

Imam Khomeini's Innovations in Changing Sex in Spousal Sentences

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Abstract: One of the recent issues of jurisprudence is the issue of "sex change". This, in addition to transforming the sex of a person, changes his legal and jurisprudence life. The gender of a person changes from man to woman or vice versa. This is the basis of numerous jurisprudential and legal questions and debates; among them, the fate of marriage is after the change of sex. If the husband alone changes gender or the woman alone acts, or even the husband and wife both simultaneously or asynchronously change gender, the marital status is in a hollow of ambiguity. The purpose of this research is to express the innovations of Imam Khomeini in the context of sex change in spouses. Consequently, according to Imam Khomeini, sex change is not forbidden, but it will change the family titles due to the negation of the former marriage.

Keywords: *sex change, becoming a sex, bisexuality, spousal sentences*

1. Introduction

Today, the issue of "sex change" is not only considered by the medical perspective, which is also important in terms of legal and jurisprudence issues. Of course, the discussions about "neutral" or "bisexual" individuals are not considered as an emerging phenomena; since past so far, there have always been people who have been neutral or sexually active in human societies, and in Islamic traditions and Islamic jurisprudence there have been discussions on these people. What has become important in gender mainstreaming is the advancement of medical knowledge, especially surgical knowledge. There is always a news story about the gender change. This is not only true for physical illnesses, such as bi-sexual (hermaphroditism), but also sex change for healthy people. In the past, the change of gender and the conversion of the boy to the girl, and vice versa, was an impossible thing, but in recent decades, thousands of gender changes has occurred in Iran and abroad. One of the questions raised here is whether the permission or lack of permission is in jurisprudential terms, as well as the legality or illegality of this issue. The answer to this question can be the subject of an article or even a thesis. The issue of permitting or non-licensing is referred to as the task of the case, which we are not currently looking for and responding to. What we are looking for is the examination of one of the precepts of gender change. In other words, this phenomenon has the effects and consequences of which one of the effects is the effect of gender change on couples' marriage. Even if we believe in the illegality of gender change, we can again speak of the state of affairs of this phenomenon (Bohrani, 1995 : 66).

From the first Shiite jurists facing this issue, and inevitably for a scientific discussion, deduction, and fatwa, was Imam Khomeini, who in 1964, in his great jurisprudential book, "Tahrir al-Vishila", referred to this issue as the issues of the accession to be deduced, and along with ten issues, discussed various aspects of this issue and the validity of the principle of sex change and finally passed his fatwa (Imam Khomeini, 622.2). After this fatwa, though the issue of sex change came within the realm of the emerging issues of Shi'a Islamic jurisprudence, it was still silent on the part of the jurists, until again, in 1987, a person (the former Fereydoon and later Maryam Malek Ara) went to Imam, and arguing that he considers himself to be a woman psychologically, was given permission to change his sex, and Imam allowed him to do so after approving expert doctors' opinions. After that, the legal and jurisprudential process was facilitated in the Muslim country. Since then, the reasoning and jurisprudential debate has been opened on this issue and the Shi'ite mujtahids and authorities have been discussing it.

1.1. Jurisprudential History of Sex Change

In the context of sex change, the two discussions are identifiable and differentiated from one another. A discussion of the determination of the sexual group of neutral individuals and bisexuals comes from the symptoms and predominant symptoms of a gender, without surgery and medical work on a person.

The background to this goes back to the emergence of the human race. All the heavenly religions have encountered this phenomenon. In the Islamic Shari'a, there is also an extensive report on this subject in narrative texts such as a narration quoted by Imam Baqir in defining the problem of gender during the time of Imam Ali's rule (Tusi, Tahzib Al-Ahkam, 454/9), and in various jurisprudence issues, neutral inheritance, marriage, immorality, worship, etc., neutrality has been discussed by scholars and Islamic jurists in this regard.

The second argument is sex change by surgery. This discussion in Islamic jurisprudence does not have a long history. First, due to the innovative nature of the medical instruments and knowledge of this process, it does not

have a long history of being widely discussed in the jurisprudence. And also, there was not a legal and jurisprudential discussion among Sunni jurists about the licensing or prohibition of and the effects of this change; because Sunni jurisprudence in this regard only denied and rejected. It is apparent that denying and rejecting is the shortest way to end topics and questions surrounding the subject. However, in Shi'i jurisprudence and Shi'a jurists, in the less than half a century since the discussion of this issue, there have been numerous studies on the issue and numerous essays have been made around it (Kharrazi, 2005: 44).

1.2. The need for gender differences in marriage

Philosophic spousal is like an "extra" concept of brotherhood and parenthood, whose validity or consideration of this concept is not possible unless two persons have a distinct existence, including the relationship of marriage, or the relationship of brotherhood or relationship of father and child, and without such parties, such a relationship will not be established. Therefore, as the concept of lover or assassin does not materialize without the existence of a beloved or a killer, it is as well true about spousal, which is a concept of the same nature, and cannot be credible without the actual existence of the two sides (Kariminia, 2011: 10).

1.3. Lack of survival of marriage, in the change of gender of a man or woman to the opposite sex

One of the varieties of gender change is the conversion of men to women or vice versa. What is the effect of this type of gender change on marriage? Most of the Islamic jurists' debates on "the effect of gender change on marriage" have been raised in the following sections: "The change of gender to the woman or vice versa". In other words, the effect of gender change on marriage has not been addressed in other types of gender change, such as sex change in neutralities (bisexuals).

After marrying a man and a woman, for one reason, one of the couples may become sexually transmitted. The most important post-surgical question is the survival or absence of marriage, as well as the permission or lack of permission of marital affairs as "couples." The study of this kind of gender change also has different types and situations. In other words, sometimes only the man, or only the woman, changes sex, and in some cases both may change sex. Of course, it is very rare for both men and women to change their gender, and so far such a gender change has not been reported, but in any case, this issue is considered by the Islamic jurists as a "jurisprudential subdivision". In addition, in changing the sex of couples, this issue is also considered by the Shi'ite jurists, and sometimes couples begin to change gender, and in some cases it can be done at a time interval and asynchronous. For example, in the first year, a man may become sexually transmitted, and in the following year, a woman changes sex and becomes a man. In short, the "gender change of couples" can be summarized as follows: (Momin Qomi, 1994: 67)

Changing the sex of one of the couples: this case has two modes:

- A) Change of the sex of the husband to woman
- B) Change of the sex of the wife to man

Changing the sex of both couples. This case also has two modes:

- C) Sex change of couples as asynchronous
- D) Changing the sex of couples simultaneously.

1.4. Survival or lack of survival of marriage in changing the sex of a man (husband) to a woman

Whenever after marrying a man and a woman, the man changes sex and becomes a woman: If this surgery is complete, in the new situation, the life of the former couples will become the "life of two women". It is natural that the marriage of two women is rejected by Islam, and therefore, the former marriage, in general, is void and ineffective. The reason for this is clear; the two important pillars of "marriage" are the existence of two individuals as "husband and wife." If this important pillar fades away, "the issue of marriage" is eliminated, and therefore, the ruling of the problem, that is, "marriage" will also be eliminated. Imam Khomeini says: "Also, if a woman marries a man and then the husband changes his sex, the marriage is canceled when sex is changed." (1987: 599)

1.5. Survival or lack of survival of marriage in the change of woman (wife) to man

This case is the same as the previous one. In other words, if after the marriage of a man and a woman, a woman becomes a man, the issue of marriage, that is, the "husband and wife" concept, will be lost and the former marriage will be void and ineffective. Imam Khomeini says: "When a woman marries, then she changes her gender and becomes a man, marriage becomes invalid when she changes gender."

According to the above, with the operation of gender change, the issue of marriage, namely, "man and woman," has changed, and a new issue, that is, "man and man," is created. Hence, the void of marriage will be a forceful act (Sarcheshmeh Pur, 2005: 56).

1.6. Sexual change of couples in asynchronous situation

Sometimes couples turn to gender change, although with the explanation that husband and wife change sex with a relatively high time interval, for example, one year or two years. In this assumption, it does not matter whether the man initially changes sex, or the woman changes sex.

In this case, as in the former state, marriage is null and void, since there is no religious license to preserve the marriage. As soon as one of the couples changes their gender, for example, the male sex becomes a woman; in the new state, both will become homosexual and the former marriage will be lost. Now, if a woman changes her gender after a while, she will not be able to get married, but will need to execute the sermon of the new marriage (Motahari, 1982: 87).

Imam Khomeini says: "If a husband and wife convert their gender to the opposite sex, so that the husband becomes a woman and the woman becomes a man, if the change is asynchronous then the sentence is the same as before."

Imam Khomeini, in *Tahrir al-Wislah*, initially accepts the second possibility (the non-survival of married couples after changing the husband's gender simultaneously), but ultimately, they prefer the first possibility (the survival of married couples). He says:

The next question is, if the husband and wife change sex simultaneously, is the marriage annihilated or it remains as such, and although the rules and duties are changed (that is, on the current man (who was previously a woman) giving alimony and on the present woman it is obligatory to obey the husband). It is recommended to remarry and not to marry another woman, except with the permission of both to divorce, although it is not unlikely that their marriage will continue to exist (Khomeini, 1987: 675).

The reason for the above caution is that the former marriage is not surviving and durable, based on its former conditions, and the commitment of the current woman to the "duties of a wife in marriage," and also the commitment of the current man to "the duties of the husband in marriage" is a new issue that no new commitment has been made for it yet.

Ahmad Motahari says: Imam Khomeini is the first jurisprudent and scholar of Muslims who has expressed legal and jurisprudential issues of gender change (*Tahrir Al-Wasilah* Imam Khomeini). Imam Khomeini, in the book of *Tahrir al-Wasilah*, deals with the topic of gender change, which, according to his views, is as follows: Imam Khomeini expresses this act with regard to sex change, religious permission, and in the first issue of the relevant section it turns out to sex change: "It seems that the change in sex from man to woman is not forbidden, and it is not forbidden to act in neutral, and it is not forbidden to act in a neutral way to join one gender, but if the woman sees in herself the tendencies of a man, or a man sees in himself the tendencies of a woman or some of the effects of the rule, is it obligatory to change it? It seems that it is not obligatory." Therefore, according to Imam Khomeini's orders, sex change is not forbidden, but if one thinks such a perceptible feeling, is it necessary to change sex? He states that it is not obligatory and they can live the same way. However, given the religious license, we assume that an individual faces an identity disorder, that is, his spirit is not in accordance with his body, and this is confirmed by referring to psychiatrists. The practical measures that must be taken in this field can be done to allow for gender reassignment. This can be done as follows: first, to obtain permission from the judicial authorities for action he must refer to the district prosecutor of his place of residence and if in that jurisdiction the prosecutor has a deputy head of affairs, he can refer the unit and submit the letter to the forensic to comment on this reference. When referring to the medicals, an applicant is referred to a psychiatrist who, in his opinion, within six months to two years of his relevant medical opinion, will submit his opinion to the Forensic Medicine and Forensic Medicine Authority to declare the response of the judicial authority to confirm or deny the applicant's identity impairment. If the medical law confirms this inconsistency with the permission of the prosecutor, the individual has the right to visit the specialized center, that practice gender mainstreaming by the provision of a licensed surgery. Some government departments, including the Welfare Organization, will provide assistance with these people and, if needed, will pay for the surgery as an interest-free loan pays for these people. Now, after the sex change operation, the person must receive the certificate of surgery from the center that performed the operation for subsequent actions.

This person is from this point on in the real body of his soul and is comfortable with the conflict caused by the disorder, but this person will have many social problems. The first legal problem is the conflict of the person's identification with his new gender and, it should be resolved by referring to the judicial authorities that it will certainly not be easy and urgent to file a lawsuit with a request for proof of gender and renaming the registration office of the place where the issuance of his birth certificate is filed to the general court of his place of residence. Providing evidence of gender change, the court will prove this issue, and the verdict is to change its name after the change in the birth certificate, he can change all his documents, including a driver's license, a passport, an insurance policy, and so on. However, if a woman becomes a man, the status of military service is a problem to be solved. So,

after changing his name, a new birth certificate will be issued to the Military office, so that the medical exemption card be issued.

1.7. Sex Change in jurisprudence

Some jurists and jurisprudents use the term "mental neutrality" for transgender people whose body language symptoms do not match their mental tendencies; and some suggest "gender reform" or "sex determination" instead of "gender change". (Imami, 2014: 41).

Religious scholars have three views: absolute legitimacy, conditional legitimacy, and absolute prohibition. Many Sunni jurisprudents, such as Qardawi, Christian churches and some Shiite jurists, disagree with the act of gender change, and they see it as a change in the creation of God, but for the Shia jurisprudents, the Shari'a's jurisprudence of the Holy Qur'an or Islamic narratives, has not mentioned a thing on the prohibition of being a sex change and since this practice makes transsexuals free from severe mental and physical illnesses and social pressures, sex change is not a change in the creation of God. The gender changers consider this a change in the creation of God that according to verse 119 of the Surah al-Nisa is forbidden, but the advocates of gender change argue that the content of this verse refers to the pattern, according to the jurisprudential inquiry, about the status of the revelation of this verse and the verses before and after it. The era of ignorance was that they took the ears of a camel who gave birth for the fifth time, and endowed them to the idols. On the other hand, all jurisprudents consider sex change permitted in the case of emergency, even if it is considered forbidden. Also, according to the advocates of gender change, all routines are a kind of change in the creation of God (such as the burning of firewood), but it is meaningless to regard them as forbidden. On the other hand, with the change of sex, the human soul does not change, and in the end, its only their traits that vary. Likewise, the advocates of sex change refer to "the principle of permission" (everything is lawful unless it is explicitly stated that it is forbidden in the Qur'an and narratives) and the "rule of dominion" (man's authority over his own wealth and body).

Shiite jurisprudence, besides accepting gender change, has set standards for both the new personality and his/her religious duties. Accordingly, the criterion of each person's religious duties is his/her new sexuality and, accordingly, he/she inherits as his/her new sex, for example, a boy who has become a girl, shares the same amount as a daughter. Also, about the limits of confidentiality and intimacy, the new sex is the norm. Seyyed Ruhollah Khomeini, in the Tahrir al-Wassila, says that "it seems that the change in the sex of a man to a woman and vice versa, is not haram". From this treatise, the absolute legitimacy of gender change is considered by Ayatollah Khomeini. Ayatollah Khomeini's fatwa on the freedom of sex change in Islam was also confirmed by Syed Ali Khamenei, the current leader of Iran (Kariminia, 2016: 88).

2. Conclusion

Of the pillars of marriage, "male and female" are "couples." If married is canceled for any reason, including gender change, marriage will be void. Therefore, the existence of "woman and woman" or "man and man" is non-religious as a "married" couple. After marriage, sometimes the man changes his gender, and sometimes a woman changes his gender. In any case, the past marriage is void or dissolved. This is a case concordance among Shiite jurists, and there is not even one opposition. In some cases, both husband and wife change sex. This kind of gender change is sometimes non-symmetrical; that is, the change in sex between husband and wife occurs at a time interval. For example, the husband in the first year and the wife in the second year will give birth to a gender change. This kind of change in sex also leads to the dissolution of the marriage; since the sex change of one (for example, the husband), the former marriage is dissolved, and the sex change of the second (for example, the wife) has no effect on the ruling of the problem (the dissolution of the former marriage). In other words, the sex change in the second partner does not have an effect on the survival of the former marriage. Ultimately, the husband and wife can re-marry each other after changing their gender. The aforementioned point is that the failure of couples' marriage in the change of asynchronous gender is the case of all Shi'a jurists, and there is not even one opposition. When the husband and wife change sex simultaneously (symmetrical), Imam Khomeini in Tahrir a;-Wassilah, prefers the survival of the former marriage, and says that survival of the marriage is not unlikely, but it is cautious that the marriage between the two be renewed. Some of the Shia jurisprudents did not essentially consider the above-mentioned, i.e. the effect of the simultaneous change of couples' gender on former marriages. A group of jurisprudents who have considered the above are two groups:

One of the jurists like Ayatollah Yusuf Sanei, like Imam Khomeini, believes that: it is not unlikely that their marriage will continue to exist. But other Shiite jurists like Ayatollah Ahmad Motahari, Ayatollah Mohammad Momen, Ayatollah Seyyed Mohsen Kharrazi, Ayatollah Mohammad Fazel Lankarani and Ayatollah Nasser Makarem Shirazi believe that the "change of the gender of couples" essentially affects the verdict (dissolution of the former marriage). However, changing the gender of couples at the same time, such as changing the asynchronous sex of couples, will invalidate the former marriage. Therefore, the former marriage is essentially void and dissolved, and the two are in need of new contracts for life as "couples". In cases of non-complicated problem or neutralization,

surgical treatment becomes either male or female. In some cases, a male or female may undergo a surgical procedure to become a problematic neutral or a non-problematic neutral. All this has been evaluated for the effect of each of the above-mentioned surgeries on marriage.

Imam Khomeini, as the first religious figure in the Islamic world, considered transsexuality an illness and allowed them to undergo surgical operation. This happened when many of the authorities at that time believed that they were deviant. Imam believed that these people were victims and they should be helped to be treated. What Imam did, he had no history in Shia world. However, the unconsciousness and unawareness of the people have caused the taboo to continue, while Imam Khomeini had broken this taboo years ago with such a fatwa.

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