.

men and women can live fulfilling lives with maintain their citizenship, gender and human rights.

Truly, more time and effort should be given to this humanitarian movement to respect for human values.

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CHAPTER 5: TRANSSEXUALITY IN IRAN

5.1 Introduction

Iran like many countries of the world, has recorded growth in the cases of transsexuals. It has become the contemporary global hub of transsexuality and sex reassignment surgery in recent time. Transsexuality has been recognized as a gender identity disorder and sex reassignment surgery as the best medical treatment for transsexuals has been allowed under the Iranian Islamic law. In fact SRS is considered as a right as health, marriage, employment and education.

Being an Islamic nation, issues of transsexuality could be controversial in view of the fact that, it is perceived as a leeway for homosexuality. Transsexuality is permissible, while, homosexuality is a crime punishable by death in Iran. This is in view of the fact that transsexuality is perceived as a form of disability that can be cured through medical treatment.

This chapter intends to examine the position of gender, transsexuality and sex reassignment surgery in Iran. It also examines the legal and socio-political status of TS in Iran. The discussion of the Iranian status on SRS and TR goes a long way in demonstrating the universality and the positive impact of Islamic Law and Sharia on proffering panacea for modern human challenges.

5.2 The Politic of Gender in Iran

Iran or Persia is an Islamic country in Western Asia with predominantly Shia population. The constitution in Iran is governed by Islamic principles. The legal system in the country is based on Islamic jurisprudence and like other Islamic countries it is mandated to respect the Shariah in all economic, cultural and social structures. Although the Western Media has depicted a

negative image of gender intolerance in Iran (Najmabadi 2005, Bucar 2010)²⁵¹, this gender dichotomy boundary, has been in existence in all Islamic societies during history and it is observable in all social structures, as the deep extreme form of this gender boundary there had been in medievalist Islamic societies(Sanders. P 1991).²⁵²

This difference in gender identity under Islamic law is born out of the belief that every gender has a peculiar role, social standing and expectations. This dichotomy is not gender discrimination. It is the different of role and performance of every gender in the society. Indeed, it does not mean that men and women are unequal in sight of Allah. The *Qur'ān* is explicit to the effect that men and women have equal rights and obligations.²⁵³

The permission of sex reassignment surgery in Iran has allowed the western media to give contradictory information about Iran from formal and informal forums and websites, occasionally some exotic reports are heard such as; “More Iranian changing their sex”,²⁵⁴ “Critical Montages: Changing Sex, Changing Islam!”²⁵⁵ Sex change is forcible operation in Iran. They argued that permission of Sex reassignment surgery in Iran is done only to eradicate homosexuality²⁵⁶ and the Iranian authorities recognized sex reassignment surgeries to demonstration their position on sexual liberty and so on.

The central issue in these researches is on the possibility of simultaneously operating two opposite positions about gender in Iran; while the homosexuality is forbidden and

²⁵¹ Najmabadi, A. (2005). *Women with mustaches and men without beards*. University of California Press. London. Bucar, E. M. (2010). *BODIES AT THE MARGINS: The Case of Transsexuality in Catholic and Shia Ethics*. Journal of Religious Ethics. Blackwell Publishing Inc., volume 38.

²⁵² Sanders, P. (1991). *Gendering the Ungendered Body*. Women in Middle Eastern History: *lifting Boundaries in Sex and Gender*, edited by Nikki Keddie and Beth Baron, 74–95. New Haven, Conn.: Yale University Press.

²⁵³ Quran, Yusuf Ali, 4:124, 33-35, and 49: 13.

²⁵⁴ Fathi, N. (2004). *As Repression Eases, More Iranians Change Their Sex*. *New York Times*. Online: <http://www.nytimes.com/2004/08/02/world/as-repression-eases-more-iranians-change-theirsex>.

²⁵⁵ <http://montages.blogspot.com/2004/08/changing-sex-changing-islam.html>.

²⁵⁶ Robert, T. (26 September 2007). *Sex Change Funding undermines no gays claim*. *Guardian*. Online: <http://www.guardian.co.uk/world/2007/sep/26/iran.gender>. Robert Tait. (27 July, 2005). *A fatwa for freedom*. *The Guardian World News section*. Online: <http://www.guardian.co.uk/world/2005/jul/27/gayrights.iran>.

homosexuals are punished by death penalty, transsexuality is permissible and transsexuals are allowed to undergo sex reassignment surgery and change all identification documents according to their new sex?²⁵⁷

To clarify of this surprisingly position, it should be mentioned; in fact, the comparison between these two groups of gender is not logical. Homosexuality and transsexuality are two entirely distinct issues. Transsexuality is an inherent biological defect and transsexuals are patient with gender identity disorder treatable by medical surgery and hormone therapy²⁵⁸, while homosexuality as a sexual intercourse between two persons of the same sex and it is a sinful sexual behavior. Homosexuals are those who are attracted to sexual desire towards another person of a same sex. Homosexuals behave out of normal sexuality and commit unnatural sexual behaviors.²⁵⁹

In contrast of homosexuality, transsexuality has not been categorically prohibited by Shariah, Homosexuality is clearly condemned by the *Quran* and *Sunnah*, and the Prophet Muhammad explicitly scorned any same sex and sexual activities between two same sex persons.

5.3 Homosexuality in Iran

Homosexuality has become popular around the world due to its legalization by some countries and same sex marriage is on the rise. Homosexuality and sexual relation between persons of the same sex is not only sinful and illegal according to Islamic law, but it is also considered a punishable crime. Homosexuality has always been considered as a deviant

²⁵⁷ Bucar, E. M. Shirazi, F. (2012). *The "Invention" of Lesbian acts in Iran: interpretative moves, hidden assumptions, and emerging categories of sexuality*. Journal of Lesbian Studies. Volume 16. Issue 4.

²⁵⁸ Shapiro, J. (2008). *On the Persistence of Gender and the Mutability of Sex, Same-sex cultures and sexualities*. An anthropological reader Journal. Volume 6. P: 138.

²⁵⁹ Bello, S. A. A. (2012). *The Punishment of Homosexuality in Islamic Contemporary World: Malaysia, Iran, Pakistan and Saudi Arabia as a Case study*. Social Science Research Network Working Paper Series, 1(1), 1–16. (December 1, 2012).

behavior in Islamic societies because it is against religious principle. It is classified as crimes with severe punishment in most Islamic countries.

Sexual intercourse between males is called *Lavat* in Persian language and “Liwat” in Arabic language and in the legal and jurisprudential texts. In the modern time they are called as Gay, while same sex activities between females is called Sihagh or Mosaheqeh, and in the modern time is called Lesbianism. (Symons 1979)²⁶⁰

Since, the legal system of Iran is according to the Islamic law and the law in Iran is extracted from Islamic Jurisprudence, homosexuality is prohibited under Iranian Islamic law. According to Iranian Penal Code, all sexual relations between persons of the same sex are subjected to punishment which is fixed in Shariah or Islamic Law. Both the Holy *Quran* and *Sunnah* prohibited homosexuality and condemn any coerced and consensual sexual intercourse among same sexes.

The condemnation of homosexuality in Iran been criticized by some mass media houses, Human Right Organizations and authors outside of Iran. They compared the status of homosexuals with transsexuals. The prohibition of sodomy and all forms of same sex activities is based on the explicit rule of Shariah. There are some clear references about the condemnation of homosexuality in the *Quran*:

أَتَأْتُونَ الذُّكْرَانَ مِنَ الْعَلَمِينَ \ وَتَذَرُونَ مَا خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ مِنْ أَزْوَاجِكُمْ

Surah Ashu'ara, 26:165-166

What! Do you come to the males from among the creatures, and leave what your lord has created for you of your wives? Nay, you are a people exceeding limits.

²⁶⁰ Hrdy, S. B., & Symons, D. (1979). The evolution of human sexuality: The latest word and the last. 1979: P: 309-314.

إِنَّكُمْ لَتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِنَ الْعَالَمِينَ \ أ تَنْتَهُونَ الرِّجَالَ وَتَقْطَعُونَ
السَّبِيلَ وَتَأْتُونَ فِي نَادِيَكُم

Surah Al-Ankabut 29:28-29

And (we sent) Lut when he said to his people: most surely you are guilty of an indecency which none of the nations has ever done before you; what! Do you come to the males and commit robbery on the highway, and you commit evil deeds in your assemblies?

The two main references are related to the story of Lut (Lot):

لَأَنْتُمْ أَكْثَرُ ظَالِمِينَ \ لَمَّا جَاءَ لُوطٌ بِٱلْبَيِّنَاتِ فَوَجَدَ ٱللَّهُ لُوطَ ٱلرَّجُلَ ٱلصَّادِقَ ٱلَّذِى كَفَرَ بِٱلَّذِينَ كَفَرُوا ۚ وَٱللَّهُ ٱلْعَزِيزُ ٱلْعَلِيمُ

Surah Al-A'raf, 7:81

Most surely you come to males in lust besides female.

لَأَنْتُمْ أَكْثَرُ ظَالِمِينَ \ لَمَّا جَاءَ لُوطٌ بِٱلْبَيِّنَاتِ فَوَجَدَ ٱللَّهُ لُوطَ ٱلرَّجُلَ ٱلصَّادِقَ ٱلَّذِى كَفَرَ بِٱلَّذِينَ كَفَرُوا ۚ وَٱللَّهُ ٱلْعَزِيزُ ٱلْعَلِيمُ

Surah An-Naml, 27:55

What! Do you indeed approach men lustfully rather than women?

On lesbianism, the verse 15 of Surah An-Nisa provides the legal punishment for same sex behavior between females, which are called as lesbianism in modern English language and Sihaq or Mosaheqeh in Arabic language:

وَٱللَّاتِى يَأْتِينَ ٱلْفَاحِشَةَ مِنْ نِسَائِكُمْ فٱسْتَشْهَدُوا عَلَيْهِنَّ أَرْبَعَةً مِّنكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ
فِى ٱلْبُيُوتِ حَتَّىٰ يَتَوَفَّاهُنَّ ٱلْمَوْتُ أَوْ يَجْعَلَ ٱللَّهُ لَهُنَّ سَبِيلًا

Surah An-Nisa, 4:15-16

If any of your women are guilty of lewdness, take the evidence of four (reliable) witnesses from amongst you against them; and if they testify, confine them to houses until death does claim them, or Allah ordain for them some (other) way. If two men among you are guilty of lewdness, punish them both. If they repent and amend, leave them alone; for Allah is Oft-returning, most Merciful.

Although, all these verses explicitly refer to homosexuality and condemn any same sex intercourses among males and females, but it's not illogical that say may be there had been some individuals with gender identity disorder among homosexuals on that time that due to lack of knowledge they had been unable to determine and in fact they didn't committing same sex intercourse according to appearance behavior, but they assumed as homosexual in public affairs.

According to one report, since homosexuality was not known among Arabs in the Prophet's (peace and blessings be upon him) time, there is no mention of the punishment of homosexuality by Prophet (SAW).²⁶¹ But there are two famous *hadiths* that is attributed to Prophet (SAW) about punishment for homosexuality as the first *hadith* is narrated by 'Abd Allah Ibn 'Abbas that Prophet SAW said:

If you find anybody committing the act of the People of Lut i.e. sodomy, then kill the one doing it and the one with whom it is done.²⁶²

And the second *hadith* that is narrated about committing sodomy on the authority of Abu Hurairah from Prophet (peace and blessings be upon him) said:

²⁶¹Bello, S. A. A. (2012). *The punishment of Homosexuality in Islamic Contemporary world (Malaysia, Iran, Pakistan and Saudi Arabia as a case study)*. Social Science Research Network Working Paper Series, 1(1), 1–16. (December 1, 2012).

²⁶² This Hadith is recorded by At-Tirmidhi (1:152), Al-Bukhari. An-Nisaei. Abu-Dawud (4462) Imam Ahmad. & Ibn Hazm.

Stone the upper and the lower (i.e. both persons committing it).²⁶³

The following two *hadiths* are clear on the description and chastisement of or sodomy:

When a man mounts another man, the throne of God shakes.”(Simon and Brooks 2009)²⁶⁴

Kill the one that is doing it and also kill the one that it is being done to.”(Simon and Brooks 2009)²⁶⁵

And also the Prophet said:

Sihaq (lesbian sexual activity between women) is zina (illegitimate sexual intercourse) among them.”(Bolaito 2013)²⁶⁶

There are various opinions among different schools of thought about the punishment of homosexuality, the prominent Islamic jurist Yusuf al-Qaradawi opined.²⁶⁷

The jurists of Islam have held different opinions concerning the punishment for this abominable practice. Should it be the same as the punishment for zina, or should both the active and passive participants be put to death? While such punishments may seem cruel, they have been suggested to maintain the purity of the Islamic society and to keep it clean of perverted elements.”²⁶⁸ (Al-Qardawi 1997, Rehman and Polymenopoulou 2012)

²⁶³ This Hadith is recorded by Al-Bukhari, At-Tirmidhi, Ibn Majah and Ibn Hazm.

²⁶⁴ Simon, R. J., & Brooks, A. (2009). *Gay and lesbian communities the world over* (Vol. 13). Rowman & Littlefield. Available at: <http://www.missionislam.com/knowledg/homosexuality>.

²⁶⁵ Ibid

²⁶⁶ Bolaito, L.A. (2013). *The Natural Law Theory of Morality and the Homosexuality Debate in an African Culture*. OGIRISI: a New Journal of African Studies. No 1. Volume 9.

²⁶⁷ Al-Qaradawi, Yusuf. (2001). *The lawful and the prohibited in Islam*. Islamic Book Trusts.

²⁶⁸ Rehman, J. Polymenopoulou, E. (2012). *Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World*. *Sharia, Homosexuality and LGBT Rights in the Muslim World*. Fordham International Law Journal. Volume 37, Issue 1, Article 7, October 10, 2012.

In Hanafi school of thought, same sex intercourse is not considered as adultery and according to most Hanafi scholars, they are not punishable by death and it will be left for the Judge to exercise his discretion. Some Hanafi Jurists allowed punishment by death for second offence.²⁶⁹ In the opinion of the Maliki School, any same sex intercourse should be punished as adultery and hence punishable by death through stoning, whether or not he is legally married.²⁷⁰

The Shafi'i school of thought has differentiated between married and unmarried persons. Married person found guilty of homosexuality would be punished to death by stoning, while unmarried person is to be punished by flogging. The Ja'fari Shia School opined that any same sex intercourse between married and unmarried persons is punishable in the same way as adultery. Seyyed al-Khoi says committing same sex intercourse, married or unmarried, is punishable by death as adultery.²⁷¹ All the Schools of thought require four witnesses to witness the actual act before the offence can be established in sodomy as well for adultery.²⁷²

In most Islamic nations, same sex activities are punished by death; they include Iran, Saudi Arabia, Sudan, Mauritania and Yemen. (Rehman and Polymenopoulou 2012)²⁷³

Sex and sexual activities are a part of human nature and is sanctioned by Islam; these activities should be done according to the limits set by Allah and within the marriage. In addition, the prohibition and punishment of homosexuality is not only a part of Iranian sexual

²⁶⁹ <http://www.religionfacts.com/homosexuality/islam.htm>. Accessed on 15 October 2012.

²⁷⁰ Ibid 24. Malik Ibn Ana's. *Al-Muwatta, Aisha Bewley*. Inverness Scotland: Medina Press1. 1989. 346.

²⁷¹ Ibid 24,

²⁷² Ibid 24. Bello, Shafi'i. (2012). *The Punishment of Homosexuality in Islamic Contemporary World: Malaysia, Iran, Pakistan and Saudi Arabia as a Case Study. Iran, Pakistan and Saudi Arabia as a Case Study.*

²⁷³ Ibid 24, 27. Rehman, Javaid. Polymenopoulou, Eleni. *Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World. Sharia, Homosexuality and LGBT Rights in the Muslim World.* October 2012.

rights and politics but that extends to most Islamic countries like Saudi Arabia, Sudan, Afghanistan, Nigeria, United Arab Emirates, Pakistan, Mauritania and Yemen (Bucar and Shirazi 2012).²⁷⁴ Although the death penalty for sodomy is not specifically addressed by *Quran*, the punishment of death for same sex acts was derived through interpretation of *Quran*, *hadith* and *qiyas* (Bucar and Shirazi 2012).²⁷⁵

Any sexual intercourse outside of traditional marriage is criminalized under Iranian Law. In the Iranian Penal Code sexual intercourse between males is defined as Sodomy²⁷⁶ and same sex activities between females with genital contact is defined as Lesbianism or Mosaheqeh in Persian language²⁷⁷. Articles 108-126 of Iranian Penal Code are related to punishment for Sodomy and articles 127-134 are about punishment for lesbianism. Both males and females are punishable if they are of sound mind, mature and consenting parties. Although the punishment for both sodomy and lesbianism are left for the shariah Judge, but the maximum punishment for sodomy and adultery is death.²⁷⁸ Punishment for same sex activities between females attracts different form of punishment. For first three times, each lesbian will be punished with 100 lashes if it is proven in court through testimony of four witnesses²⁷⁹ and for the fourth time, they will be punished by death if found guilty.²⁸⁰

Further, even foreplay or any non-penetrative sexual activities between males is punishable by hundred lashes.²⁸¹ The Penal Code states further that “*if two men who are not related by blood lie naked under the same cover without any necessity*” they will punished

²⁷⁴ Bucar, E. M. Shirazi, F. (2012). *The “Invention” of Lesbian acts in Iran: interpretative moves, hidden assumptions, and emerging categories of sexuality*. Journal of Lesbian Studies. Volume 16. Issue 4: 416-434

²⁷⁵ Ibid

²⁷⁶ Article 108

²⁷⁷ Article 127 of Iranian Penal Code

²⁷⁸ Article 109-111

²⁷⁹ Art. 128

²⁸⁰ Art. 131

²⁸¹ Art 121 and 122 of Iranian Penal Code

by ninety nine lashes²⁸² and also if two unrelated women lie under one cover without necessity, they will be punished by less than 100 lashes.²⁸³ It should be noted that in both sodomy and lesbianism the testimony of four men is required to proof the crime.²⁸⁴ These punishments do not target only homosexuals, it is applicable to all same sex conducts regardless of whether or not they identify themselves as gay, heterosexual, bisexual or transgender or they are members of sexual minorities.

5.4 Transsexuality in Iran

Transsexuality has been recognized as a gender identity disorder in Iran and transsexuals have been classified as patients with sexual abnormality. In a Fatwa in 1963, Imam Khomeini opined that sex reassignment surgery is a medical treatment for transsexuals and it is permit under Islamic law.²⁸⁵ After Khomeini's fatwa, Transsexualism was supported by Iranian authorities and government.

Iran has become a popular home for sex reassignment surgeries and is a global leader for sex change due to its recognition of transsexuality and permission of sex reassignment surgery. It has the best medical and social services for transsexuals and carries out more operations in the world after Thailand,²⁸⁶ According to Dr. Bahram Mirjalali,²⁸⁷ Iran is a paradise for transsexuals (David Graham: 2010).

Sex change operation for transsexuals is now considered as a human right in Iran just like other rights such as rights to marriage, health, employment, education etc. Transsexual individuals have right to change their sex for treatment but that must be under trustworthy

²⁸² Art.123

²⁸³ Art.134

²⁸⁴ Islamic Penal Code. (1991). Islamic Republic of Iran. available at: <http://www.unhcr.org/refworld/docid/4d384ae32.html>.

²⁸⁵ Imam Khomeini, R. (2000). *Tahrir al-Wasilla; Changing of Sex*. Issue 1 and 2.

²⁸⁶ Bahreini, R. (2012). *Human Rights Violations against Individuals of Diverse Sexual Orientations and Gender Identities in the Islamic Republic of Iran*

²⁸⁷ An Iranian trained French physician that has done several sex reassignment surgery operations in Iran.

physicians and according to international standards.²⁸⁸ They can also change the name and all identification documents even birth certificates. The procedure of sex transition and the process of change of documents are performed under the government's supervision.

Unfortunately, the legalization of transsexuality and recognition of sex reassignment surgery as a treatment for transsexuals has led to some controversial opinions and criticisms outside Iran without its acceptance in most western and eastern countries. In response to these debates, it is necessary to examine the historical development of transsexuality in Iran.

5.5 The History of Sex Reassignment Surgery in Iran

The controversial history of sex reassignment surgery in Iran is usually traced to the 1979 revolution of Islamic Republic of Iran. Evidence indicates that sex change operation is not new in Iran and these surgeries have been performed long before that in Iran. The first documented sex reassignment surgery performed in Iran by doctor Khalatbari in 1930. He changed a 18 year old young boy to a girl, by sex reassignment surgery; this surgery became a hotly debated issue.(Coggon, Hammond et al. 2008).²⁸⁹

Before that, the sex change operations had been performed in hermaphrodites to discover and reveal the real sex or remove the weak sex sign to reinforce the strong sex sign as, the primary discussions about medical treatment for hermaphrodites and people with ambiguous sex and gender have been discussed by the Islamic scholars and prominent Islamic thinkers like Zakariya Al Razi and Ibn Sina (Sanders Paula, 1991: 76).

The 1940s saw the beginning of discussions on Transsexualism in Iran through some popular write-ups translated in Persian language as sex, love, marriage, sex change,

²⁸⁸ World Professional Association for Transgender Health (WPATH), available at: <http://www.wpath.org/>

²⁸⁹ Coggon, J. Hammond, N. Holm, S. (2008). *Transsexuals in sport—fairness and freedom, regulation and law*. Sports Ethics and Philosophy. Volume 2. Issue 1.

homosexuality and gender misidentification. The conditions of genital alteration by surgery appeared in Iran in the early 1930s and these surgeries increased in the 1940s and 1950s. The concepts of sex and gender, gender determination and gender disorder appeared in Iranian medical literature via medical and psychological books in the late 1960s (Najmabadi Afsaneh, 2008: 37, 38).

By the 1970s there were more discussions on sex change surgery. Two hospitals in Tehran and Shiraz undertook sex reassignment surgeries according to a report by Kayhan on 11th October 1976. Further, 20 persons out of fifty applicants for sex transition also underwent sex reassignment surgery (Najmabadi Afsaneh, 2012: 533-556).

The political influence and power of Imam Khomeini made the issue of sex reassignment statutorily accepted in Iran following his fatwa in 1967 in Arabic language when He is writing his book *Tahrir Al- Vasilah*²⁹⁰ and reissuing the fatwa on 1985 in Persian language legalizing sex reassignment surgery in response to a letter from a transsexual asking the religious rule. Sex reassignment surgery has been officially and legally allowed for transsexuals after the 1979 Iran Revolution. Khomeini pronounced a Fatwa in 1983 that; *“There is no religious restriction on sex reassignment surgery as a treatment for transsexuals (Khomeini, 2000).”* After Khomeini the validity of this medical remedy is supported by many influential jurists and Iranian authorities. By establish of Islamic republic of Iran in the 1980, the conditions of transsexuality gained a new support financially and legally.

Islamic literatures classified humankind into male or female, however, hermaphrodite individuals whose gender is difficult to determine is equally accepted. With the advancement

²⁹⁰ الظاهر عدم حرمة تغيير جنس الرجل الى امرأته او العكس وكذلك لا يحرم العمل بالجنس الذي لا يثبت له صفة له في حال عدم تحديد جنسها. ولا خلاف في ذلك ولو رأت المرأة نفسها امرأة أو رجلًا من سنين خلتها الرجل، أو بعض نفاذ الزوج ولقوة، أو رأى المرأة نفسها امرأة أو رجلًا من سنين خلتها أو بعض نفاذها؟ الظاهر عدم وجوبه إذ كماله شخص حقيقى من جنس ولو كان أجنبى تغييره ليس بمتبع من جنسها. »

of modern science, the true identity of the hermaphrodites will be easily determined with accuracy.

The Iranian media made a detailed coverage of the issue of transsexuals and sex change surgeries during the first three decades of the legalization of sex reassignment surgeries in Iran (Fahti, 2004; McDowall & Khan, 2004; Eqbali, 2004; Tait, 2005; Harrison, 2005; Stack, 2005). Today, Iran has become prominent for sex reassignment surgery in the world and it is known as global leader for sex change operation according to Gordian (Coggon, Hammond et al., 2008). It is one of few Islamic countries in the world that made sex change legal and allowed transsexuals to change all identification documents including birth certificates (Bahreini, 2012).

After the revolution of Islamic Republic of Iran, transsexuality is recognized as a disorder treatable by medical surgery and sex reassignment surgery is considered as a human right like marriage, education, health and etc. Today, Iran has access to a prominent position on accepting transsexuality and performing sex reassignment surgery as the best medical and social services for transsexuals in worldwide.

According to many western media reports over the past decades, Iran carried out more sex change operation than other countries except Thailand (Robert Tait: 2007). Between 1987 to 2001, 270 people applied for sex reassignment surgery, only 70 of them was female that submitted for change to male and 214 of were approved (Najmabadi Afsaneh, 2008).

There were no formal statistics of transsexuals in Iran and indeed worldwide. As a common statistic there are approximately four to six persons in every 100,000 as transsexual. Approximately, 28,000 to 48,000 people are presumed to be transgender patients in Iran (Bucar Elizabeth M., 2010). The male to female procedures are approximately 74% and the female to male procedure are 26% (Kariminia Muhammad, 2010). This indicates that the

percentage from males to female is higher than that of females to male. Recently, medical studies estimate that there are millions intersex individuals with ambiguous biological factors in the United States (Anne Fausto-Sterling, 1993: 255-286).

5.6 The legal Status of Transsexuality and SRS in Iran

Iran is an Islamic Republic and operates an Islamic system of government based on Islamic principles. Due to its Islamic nature, Muslim scholars play significant role in determining the manner the Iranian government operates. The legality of transsexuality in Iran today is due to its approval by Imam Khomeini after the Iranian Islamic revolution of 1979. The legal status of transsexuality is transsexuals have been classified as people with gender identity disorder which is treatable by surgical remedy and Sex reassignment surgery has been recognized as an effective treatment for them and it is allowed under Islamic law and transsexuals can undergo the sex change as a matter of right (Najmabadi, Afsaneh, 2008: 8).

Unlike most countries in the Islamic world, sex reassignment surgery is legal in Iran and Iran also has become a home for European and Arab patients seeking to change their gender. Now the central question is that, who can be patient for Transsexuality and how can they take permission for sex reassignment surgery? How can they change their identification documents and birth certificate?

Although surgical treatment has been allowed for intersexual by medievalists' prominent Islamic thinkers (Paula Sanders, 1991), Imam Khomeini passed the first fatwa to endorse sex reassignment surgery as a remedy for transsexuals in modern time. After Imam Khomeini's *fatwa*, sex reassignment surgery was supported by many influential Ayatollahs and Shia clerks in Iran. Thus, transsexuality has been allowed by Iranian authorities and sex reassignment surgery as a medical treatment is sanctioned by the Iranian authorities. Now

transsexuals in Iran can undergo sex reassignment surgery and change legally their sex and obtain their new gender identification document.

It should be noted that the process of sex reassignment surgery includes the requirement that a psychiatric must diagnose the patient and recommend the operation. Similarly, the surgery must be in accordance with the World Professional Association for Transgender Health (WPATH). Furthermore, applicants, physicians and authorities in all stages are obliged to abide by Sharia and all operations performed under the government's supervision.

From the year 2000 onwards, three organizations have responsible the affairs of transsexuals in Iran; the Legal Medical Organization, the Welfare organization and the Imam Khomeini Relief Committee work hand in hand towards running the affairs of transsexuals (Najmabadi, Afsaneh, 2008). The Welfare Organization is responsible to study the transsexuals' life and consulting them and their families in order to encounter with their potential problems. The Legal Medical Organization is the most important and specialized center for psychological and medical examinations in Iran. They diagnose the real transsexuals from others and confirm whether these patients need hormonal and surgical treatment.

The examination process on patients may take a period of six month to two years. Since the private and Governmental bodies do not cover sex reassignment surgery cost, the Imam Khomeini Relief Committee is the third Organization that supports with some financial assistance to some patients that cannot afford the cost of surgery. These financial supports are done in the form of loan by Imam Khomeini Charity Foundation (Bucar Elizabeth M. Shirazi, Faegheh, 2012).

According to Article 33, No.8, of the Examination and Medical Exemptions Regulations of Iran, transgender and MSM individuals are exempting from military service even though Military service is compulsory for all Iranian men who reach the age of 18. Based on this Article Iranian transgender will be classified as people with hormonal imbalance and they will be classified as people with Behavioral Disorder on their Military Exemption Cards.²⁹¹

In the early of 2010, The General Director of the office for Socially Harmed at The Welfare Organization of Iran announced that the code for Military service exemption for transsexuals will be change. After 2 years of discussions and research with Military Service Organization, they concluded that Transsexuals would receive their exemption card under the glandular disorder clause based on Section 30 instead of the mental disorder clause according to Section 33.8. This is considered as an important step towards addressing the issue of transsexuals because they are often marked as people suffering from mental disorder due to Section 33.8 and suffer discrimination in employment, housing and education. Unlike section 30, that considered transsexuality as glandular disease hence allowing the transsexuals to enjoy the primary rights easily (Najmabadi Afsaneh, 2012).

5.7 The legal process and medical procedure for verification of Transsexuality

It seems that, the legality of transsexuality in Iran has led to the misunderstanding that anyone in Iran can change his sex and gender at will, but this is not true. Sex reassignment surgery is not a cosmetic or elective operation, but a medical necessity.²⁹² It is dependent on the individual's need and must be distinguished from case to case (Raha Bahreini, 2012). Proving

²⁹¹ Director of Socially Vulnerable groups at the State Agency for National Well-Being, BBC Persian, January 6, 2010, http://www.bbc.co.uk/persian/iran/2010/01/100106_107_transsexual_iran_sarbazi_armyexempton.shtml (Accessed August 23, 2010).«

²⁹² World Professional Association for Transgender Health. Standards of Care for Gender Identity Disorders. Sixth Version (February 2001). Available at: <http://www.wpath.org/documents2/socv6.pdf>.

Transsexualism and obtaining the legal permission for sex reassignment surgery is only available to those who suffer from a strong gender identity disorder. They need to proof legally and medically evidence that they are suffering gender identity disorder and should be determined by medical and as well as religious experts (Bucar Elizabeth M. Shirazi, Faegheh, 2012).

It takes a period of six months for the experts to establish and separate between the real transsexuals from other sexual groups like homosexuals, hermaphrodites and other psychological disorders relating to sexual abnormalities.

Similarly, individuals diagnosed with Gender Identity Disorder must pass through three cycles of treatment experience of a real life role of the new gender, hormone therapy of the desired sex and sex reassignment surgery will change the external appearance of the body and genitalia of the patient. These stages of treatment have been emphasized by Standards of Care for Gender Identity Disorder.²⁹³

After 6 months of psychology tests, the applicants must obtains a referral letter from a trustworthy psychologist to a court. After a private session by a court officer with the applicant, the patient will be referred to the Psychiatric Ward of the Legal Medicine Organization of Iran. This Ward is comprised of clinical psychologist and psychiatrists that are responsible for the final decision for sex reassignment surgery for the applicants. They will do all medical and psychological tests including hormonal and chromosomal tests, ultrasound, radiology and physical examination. The applicants will be subjected to psychotherapy by a commission of psychiatrists at the Tehran Psychiatric Institute (TPI) approximately twelve sessions (Raha Bahreini, 2012). This commission is responsible for reviewing the validity and legitimacy of the request for sex reassignment surgery, and finally

²⁹³ World Professional Association for Transgender Health. Standards of Care for Gender Identity Disorders. Sixth Version (February 2001) at p. 18, online: <http://www.wpath.org/documents2/socv6.pdf>.

makes recommendation to the Legal Medicine Organization of Iran (LMOI) for rejection or approval.

The Commission recommends them to the psychiatric ward of Legal Medical organization of Iran for sex reassignment surgery. This Ward is responsible for the final decision and recommendation for operation is made as follows:

The confirmation of affliction with gender identity disorders and issuance of permit for sex change in case of those individuals who cannot tolerate their biologic identity as a result of this affliction”

This certification allowed the applicant to follow the process of hormone therapy and sex reassignment surgery and the military service exemption. The procedure of hormone therapy and sex reassignment surgery may take place between six months to two years. This period is sensitive and the patients require special care and proper supervision. Due to the push for hormone therapy, some patients can go extra-length to administer the hormone without medical supervision and which will negatively affect the health of the patients.

In Iran it is not allowed for the applicants to behave, dress and live as a member of the opposite sex until the complete process of hormone therapy and sex reassignment surgery procedure has been completed. Changing the applicant's name and changing all new identification documents requires court order and that the order is according to the commission's certification. The post-operation transsexuals have to show their body to the court for proving change to the opposite sex by sex reassignment surgery and hormone therapy. The new social role of transsexuals can take place after changing their name and birth documents.

5.8 The Criteria for Choosing Patients for Sex Reassignment Surgery in Iran

Sex reassignment surgery has been allowed in Iran by Khomeini's Fatwa on 1960 for individuals with gender identity disorder and now this operation is done in several centers.

To avoid poor results of treatment, certain medical standards have been determined by Iranian authorities as follow:

- 1- Living in new sex role (Successful implementation of real-life test) at least for one year.
- 2- Use Hormone therapy at least for one year.
- 3- Lacking of psychosis and mental retardation.
- 4- They must be at least 21 years of age.
- 5- Be able to understand the outcome of sex operation and awareness of restrictions and real expectations for living after sex operation in social and employment environments.
- 6- Lacking of other illness like; infectious, diabetes, heart illness and etc.
- 7- Present Divorce Certificate, before sex change operation if applicant is already married.
- 8- Lacking of recent culpability and antisocial activities, to avoid consequences of illegal actions (Kahani. A, 2014).

5.9 The Jurisprudential Perspective of Transsexuality and SRS in Iran

Before the Islamic Revolution in Iran, Islamic jurisprudence was not entered into the scientific and medical communities. By the Islamic revolution, the domain of Islamic jurisprudence became widespread and almost, all medical and social subjects came under Islamic jurisprudence scrutiny. Transsexuality is one of new medical phenomenon that Islamic jurisprudence has been focused around it. In fact, this subject rose within the various social, medical and legal contemporary domains (Najmabadi A. 2012. P: 353).

The concept of transgender or transsexual as a human being in Iran, is different from what formed by Western practices and concepts. It is as a result of political and socio-cultural

situation in Iran²⁹⁴. With achieve to the medical scientific developments in surgical transformations in the 1930 and 1940, the distinction between these two categories, has been enabled by psychological, biomedical, legal and jurisprudential discussions.²⁹⁵

In those decades, trans-bodies emerged different from congenital bodies in national scientific discourse and sex reassignment surgeries were discussed as medical and surgical developments.

At the mid of 1980, it became clear that the bio medical and psycho-serological sciences needed to present their reasoning about sexual matters to be able to interact with legal authorities when needed. In order to the possibility of legal consolidation of status of patients, through a combination of fiqh, medico-psychological discourse, and the political activism of transsexual groups, the Legal Medical Organization of Iran sent a query to the Legal Office of Ministry of Justice asking for clarification on the legality of sex reassignment surgery. The Ministry of Justice replied that according to the Ayatollah Khomeini's opinion as well any particular article of the law, SRS is legal whether for transsexuals or for the intersex individuals. Ayatollah Khomeini also detailed the legal provisions about the effect of sex change in terms of laws of Iddah, Marriage, divorce, child custody and other issues (Najmabadi. A 2012: 542)

In jurisprudential discussions, there is a strict distinction between two meanings of *Jins*. The classical meaning of *Jins* in jurisprudential discourse is genus of something and the conception of sex in modern sense of *Jins*. Over the last century, the transformation of socio-cultural notion of sex/gender over the past century has brought into proximity the

²⁹⁴ Najmabadi, A. (2012). *Verdicts of Science, Ruling of Faith: transgender/sexuality in contemporary Iran*. Social Research. Vol. 78 : No. 2 : P:353

²⁹⁵ Ibid. P:536

male/female distinction of fiqh with the biological sex taxonomies and social categories men and women. (Najmabadi. A. 2012. P: 543)

Based on Islamic teachings that there is no disease without treatment and Allah has created a treatment for any illness as *Prophet Muhammad (PBUH said:*

There is no disease that Allah has created, without creating its treatment.²⁹⁶²⁹⁷

So, Islam always encourages Muslims to seek treatment for their ailments as Prophet Muhammad said:

Cure your ailment, Allah has never created a disease but created its treatment, except death.²⁹⁸

Since the trustworthy physicians diagnose transsexuality as a gender identity disorder and recognize sex reassignment surgery as an effective treatment for them, in the sight of Islamic jurisprudence, this surgery is not considered as intervention in Allah's creation or surgery for sexual desire or beauty. It is a medical intervention in the external physical of the body to make more congruent the external appearance with the true gender identity. In line with the jurisprudential perspective of transsexuality, Imam Khomeini opined:

It seems that the sex-reassignment surgery for male-to female is not forbidden (haram) [in Islam] and vice versa, and it is also not forbidden for a Khuntha (hermaphrodite/intersex) undergoing it to be attached to one of the sexes [female or male]; and [if one asks] is a woman/man obliged to undergo the sex-reassignment surgery if the woman finds in herself [sensual] desires similar to men's desires or some evidence of masculinity

²⁹⁶ Al-Bukhari 1987, Ibn Hajar 1988

²⁹⁷ Muhammad Bin Ismail Al Bukhari Al Ja'fai. Sahih Al-Bukhari, Fi-Tebb. 5678; Ahmad Ibn Ali ibn Hajar Al Asqalani. Fathul Bari Fi Sahih Bukhari book of Tebb. 5354. Sahih Muslim.

²⁹⁸ "The Revival of Prophetic and Herbal Medicine". Muhammad Ali Al-bar. 1996. This narrative is mentioned in Masnad of Ahmad Ibn Hanbal; Sahih Bukhari and in Sahih Muslim.

in herself—or a man finds in himself [sensual] desires similar to the opposite sex or some evidence of femininity in himself? It seems that [in such a case] if a person really [physically] belongs to a [determined] sex, a sex reassignment surgery is not an obligatory (wajib), but the person is still eligible to change her/his sex into the opposite gender..”²⁹⁹

5.10 The History of Jurisprudential Discussions of SRS in Iran

The current legal status of transsexuality in Iran is attributed to homophobia’s policy of Shi’ism after the 1979 revolution. The primary jurisprudential discussions about surgical treatment for hermaphrodites and people with ambiguous genders have been discussed for a long time before by the Islamic scholars and medieval prominent Iranian Islamic thinkers like Zakariya Al Razi and Ibn Sina(Sanders 1991)³⁰⁰. The history of Islamic and jurisprudential discussions of Transsexuality and sex reassignment surgery in contemporary Iran is traced back to 1963. For the first time, the legitimacy of sex change and some other provisions about this issue have been expressed by Imam Khomeini, when he was exiled in Nofel Loshato.

Imam Khomeini explained some religious and jurisprudential provisions about transsexuality in his book "*Tahrir Al-Wasilla*" under a section title as “The Examination of Contemporary Questions” and under subsection entitle “The Changing of sex”. Imam Khomeini's viewpoints in his book are the beginning of jurisprudential and legal discussions about sex reassignment surgery in the modern world. His book is the first and most important jurisprudential resources to illustrate the legal status of Transsexuality in Iran.

²⁹⁹ Imam Khomeini, R. (2000). *Tahrir al-Wasilla; Changing of Sex*. Issues 1 and 2. Volume 2 (Qum: Mu’assasah-E Tanzim Va Nashr –e Aasare-I Imam Khomeini, 2000) at 596-598.

³⁰⁰ Sanders, P. (19991). *Gendering the Ungendering Body: Hermaphrodite in Medieval Islamic Law*. Women in Middle Eastern History. New Haven and London. Yale University press.

After Khomeini viewpoint's in 1963, this subject remained silent to 1984 and not expressed by any of Islamic jurists or organization. The validity of this medical remedy was started after the revolution of 1979, by Khomeini's fatwa in 1983. Imam Khomeini pronounced a Fatwa in response to a letter from a transsexual man named as Fereydun about the religious rule about sex reassignment surgery in 1984.

After Khomeini, the validity of medical treatment for transsexuals is supported by many influential jurists and Iranian authorities. Most of Shiites' scholars had investigated this issue after Khomeini's Fatwa. Discussions and articles have been raised and this subject has been discussed almost, in all Istifta'at books as it is estimated that over than 250 Istifta has been issued about this subject by religious leaders.

There is no unanimity of opinion about sex change operations among Shiite clerks. Most of them permitted sex reassignment surgery as treatment for transsexuals such as Imam Khomeini, Khamenei, Fazil Lankarani, Ali Al-Sistani, Yusuf Sanei, Hussein Ali Montazeri, Makarem Shirazi and Janati. A few of Iranian jurists prohibited sex change such as Mirza Javad Tabrizi, Seyyed Sadiq Shirazi and Sabzevari.

5.11 Imam Khomeini's Viewpoint on "Sex Change"

As mentioned before, Imam Khomeini's rulings on sex change appears in "Tahrir Al-Wasilla" under a section as "The contemporary questions"³⁰¹ –and a subsection as "The changing of sex". Khomeini states as follow:

The prima facie (al-zahir) view is contrary to prohibiting the changing, by operation, of a man's sex to that of a woman or vice versa; likewise, the operation [in the case] of a hermaphrodite is not prohibited in order that she or he may become incorporated into one of the two sexes. Does this [sex change operation] become obligatory if a woman perceives, in herself, the

³⁰¹ Al-Masael Al-Mustahdithah

inclinations which are among the type of inclinations of a man [literally the root/origin inclinations of a man], or some qualities of masculinity; or if a man perceives, in himself, the inclinations or some qualities of the opposite sex? The prima facie view is that it [sex change] is not obligatory if the person is truly of one sex, and changing his/her sex to the opposite sex is possible.

If knowledge proves, before the operation, that inside he is the opposite sex, and therefore the operation does not change one sex for the other, but rather uncovers what was hidden, then there is no doubt concerning the necessity of putting into proper order the true sex and getting rid of the traces of the visual sex. So if he knows that he is a man, then his religious duties are a man's duties, and what is prohibited for men is also prohibited for him, and vice versa for a woman.³⁰²

What obtained from the word of Khomeini is that; firstly, sex reassignment surgery is permissible for hermaphrodites including both problematic and non-problematic hermaphrodites. Secondly, Khomeini stated that sex change in Neutral is not unlawful so it means that it is permissible. Further he stated sex change is not obligatory. Thus, he rejected the compulsory for sex change in neutral. Because, neutrals have both male and female genitals and they can do their religious duties accordance to their prominent sexual symptoms. They can remain on the current status and according to legal criteria, define one of two sexes for themselves and do their religious duty according to prominent sex symptoms.

5.12 The first Fatwa on Transsexuality

Fereydoon Molkara, later Maryam Khatoon Molkara was the first Iranian male to female transsexual activist. She had wished to be a woman from childhood. She started fighting for transsexuals' rights in Iran and her struggles and efforts thrust Iran into the role of a global

³⁰² Imam Khomeini, R. (2000). *Tahrir al-Wasilla; Changing of Sex*. Issues 1 and 2. Volume 2 (Qum: Mu'assasah-I Tanzim va Nashr-I asar-I Imam Khomeini, 2000) at 596-598.

leader for SRS. The Islamic government followed the fatwa and changed the state law. She established an organization to advise and help transgender people.

She wrote her first letter to Imam Khomeini in 1975, when Khomeini was exiled in Iraq. She described her situation to Imam Khomeini that: “I have always the feeling that I am a woman. My mother also had told me I put chalk on my face in front of mirror and makeup in childhood when I have 2 years old.”³⁰³

Imam Khomeini replied her that; she should follow the Islamic obligation as a woman. Her second attempt in 1978, at Paris, to personally lobby the Imam was futile. After the 1979 revolution, she was declared a psychiatric case, dismissed from work, administered male hormones and admitted in a psychiatric hospital. She later gained her liberty using her contacts with influential clerics (Tait Robert. 2005:2).

Akbar Hashemi Rafsanjani, who later became Iranian President, advised her to write a letter to Khomeini. She heeded the advise as she knew that a legal protection through Khomeini’s religious blessing is necessary to legitimate her SRS in London or elsewhere. So, she dressed up in male suits and went to see Imam khomeini in Tehran. She went there holding a copy of the Quran with shoes tied on her neck which symbolizes a plea for shelter in Shiism; a gesture redolent of *Ashura*. She was saved by Hassan Pasandide, Imam Khomeini’s brother, and taken to his house when she was being manhandled by the guards. Malkura was tall, bearded, and giant like a man but was actually a woman. The guards thought she was hiding a bomb in the band wrapped around her chest; she had to remove the band to expose her real feminine breast.³⁰⁴

³⁰³ Tait, R. (2005). A Fatwa for transsexuals. The Guardian, 27. Available at: salon.com/story/news/feature/2005/Salon.com.A.Fatwa.for.transsexuals07/28/Iran_transsexuals/print.htm

³⁰⁴ Ibid

Fortunately, Ahmad, Khomeini's son, weepingly sympathised with her and took her to his father. She was so emotionally excited that she fainted on seeing her optimistically potential savior, the Imam. Khomeini rebuked those who molested her saying that Molkara was Allah's servant who came to seek shelter.

After consultation with his three doctors, who were there, Khomeini granted her request as follows:

Changing gender under trustworthy physician prescription is legitimate and no objection. I hope you will be healthy and good Luck."³⁰⁵

Molkara perpetuated her struggle for fellow TS rights and for access higher standards of SRS in Iran. She had her SRS in Thailand having classified the Iranian procedure as defective. She was the leader and spokesperson of the Iranian TS community but is being protected by two security monitors. Although her brief encounter with Khomeini provided the required panacea, TS still live in fear of social aggression and thus a lot needs to be done in this regard.

In 1985, Khomeini issued an SRS Religious Authorisation Document which by extension continues to solve all similar TS predicaments. His Religious verdict was the first fatwa on sex reassignment surgery in contemporary Islam's world as follows:

There is no religious restriction on sex reassignment surgery as a treatment for transsexuals."(Khomeini 2000)³⁰⁶

³⁰⁵ Imam Khomeini, R. (1985). Imam Khomeini office. Istifta'at section.

³⁰⁶ Imam Khomeini, R. (2000). *Tahrir al-Wasilla; Changing of Sex*. Issue 1 and 2. Volume 2.

Following Ayatollah Khomeini's pronouncement (Fatwa), some religious scholars then regulated the social and legal aspects of sex change such as marriage, inheritance, and provision for children.

5.13 New sex identification

New sex identification is another important issue related to sex reassignment surgery. In all over the world, a document is issued immediately after birth that records the legal and sexual identity of a person. This document is called "*Birth certificate*" or "*Shenasnameh*" in Persian language. All identification cards, licenses and personal documents are issued based on birth certificate. Therefore, according to the important role of birth certificate in public affairs, there is a question that is there any right to change birth certificates for those who change their sex by sex reassignment surgery or not?

In England, although sex reassignment surgery is legal, according to judicial procedures and court decisions, transsexuals don't have permission to change their identification Cards. It is argued that; Issuance a birth certificate is for recording a historical event that has been occurred on a certain date. Therefore, there has been no mistake during issuing a document. On the other hand, identity card is valid so that we can't change or reform it in order to deny his or her identity card. So, before discussing about the legality of changing birth certificate for the legal nature of birth certificate must be explained. Is birth certificate or identity card a record of a historical event or it is an identity card?

Certainly, all essential information about a person includes the name, sex and date of birth is recorder on birth certificate or identity card. All people are required to carry their identity card and show it when they were asked. Is there any error or mistake in the details of identity card, the holder will be faced with problem in the enjoyment or use some of rights.

One area in which some transsexuals are seeking change is in the matter of their Identity Card. If they can change their identity card they use of it where they were asked and can enjoyment of their rights.

As a result, Birth certificate is not merely a registration historical event, but it is a document for identification the individual legal identity. Thus, those who changed their sex, have right to reform the identity Card. Ultimately, identity card seems as an individual legal identification.

5.14 Conclusion

This chapter examined transsexuality in the Islamic Republic of Iran. It examined the history and antecedents of transsexuality in Iran. It examined socio-cultural, legal and jurisprudential aspects of transsexuality. Since the constitution in Iran is governed by Islamic republic and the legal system in the country is based on Islamic principles, it is mandatory to respect Shariah principles in all economic, cultural and social structures. Transsexuality is different from homosexuality. Transsexuality is an inherent and biological defect treatable by medical surgery and hormone therapy, while homosexuality is a sinful sexual behavior and Homosexuals behave out of normal sexual bounds and commit sexual wrong.

The chapter finds that transsexuality, as a gender identity disorder, is accepted and accorded protection as of right by the legal system of Iran and Sex reassignment surgery has been recognized as an effective treatment for them. The sex reassignment surgery is not considered as an attempt to change Allah's creation according to Islamic jurisprudence of Iran. The history of permitting transsexuality is traced back to prominent Islamic thinkers of Iran like Zakariya Al Razi and Ibn Sina. With the establishment of the Islamic Republic of Iran, and especially with Imam Khomeini's Fatwa on sex change, sex reassignment surgery

became legally permissible after certain medical, psychological and religious conditions have been satisfied.

Unlike most Islamic countries, sex reassignment surgery is legal in Iran. Transsexuals can undergo sex reassignment surgery after taking permission from the Legal Medical Organization of Iran under the supervision of the trustworthy physician according to the World Professional Association for Transgender Health (WPATH). After the sex reassignment surgery, transsexuals are allowed to change all identification documents. Furthermore, three organizations have taken responsibility for transsexuals' affairs in Iran the Legal Medical Organization, the Welfare organization and the Imam Khomeini Relief Committee. Most religious and jurisprudential issues are provided by Imam Khomeini and some Islamic scholars.

On the whole, this chapter finds that despite the legality of transsexuality and sex reassignment surgery, transsexual individuals suffer from rejection and discrimination even within their own family, friends and in the wider societies. Public awareness helps to this fact that transsexual individuals suffer from a gender identity disorder and they are different from homosexuals and a close look at their problems will be improved the perspective of the society for them.

CHAPTER 6: THE EFFECTS OF SEX REASSIGNMENT SURGERY ON SOCIAL LIFE AND PSYCHOLOGICAL STATUS OF TRANSSEXUALS

6.1 Introduction

This chapter intends to examine the effects of medical and psychological treatment on quality of transsexuals' life. For this purpose, it has examined the mental, psychological and overall quality of life in individuals with gender identity disorder before and after sex reassignment surgery and hormonal treatment in Iran.

As mentioned earlier, transsexuality in Iran has been recognized as a gender identity disorder and sex reassignment surgery has been allowed under Islamic law as the best medical treatment for transsexuals. In fact, sex reassignment surgery is considered as a right, like other human rights such as health, marriage, employment, education and so on. Proper medical and social services are provided for them by the Iranian authorities and government. The medical procedure and the process of changing personal documents are performed under government supervision.

In order to support individuals with gender identity disorder, the Iran's Sexual Identity Community established in Iran by Ms. Maryam Khatoun Molkara in 2007 and started its supportive activities by taking formal license from Iran's Ministry of Domestic Affairs in 2015. The politic and goal of this institute is based on building culture and education regarding the issue of transsexuality.

According to this community, It is estimated that the statistic of transsexuals in Iran could be as one male in every 12000 men, and one female in every 30,000 women. Based on official statistic, there are 1,000 transsexuals in Iran, but informal statistics has estimated that there are 4,000 transsexuals in Iran. The prevalence of gender identity disorder in men is more than women in Iran just as is the case all over the world. Annually, about 80 persons

undergo sex reassignment surgery after getting permission from the Legal Medicine Organization in Iran and 90% of them are male to female transsexuals.

6.2 The Statement of the Problem in Fieldwork

The phenomenon of Transsexualism or gender identity disorder has become a controversial subject in medical and psychological sciences over the last decades. The treatment of this disorder by psychological, surgical and hormonal interventions has increased over the world.

According to the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) of the American Psychiatric Association³⁰⁷, Transsexualism or gender identity disorder is a persistent discomfort with sex that someone born with or a severe sense of inappropriateness in the gender role (Costa, 2016).

In order to balance between the challenging issues of diagnosing nonconforming gender identity, the condition has been revised by the American psychiatric Association in 2013 and the discomfort and experience about the gender incongruent has been renamed as gender dysphoria (APA, 2013).³⁰⁸

Many studies have been done about psychiatric comorbidity among people with gender dysphoria over the last few decades. Studies have focused on the effects of sex reassignment surgery and hormonal interventions on mental health of individuals with gender dysphoria.

However, studies have suggested that sex reassignment surgery with hormone therapy improves gender dysphoria individuals' well-being and increase their self-confidence, general and personal satisfaction and overall quality of life. In the last few years,

³⁰⁷ American Psychiatric Association (APA). *Diagnostic and Statistical Manual of Mental Disorders: DSM-III*. 3rd ed. Washington, DC: American Psychiatric Association; 1980.

³⁰⁸ American Psychiatric Association (APA). *Diagnostic and Statistical Manual of Mental Disorders: DSM-5*. 5th ed. Arlington, VA: American Psychiatric Association; 2013.

a large body of research has studied the specific effects of hormone therapy on different aspects of mental health in gender dysphoria individuals' life and suggested that hormonal treatment may help the psychiatric comorbidity on individuals that suffering from this condition.³⁰⁹ This chapter is aimed to investigate the effects of sex reassignment surgery with hormone therapy among some postsurgical gender dysphoria individuals in Iran.

6.3 The Practical Objective

The practical purpose of this research is as follow:

- 1- Introducing transsexuals to the society as a patient and expressing their problems and difficult conditions of their life.
- 2- Introducing sex reassignment surgery as an effective medical treatment for transsexuals.
- 3- Increasing the level of the society's knowledge about the satisfaction of sex change in these individuals.
- 4- Offer a practical pattern for more accurate diagnosis of applicants for sex change operation and providing a suitable approach to therapists in the field of gender identity disorder.

6.4 Fieldwork Question

- 1- What are the psychosocial consequences in transsexuals before sex change according to demographic variables?
- 2- What are the psychosocial consequences in transsexuals before sex change according to their physical and mental status?

³⁰⁹ Costa, R., & Colizzi, M. (2016). The effect of cross-sex hormonal treatment on gender dysphoria individuals' mental health: a systematic review. *Neuropsychiatric disease and treatment*, 12, 1953.

- 3- What are the psychosocial consequences in transsexuals after sex change according to their physical and mental status?
- 4- What are the psychosocial consequences in transsexuals before sex change according to the social and family encounters?
- 5- What are the psychosocial consequences in transsexuals after sex change according to the social and family encounters?
- 6- What are the psychosocial consequences in transsexuals after sex change according to their satisfaction of sex change surgery?

6.5 Empirical Studies

Sex reassignment surgery as an effective treatment for gender identity disorder continues to be questioned from different aspects and has received a considerable attention in the medical and psychological literature. By increasing the surgical and hormonal treatment in this issue, many studies have been done on sex reassignment surgery and hormone therapy and the quality of life among individuals with gender dysphoria. In recent years, more studies have focused on this subject. Studies aimed to support the evidence that sex reassignment surgery and hormone therapy improve satisfaction, self-esteem and the quality of life of gender dysphoria individuals and decrease the negative symptoms of mental health as stress, social distress and anxiety.

Michael Fleming (1981) is one of the first studies in this field that examined the assessment issues about transsexuality on 20 pre and post operation transsexuals through the use of Minnesota Multiple Personality Interview (MMPI). His study showed the significant

differences in both sex and surgical status of transsexuals as the post operation transsexuals had a higher level of psychological adjustment.³¹⁰

Dhejne (2011) estimated the criminal rate, illness and mortality among 324 postsurgical transsexuals for a long time (1973- 2003) in Sweden. He found that postsurgical transsexuals have more considerable risks for psychiatric morbidity, suicide and mortality compared with general population. His findings suggested that although sex reassignment surgery decreasing gender dysphoria in postsurgical transsexuals, but it's not sufficient and the psychiatric and somatic care should improve after surgery for these individuals.³¹¹

White Hughto (2016) has studied the effects of hormone therapy on quality of life and changes in psychological functioning in transsexuals. He measured the subsequent changes of hormone therapy in mental health and quality of life in transsexuals accessing hormone therapy over time through three uncontrolled prospective cohort studies.

Two of his studies reported a significant decrease in mental health outcomes such as hostility, depression, interpersonal sensitivity and public anxiety after hormone therapy and his another studies provided the low quality evidences that hormone therapy could be improved the mental health of transsexuals individuals. He asserted that “The prior review find that the studies assessing sex reassignment surgery together with hormone therapy were strongly associated with improved psychological functioning.”³¹²

³¹⁰ Fleming, M., Cohen, D., Salt, P., Jones, D., & Jenkins, S. (1981). A study of pre-and postsurgical transsexuals: MMPI characteristics. *Archives of Sexual Behavior*, 10(2), 161-170.

³¹¹ Dhejne, C., Lichtenstein, P., Boman, M., Johansson, A. L., Långström, N., & Landén, M. (2011). Long-term follow-up of transsexual persons undergoing sex reassignment surgery: cohort study in Sweden. *PloS one*, 6(2), e16885.

³¹² White Hughto, J. M., & Reisner, S. L. (2016). A systematic review of the effects of hormone therapy on psychological functioning and quality of life in transgender individuals. *Transgender health*, 1(1), 21-31

Costa (2016) that claimed his study is the first systematic review of all work that has studied the effect of hormone therapy on mental health and psychological well-being on cross-sex with gender dysphoria approved the positive effects of hormonal treatment on mental health in gender dysphoria of cross-sex individuals. Costa investigated the effect on cross-sex hormonal treatment on various parameters concern to mental health include self-esteem, depression, mood states, tension, anxiety and mental health concern quality of life.

His findings reported a significant improvement in positive symptoms of mental health and a higher level of self-esteem, social, emotional and mental quality of life due to the hormone therapy and a significant reduction in negative symptoms of stress, social distress, anxiety and tension as well as a decrease in personal and global psychopathology after receiving hormonal treatment.³¹³

Muhammad Hassan Murad (2010) also survived the quality of life and psychological outcomes of sex reassignment surgery and hormonal therapy through a systematic review and meta-analysis on individuals with gender identity disorder. He pooled proportions and estimated the 95% confidence intervals by using a random-effects meta-analysis by studying 28 eligible studies. His findings showed that 80% of individuals with gender identity disorder presented a significant improvement in gender dysphoria, 78% had significant improvement in psychological symptoms, and 80% reported significant improvement in quality of life and 72% improvement in sexual function. He concluded that very low quality evidence suggested that sex reassignment surgery that includes hormone therapy, improved sexual and psychological function, gender dysphoria and quality of life.³¹⁴

³¹³ Costa, R., & Colizzi, M. (2016). The effect of cross-sex hormonal treatment on gender dysphoria individuals' mental health: a systematic review. *Neuropsychiatric disease and treatment*, 12, 1953.

³¹⁴ Murad, M. H., Elamin, M. B., Garcia, M. Z., Mullan, R. J., Murad, A., Erwin, P. J., & Montori, V. M. (2010). Hormonal therapy and sex reassignment: A systematic review and meta-analysis of quality of life and psychosocial outcomes. *Clinical Endocrinology*, 72(2), 214-231.

Dhejne (2016) reviewed 38 longitudinal and cross-sectional selected studies among 647 studies during five years (2000-2015) about the prevalence of psychiatric and psychiatric outcomes on individuals with gender dysphoria, pre and post confirming medical interventions.

According to Dhejne, this review indicated that, although the levels of psychiatric disorders in individuals with gender dysphoria at the time of assessment is higher than in other people, medical interventions for gender confirming improved their mental health as, in some cases they reach to normative values.³¹⁵

Hejazi, A. (2008) investigated the adaption of role and gender identity of 12 transsexuals (9 person male change to female (M-F) and 3 of them female to male (F-M) with their new sex after sex reassignment surgery by using the MMPI1. Her findings show that an improvement in their social and mental situation after sex reassignment surgery and they had a good adaption with their new sex role and identity. All of them were satisfied of their sex change and there was no case of dissatisfaction. She found that although they were satisfied of sex reassignment surgery, but several factors such as financial situation, satisfaction of individual relationship, sex partner and satisfaction of sexual life, present supportive system and appropriate family and social encounter have a significant role in order to more adaption them with their new identity.³¹⁶

Abedini, Samad (2015) studied the relationship between social-cultural and family dimensions with understanding sexual identity before and after surgery on 12 individuals

³¹⁵ Dhejne, C. Vlerken, R.V. Heylens, G. Arcelus, J. (2016). *Mental health and gender dysphoria: A review of the literature*, International Review of Psychiatry, 28:1, 44-57,

³¹⁶ Hedjazi, A. Edalati Shateri, Z. Mostafavi, S. S. Husaini, Z. Razaghian, M. Moghadam, M. (2008), *A preliminary analysis of the 12 transsexuals patient with regards to their adaption in means of role and gender identity after sex reassignment surgery*, Scientific Journal of Kurdistan University of Medical Sciences, Vol 13, No:1, Winter 2008.

with gender dysphoria in Ardabil province of Iran. According to his results, the level of satisfaction with same sexes is different from the perception of sexual identity before and after surgery. They had a higher level of satisfaction of their relationships with their same sexes. The level of social confirmation improved for them after surgery by same sexes. His findings indicated that they had improved in mental health, adherence to gender values, self-concept and the compliance with behavioral patterns after surgery.³¹⁷

6.6 The Method of the Study

6.6.1 Variables

Table 6.1: The Table of Variables

Title of Variable	Type of Variable		Quantitative		Qualitative		Scientific Definition	Measure	Scale
	Independent	Dependent	Continuous	Distinct	Nominal	Ordinal			
Sex	✓				✓		Male / Female	Male / Female	Checkup
Age	✓		✓				Grouping	Last years of Life	Birth Certificate
Education	✓		✓				Education	Level of Education	Question
Married Status	✓				✓		Single/Married	Single/Married	Question
Occupation	✓					✓		Employment/Unemployment	Question
Financial Status	✓		✓			✓	Salary/Income	Week≤200,000Rial=53\$ Average:200,000-500,000 Rial	Question

³¹⁷ Abedini Samad, Sepehrinia Hamideh (2015), Investigating the Relationship between Social-Cultural and Family Dimensions with Understanding Sexual Identity Before and After Surgery in Individuals with Sexual Dysfunction in Ardabil Province, Journal of Sociology Studies, Vol 29, No 2, PP 21-38.

								Good ≥ 500,000 Rial	
Self-made questionnaire for psychosocial Status		✓		✓			Self-made Questions	Self-Satisfaction Family Satisfaction Adapting with the Society	Questionnaire

6.6.2 Type of the Study

This research is a descriptive-analytical study that intends to measure transsexuals' satisfaction of sex reassignment surgery according to their true feel and experiences and evaluate the consequences of sex change on the families and the society.

6.6.3 The Study Population

The study population of this research is a small number of post-operative transsexuals that had undergone sex change surgery by taking permission of the Legal Medicine Organization in Iran and they continuing their treatment and they keep their with the Iran's Sexual Identity Community in Tehran. Since most of Iranian Transsexuals are from the south of Iran they live far from Tehran. A small group of them live in Tehran or around that they are in connect with the Iran's Sexual Identity Community. It should be mentioned that, since they are living in different place and most of them are in restricted by their families, it is difficult to find them and the Iran's Sexual Identity Community is the only place that they gather for attend to some meeting, seminar and workshop. So, the researcher had to done this research in the Iran's Sexual Identity Community in Tehran.

6.6.4 The Sample of study

The sample of the study in this research, were 12 of Iranian post-operative transsexuals that 3 of them were female to male transsexual and 9 of them were male to female post-operative transsexual that had undergone sex reassignment surgery under supervision of the Legal Medicine Organization in Tehran and now they living in their new sex role.

6.6.5 Choosing the sample of study

As it mentioned before, since transsexuals in Iran are scattered and they usually limited by their family for attending in mass media and they often refuse to interview.

So, the researcher had to go to Iran's Sexual Identity Community and asked them to invite some available post-operative transsexuals for interview. Therefore, the community invited 5 persons of them for first time and 7 persons of them for second time during one month.

6.6.6 Place and Time of Research

The place of the interview was in the Iran's Sexual Identity Community in Tehran and since it was difficult to bring them together in one time, the researcher had to do the interview in two times within one month.

6.6.7 The Method for Data Collection

The first step was preparing a self-made questionnaire by the researcher including 10 questions according to the goals of this research include information about the psychosocial status of transsexuals before and after surgery and the psychosocial consequences of sex change in their personal and social life. Then the researcher had to communicate with the authorities of the Iran's Sexual Identity Community in Tehran to invite some of the post-operative transsexuals for attendance to interview. Finally, the researcher traveled to Tehran for doing the interview with 7 invited post operation transsexuals and after one month she had to go for interview with 5 post operation transsexuals.

6.6.8 The Method for Data Analysis

The qualitative analytical method was adopted in this descriptive research. To analyze the descriptive statistics, the central indicators of mean, standard deviation, frequency and percentage based on the type of variable has been used in this study.

6.6.9 Inclusion Criteria for Interview

Inclusion criteria were as follows:

- 1- Having transsexual experiences in real life.
- 2- Having undergo sex change surgery
- 3- Having psychotherapy period.
- 4- Using the hormone therapy.

6.6.10 Problems and Limitations

Since the researcher lives about 1000 KM far from the living place of the sample of the study (Tehran), traveling to following the interview affairs was so difficult and was not economical. The study's samples also are from different provision of Iran and gathering them in one time and one place was so difficult. Most importantly, dissatisfaction of the sample of the study to participate in the interview due to the family's threat was the other problem.

6.7 Findings

In this study, the descriptive and analytic findings of 12 transsexuals that had undergone sex change under the Legal Medicine Organization in Iran and now living in new gender identity has been studied.

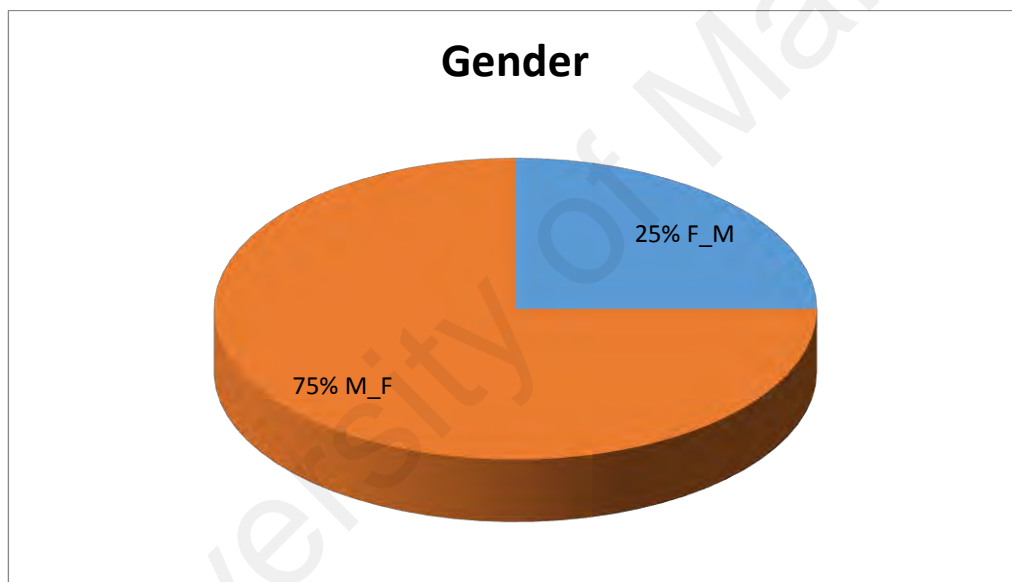
Table 6.2: Frequency and Demographic Findings

Variable		Frequency	Percentage	Mean Standard Deviation
Sex	Male(M-F)	9	%75	
	Female(F-M)	3	%25	
Age	18-24 years old	2	%16.7	
	25-29 years old	6	%50	

	≥ than 30 years old	4	%33.3	
Married Status	Single	10	%83.3	
	Married	2	%16.7	
Occupation	Employment	7	%58.3	
	Unemployment	5	%41.7	
Education	Under Diploma	3	%25	
	Diploma Holder	7	%58.3	
	Over the Diploma	2	%16.7	
Financial Status	Weak ≤ 200,000R	3	%25	
	Average 200,000- 500,000R	5	%41.7	
	Good ≥ 500,000R	4	%33.3	

The findings in this study showed that, 75% of these individuals were male to female (M F) transsexual and 25% of them were female to male (F-M), figure 1.

Figure 6.1: Percentage of MTF and FTM



Also according to the findings, 16.7% of respondents were in the 18-24 age groups, 50% in the 25-29, and 33.3% were over 30 years old. 83.3% of respondents were single and 16.7% of them have married (only one male and one female were married). In terms of occupation, 58.3% of them were employed and 41.7% of them were unemployed. In terms of education, 25% of them were under diploma, 58.3% had diploma and 16.7% of them had college education. Financially, 25% of the respondents' families were in the weak economic situation (their monthly income was about 2,000,000 Rial, that is equivalent to about USD 55), 41.7%

of them were living in medium economic situation (their income were about 2,000,000 to 5,000,000 Rial about 55 – 110\$) and 33.3% of them had a good financial situation and they had income more than \$150 per month.

Table No 3: Percentage distribution of respondents' views towards to mental states before and after sex change.

Table 6.3: Percentage Distribution of Respondents' Views

Items	Time	Never	Little	Somewhat	A lot	Very much	Mean± Standard Deviation
How much are you satisfied of your voice (masculine/feminine)?	Before surgery	33/3%	16/7%	16/7%	25%	8/3%	2.58±1.38
	After surgery	16/7%	8/3%	16/7%	33/3%	25%	3.41±1.38
How much are you satisfied of your appearance (masculine/feminine)?	Before surgery	41/66%	16/7%	16/7%	16/7%	8/3%	2.33±1.37
	After surgery	8/3%	8/3%	16/7%	33/3%	33/3%	3.74±1.23
How much are you satisfied of your role (masculine/feminine)?	Before surgery	50%	8/3%	16/7%	16/7%	8/3%	2.25±1.42
	After surgery	8/3%	8/3%	8/3%	33/3%	41/66%	3.91±1.25
How much are you satisfied of your behaviors (masculine /feminine)?	Before surgery	25%	8/3%	25%	16/7%	16/7%	2.66±1.40
	After surgery	8/3%	8/3%	16/7%	25%	41/7%	3.83±1.27
How much are you satisfied of your sexual organs (masculine /feminine)?	Before surgery	66/7%	8/3%	8/3%	8/3%	8/3%	1.82±1.34
	After surgery	8/3%	16/7%	25%	25%	25%	3.41±1.25
Have you ever thought about the hurt to your sexual organs?	Before surgery	41/7%	8/3%	16/7%	16/7%	16/7%	2.58±1.55
	After surgery	66/7%	8/3%	8/3%	8/3%	8/3%	1.82±1.34
	Before surgery	66/7%	8/3%	8/3%	8/3%	8/3%	1.82±1.34

Items	Time	Never	Little	Somewhat	A lot	Very much	Mean± Standard Deviation
Have you ever acted about hurt to your sexual organs?	After surgery	75%	8/3%	8/3%	0%	8/3%	1.58±1.18
Have you ever thought about suicide because of being a TS?	Before surgery	33/3%	8/3%	16/7%	16/7%	25%	2.91±1.60
	After surgery	66/7%	8/3%	8/3%	8/3%	8/3%	1.82±1.34
Have you ever commit suicide because of being a TS?	Before surgery	50%	16/7%	8/3%	16/7%	8/3%	2.16±1.40
	After surgery	66/7%	8/3%	8/3%	8/3%	8/3%	1.82±1.34

The Table No 2 indicates the distribution of percentages of participants' comments towards the status and attitudes of gender identity disorder. They expressed their trends and tendencies before and after sex change surgery. The Average of participants' response after surgery in compared before surgery, has increased in positive items and decreased in negative items.

Their Satisfaction of sexual organs after surgery has increased in compared before surgery. Also their satisfaction of their behaviors according to the new sex role has increase after sex reassignment surgery. The average satisfaction of this item before surgery was 2/66, while it has increased to 3/85 after surgery. This finding show that since transsexual individuals have problem with their appearance physical and sexual organs, they hide their behaviors and are trying to act according to the sex that they think they are belonging to it.

In negative items, thinking about the suicide and hurting had the highest percent before surgery (%2/98) compared after surgery (%1/82).

6.8 Discussion

As it mentioned before, gender identity disorder as a subject of medical science was raised in Iran for a long time. Ayatollah Khomeini's fatwa asserted the legitimacy of sex reassignment surgery as a cure for this illness under trustworthy physicians. This subject starts to discuss among Iranian Jurists as a new phenomenon in Islamic jurisprudence and law, from the legitimate and illegitimate perspective. The discourses had more focused on the legality or illegality of sex change in sharia and law and the mental and social status of transsexuals have less to be discussed.

After the legality of sex reassignment surgery in Iranian Law, the psychological and surgical treatment with hormone therapy was started by many surgeries in several medical centers.

The lack of legal definition of transsexuality due to limitations of Islamic sources and the general perception of gender that promotes the heterosexuality as the normal or preferred sexual orientation have led to misrecognition of the social status of transsexuals in Iran. They are considered outside of heterosexuality boundaries due to changing their sexual organs by surgery, so they often are hardly accepted as a full member of society. It can be said, the social status of transsexuals in Iran are as well as the social status of these individuals in other societies before medical and psychological interventions.

The result of this study indicates that individuals with gender dysphoria which have not undergone medical treatment hide their identity because of the fear of the society's encounter and act according to the society's expectations and they show their identity disorder less in their behaviors. In fact, they show their dissatisfaction of their sexual identity among their friends and their closed relatives or keep this dissatisfaction with themselves more than they show it with behaviors that are interpreted as abnormal by the society. By

doing so, they can decrease the sensitivity of the society to their identity disorder and their behaviors and they can live together with their family. Therefore, the objective aspects of their life are encountered with appropriate conditions due to the family support base.

However, medical interventions on gender dysphoria have been effective from two aspects in Iran; socially and medically. Socially, it changed the attitudes of families and society from hatred, abnormalities and torture to compassion, tolerance and feel of humanitarianism that could be led to strengthen the transsexuals' status in the society. Medically, according to studies, the psychiatric and surgical treatments with hormone therapy have demonstrated a significant effect on mental health and transsexuals' well-being at different levels.

Since the most problems of individuals with gender dysphoria is up to their sexual status, as they hated of their sexual organs and had a sever sense of incompatible with their sex that they were born with, they have desire to change their sex and live in the opposite sex. This permanent desire often overshadows all their activities and forms the main axis of their worldview.

This situation cause stress, anxiety and trauma for them and their relationship with others are facing with serious challenges. Therefore, they are rejected from their family, friends and relatives and their isolation of society provides the conditions for entrance to moral deviations. Consequently, psychological and medical interventions with hormone therapy decrease their gender dysphoria and increase the quality of transsexuals' life.

The results of this research are in line with many studies in this regard that some of them survived before (Murad 2010, Dhejne 2011, 2016, Hughto 2016, Costa 2016, Abedini

2015) indicating that, medical treatment improved the gender confirming in gender dysphoria so that, mental well-being of transsexuals in many cases reaching normative values.

The findings of this study show that, medical treatment decrease gender dysphoria strongly and cause more compatibility between their mind and their sexual organs. So, their mental comfort and the quality of their life increase with sex change surgery. Total index of the quality of life and the mental comfort among these individuals show a significant difference before and after surgery. They had a higher quality of life and mental comfort after surgery and hormone therapy.

These findings also show that, sex reassignment surgery has effects on the psych and the mind of transsexuals and other aspects of their life are influencing by other factors like relationship with their parents, their social base and the economic situations.

6.9 Conclusion

According to these findings, it can be concluded; gender dysphoria has affects merely on the mind and soul of transsexuals and impresses the mental and intellectual aspects of their life does not effects on other aspects of their life.

CHAPTER 7: CONCLUSSION AND RECOMMENDATIONS

7.1 Introduction

As it mentioned before, Transsexualism is a global phenomenon that is increasing in today's world and is observable in all countries. Gender identity disorder has overshadowed all transsexuals' activities in their life. This topic has become as a controversial subject in mass media worldwide, although there is no a comprehensive scientific understanding of this phenomenon. The biological and psychological statuses of these individuals are still unknown. Transsexuals as a sexual minority are located at the extreme margin of deprivation even in Muslim countries. They are prevented from their primary human rights and have not a sociopolitical space for living human being with dignity. Their most exclusion is due to non-recognition as a separate gendered human being outside of the male-female dichotomy. They are subjected to any physical, sexual and verbal abuses and experience sociocultural deprivations, humiliations and discrimination in society. Extreme social deprivations put them in the most identity crisis and diminish their self-esteem and sense of social responsibility.

7.2 Conclusion

According to the foregoing analysis and discussion it can be concluded that sex reassignment surgery has been recognized as an effective treatment for transsexuals, and Islam always encourages Muslims to seek treatment for their illness. Sex reassignment surgery is just like other medical treatments and should not be considered as a deliberate act to change God's creation. As change in God's creation means an attempt to mislead servants which are prohibited by the Quran (30:30). Also, the curse of the Prophet (PBUH) refers to those who habitually and deliberately imitate the appearance and external behavior of the opposite sex, not transsexuals who behave according to their gender identity.

Furthermore, if transsexuals are not allowed to such treatment, they will be vulnerable to sexual misconducts which are against Islamic moral. So, if sex reassignment surgery is done according to the medical standards, diagnosis and performed under the supervision of trustworthy physician, it would be in line with Islamic rules and it is not against Islamic moral.

However, despite the Quran explicitly acknowledges the existence of people with different identities and sexual problems³¹⁸ and encourage them to seek treatment for illness, as well the numerous juristic opinions, judicial decisions and some religious verdicts transsexuals are still facing cynicism, religious prejudices, negative attitudes and they are grappling with stigma, discriminations, intimidation, arrest, torture and harassment, especially in Islamic countries.

As a fact, Human sexuality is ubiquitous aspect of human's life that it is impossible to hide and needs to be recast. Human sexuality cannot be restricted to hormones, biological reproduction, genitalia and sexual pleasure. It includes many socio-cultural concepts, derived from the feeling, thinking, imaging and the embodied knowledge of all stages of human being lives.³¹⁹

In order to communicate between peoples and communities, human sexuality should be eligible of pleasure and health for all human beings, especially for those that their gender identities falls in the danger, such as transsexual, bisexual, gay, lesbian and transgender. The sciences related to Human sexuality and Transsexualism should be increased as an ongoing science across cultures, disciplines and different field of analysis. It is necessary to attitudinal changes towards sexual pluralism and acceptance of diversity as a social reality. Thereby, it

³¹⁸ Quran, 42:49-50

³¹⁹ Gender Technology and Development,

will help more understanding about human lives that still obstruct by moral barriers and epistemological.³²⁰ As, according to Jolly:

“Positive approaches to sexuality can enhance equality and empowerment for all” (Jolly, Cornwall & Hawkins, 2013).

Transsexuals want to live like other ordinary citizens. They want to live quietly, without fear of harassment and violation. They do not want to live in poverty, unemployment or to be forced into prostitution in an attempt to survive. They must be considered as a protected category to education, employment and housing without discrimination. The appropriate information about gender identity disorder and medical treatment, family counseling and educating the transsexuals’ parents should always be considered as a need for these individuals. Family’ counseling and educating, not only create a secure environment for transsexuals and their families, but also, the acceptance of transsexuals by relatives, will make their treatment easier by sex reassignment surgery. This safe environment enabled transsexuals and their families to come to terms with the cultural, social and medical consequences of medical treatment which is free from discrimination and social stigmatization.

According to the first Article of the Universal Declaration of Human Rights, “All men are born free and have the same dignity and rights.” Transsexuals like other people have a fundamental right and dignity as human beings and should be treated equally with other humans. The Islamic institutions should be came to terms with the status of transsexuals and offer a unique perspective in diagnosing and treatment of these individuals in the context of Islamic tenets.

³²⁰ Ibid

However, the ultimate target of this movement have to lead to a congruent and supportive environment for transsexuals, where they as a citizen along with men and women can live with maintain their citizenship, gender and human rights.

7.3 Recommendations

It is needed to more investigation and psychiatric evaluations concern the psycho-social situations of these individuals to diagnosis and treatment. For this purpose a Proper notification and increase public awareness about gender identity disorder can facilitate social life for these people. Taking a positivist stance in deciding the establishment and expansion of counseling centers will help to raising awareness and providing social support of people. Also a close look at the social constructivism movement in favor of the transsexual by the members of mainstream societies of the government and non-government sectors, civil society and policy planner.

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