

Reviewing Jurisprudential and Legal Effects of Gender change on Marriage and Family

Abstract

An emerging topic attracting the attention of various sciences such as medicine, psychology, sociology, jurisprudence, and law is gender change. Currently, some people do not accept gender change issue and react to it. Instead, some consider it as a cure for disease and have a rational view. Many contemporary jurists allow gender change, but they have not explained its legal consequences, especially in couples' relationships. This research uses descriptive and analytical method and reliable jurisprudential and legal sources, and examines the reasons for gender change legitimacy and its effects on the family's legal system. If the gender is changed based on valid medical standards and experts' approval, some aspects of rights will be affected. If a right is derived from a contract, the origin of the right should be determined by the former gender's role. If gender played an essential role in it, then with the change of gender, the said contract is invalid and as a result, the rights arising from it are also canceled accordingly. But if the change of gender had a secondary role in it, the contract remains despite the change of gender and is conditional. If there is a legitimate rational interest in the existence and continuation of the former sex, the contract can be terminated. The non-contractual rights of the mentioned person may also be an acquired right that gender change will not affect these rights. In addition, this person can enjoy other rights according to the new gender.

Keywords: *Gender change, Neuter, Transsexual, Alimony*

**Mohammad ali allahyari,
Mahmoud aghajani**

¹*Department of family law, faculty of law, Kerman branch, Islamic Azad University, Kerman, Iran*

²*Department of private law, faculty of law, Kerman branch, Islamic Azad University, Kerman, Iran*

**Correspondence author:

Email:allahyarimohammadali2@gmail.com

Introduction

Today, we are facing a new phenomenon called gender change. Considering the dynamism of the Shia school and the flexibility of this school in the face of amazing issues in society, significant medical advances, and gender reassignment surgery in today's society, it is necessary to clarify the rights and shari'a and legal duties of people affected by this issue so that both They and those who are related to them can better manage this problem and avoid potential mental and emotional torment. According to medical science, some people need to change their gender due to hormonal changes and other disorders in their body, and all over the world, including in Iran, these people decide to change their gender due to improve their perceived personal-social tension. Undoubtedly, when the issue of gender reassignment and surgery of people is explained, the necessity of jurisprudential and legal rights and duties becomes more evident, considering the different rights and duties of men and women in law and jurisprudence, and considering the fundamental changes of these people. It is well known that after the surgery and gender change, the need for these people to be aware of their rights and duties becomes more urgent. But so far no comprehensive work has been written that contains all the required materials related to gender change. Therefore, it is necessary to prepare suitable work to make people aware of this phenomenon, so that ambiguities disappear. The point to think about is that currently some people do not accept the issue of gender change and react to it, while some consider it a treatment for a disease and have a positive and rational view of this issue. It should be accepted accept that those subject to this phenomenon are those

whose physical characteristics and behavioral patterns are seriously in conflict with their sexual tendencies and desires. They suffer from mental or physical problems and are known as transsexuals or mental neuters, which is considered the most severe type of sexual identity disorder. According to the research, it is clear that there are differences of opinion between Shia and Sunni jurists about gender change, and their differences include three theories: absolute prohibition, absolute legitimacy, and conditional legitimacy. The Sunnis are completely opposed to the issue of gender change and consider it haram and believe that making a change in God's creation is haram, but the Shia jurists believe that if this change requires doing haram acts such as touching or commenting, it is permissible and the reason They consider the absence of reasons and documents from the Holy Sharia regarding the sanctity of gender change to be permissible. However, due to the positive attitude of the Shia jurists, the full potential of medical science, regarding the total possibility of surgery for these individuals, and the increased number of applicants, clear laws have not been approved in this regard, and the written law in this regard are not completely concrete. Therefore, by accepting this issue, the rights and obligations related to marriage, dowry, iddah, alimony, etc., with a direct and unmediated relationship with the gender of people, will change. It should be noted that before surgery was possible, jurisprudential issues related to people with sexual disorders were examined only from the physical aspect and as neutral at different levels of jurisprudence, especially the issue of inheritance.

The lack of a specific and codified law regarding people with sexual disorders, whether bisexual or gender neuter and a special and coherent application program regarding gender change rulings create the necessity that the juridical and legal status and duties and rulings of these people be written down. In this regard, according to the adherence of the Iranian nation to the laws of Islam, the legitimacy of this religion in the country, and considering that the civil law of Iran is derived from the Holy Sharia, therefore, in addition to examining the standards of Imami jurisprudence and the Holy Sharia regarding these persons, the existence of laws And coherent and codified rulings are especially necessary for the transparency of the rights and duties of these persons. In this article, we try to examine the juridical and legal effects of gender change.

Gender change

Gender change has been defined as any transformation that makes the current situation of a gender different from the previous situation; Genus in Persian and Arabic means a nature that includes many types of humans and animals and is mentioned as an "object", too (Dehkhoda, 1998, p. 20). Only a few Shia jurists have written about the meaning of gender change and described it as a tool for turning a woman into a man, or vice versa (Kariminiya, 2009, p. 45).

Individuals with no physical or mental problems face the prohibition made by the medical community if they decide to change their gender. Physicians do not perform this operation for these people since the request for gender change may be an excuse for refusing military or derived from delusional-psychotic reasons, which of course is rare (Kriminia, 2010, p. 45).

Neuters or bisexuals have the symptoms of both sexes. They are known as "hermaphrodites" in medical science. Bisexual disease or hermaphroditism is a type of hormonal abnormality that occurs during the development of the fetus and may be caused by the influence of the mother's hormone or some drugs/chemicals used during pregnancy. According to Imam Khomeini (may Allah be pleased with him) in Tahrir al-Wasila (1985, p. 627), it seems that changing the gender of a male to a female and vice versa is not haram, nor is it haram to change a neuter gender to one of the two genders, male or female. His fatwa revolves around two axes. He believes that gender change is not haram for those with no physical problems, and knows it is permissible in bisexual. He has distinguished these two groups and has described permission for both groups. Imam Khomeini sees gender change both for neutered and normal people as a possible and permissible phenomenon (Kriminia, 2010, p. 67)

People with gender identity disorder are physically normal, but psychologically they are similar to the opposite sex. In medical science, this condition is called transsexual or gender identity

disorder. Transsexuality is a type of psychiatric disorder in which the anatomy, physiology, hormones, and chromosomal formula are in harmony, and the sexual appearance is in accordance with the genetic formula, but psychologically, the individual does not accept his/her gender and is dissatisfied with it. Therefore, they do not behave according to the expected gender and behavioral pattern and imitate the behavior of their desired gender. While the normal state of people reaches gender identity according to their biological sex. (Police office, Kyomarth-Ebrahimi, Nusibeh, 2011, p. 79)

Legitimacy of gender change

There are three theories about the Legitimacy of gender change. The first theory bans gender change. A reason for this theory is that the permissibility of gender change requires permission to remove and hurt the organs that are removed from the body of the person subject to gender change to replace them with artificial organs of the opposite gender. While hurting oneself or another is prohibited, and therefore, changing gender is an illegal act. (Madani Tabrizi, 1996, p. 49). This reason can be criticized because according to it, gender change can be considered forbidden if it is not required by necessity. As a result, it is legitimate to remove or hurt an organ in case of emergency. Another reason for this theory is that it is not predestined because God created man male and female and no power can change male to female and vice versa. This reason is also not correct because the non-predestination of gender change does not include all people, but only includes people whose sexual-psychological tendencies have created male or female. So, a person who has sexual symptoms of both male and female genders is considered one of the main symptoms, and the other is redundant (Davood Nojavan, 2008, p. 163). Another reason for this theory about the illegitimacy of gender change is its opposition to public interests since the rules that determine the civil status of a person in the society are not only established for his benefit, but the important purpose of these rules is to provide public benefits, therefore, people cannot agree with each other contrary to them, as they cannot use a contract. The ability to change someone's nationality or gender (Diani, 2010, p. 11)

On the other hand, another theory has been expressed based on which "gender change" is considered permissible and legitimate, and the main reasons for it are investigated. One of the reasons for this theory is the principle of blasphemy and the lack of evidence for its sanctity from the Shari'ah because the principle is the permissibility of possessions unless there is a reason for prohibition and there is no reason for its sanctity in the Sharia. Therefore, this act is legitimate (Khomeini, 1987, p. 599). This theory can also be objected to because although there is no specific reason for the lack of permission from the lawgiver if a person without significant physical or mental problems does (change gender), this act is not only legitimate

It is not, but it makes a person fall into a mental and emotional crisis. Another reason that can be cited in the absolute legitimacy of gender change is the rule (People who are in control over their property and themselves) (Momen Qomi, 1996, p. 98)

The third theory is the theory of conditional legitimacy. The legitimacy of any act as stated in Article 215 It has been specified that it depends on the existence of a legitimate rational interest. As a result, (gender change) is legitimate if the applicant has a sexual problem and a doctor who specializes in gender change finds it useful to solve his problem (Davood Nojavan, 2009, p. 165).

The effect of changing the gender of the couple in the marriage contract

Whenever a man changes his gender and becomes a woman after marriage, the former couple will become a life of two women, and according to Islam, the marriage of two women is rejected. Therefore, the former marriage is generally annulled. In other words, one of the important elements of marriage is the existence of two people as husband and wife, and if this important element is lost, the issue of marriage is eliminated, and therefore the ruling of the issue, i.e., marriage, will also be lost (Kriminia, 2009, p.128) Imam Khomeini says that if a woman marries a man and then the man changes his gender, the marriage becomes invalid from the moment of gender change (Imam Khomeini, 1987, p.559, problem 3). Therefore, whenever a woman becomes a man after marriage, the previous marriage will be void.

Sometimes the couple's gender change is asynchronous. In this case, both couples change their gender, although the difference is that the gender change of husband and wife takes place over a relatively long time interval, for example, one or two years. Regardless of whether the man or the woman changes gender first, the marriage is still invalid because there is no sharia permission for the marriage to survive. As soon as one of the spouses changes their sex, for example, a man becomes a woman, in the new state both will be of the same sex and the marriage will be destroyed. But, if the woman also changes her gender after some time, the marriage contract will not be achieved, but it is necessary to perform the marriage sermon (Kiriminia, 2010, p. 129).

It can be assumed that the husband and wife became eligible for gender reassignment at the same time. In this situation, is the former marriage valid or annulled? There are two possibilities. The first possibility is that the former marriage is still preserved; In other words, the truth of marriage means the marriage of each one to the other and nothing more. In this case, only the marital status has changed before and after marriage. According to this, the current couple was previously a wife and the current wife was previously a couple, which in

this new state of marriage, i.e. (marriage of each relative to the other) remains the same (Kriminia, 2009, p. 130). Some Shia jurists in explaining the above matter, i.e. the duration of the former marriage when the couple changes gender at the same time, believe that it may be possible to accept (the principle of the former marriage), and although some characteristics and attributes have changed in the new situation, this Change does not necessarily lead to the survival of the subject and its unity. Therefore, if we have doubts about the survival or non-survival of marriage, we can issue the marriage sermon (Motahari, 1983, p. 199). The second possibility is that the former marriage did not last and was annulled in the new situation, due to the fact that in marriage, in addition to the marital relationship between the parties, something else is also necessary: the man must be married to the woman who is his wife - in terms of logic, It is called "non-parallel ratio and superposition", that is, there is a specific ratio between two things only on one side, but that ratio does not exist on the other side. Therefore, it is a special task and if both of them change gender, it is not possible to rationally and religiously accept the former marriage with its characteristics (alimony, dowry, compliance, etc.) (Motahari, 1983, p. 199)

There are two opinions regarding the permissibility of marriage of an obscure neuter. The famous opinion is that Islamic jurists believe that the true gender of an ambiguous neuter is not known, so she is not legally allowed to marry, that is, if a man marries, maybe he is a man, and as a result of his marriage, it is an example of a marriage between a man and a man. And if he marries a woman, he may be a woman, and as a result of his marriage, it is an example (marriage of a woman with a woman), which there is no doubt about its sanctity (Kriminia, 2009, p. 135).

According to an unusual theory, obscure neuter can choose a gender for himself and this gender will be the ruler for him until the end of his life. He has no right to marry a man or a woman due to complete gender ambiguity. Therefore, gender change does not affect the issue of annulment of a previous marriage. Therefore, even if the obscure neuter changes gender and becomes a woman, the former marriage is not corrected, but the couple must remarry in the new situation to continue married life. According to the unpopular opinion, if the obscure neuter chose the female gender, then his marriage was valid from the first stage. Now, if the obscure neuter changes gender and becomes a woman, the previous marriage will be preserved, but if it becomes a man, the previous marriage will be annulled. Also, if the obscure neuter has chosen the male gender, then his marriage is valid, and if he changes his gender and becomes a man, the previous marriage will be preserved, but if he becomes a woman, it will be invalidated.

A neuter is a person who belongs to one of the two genders, male or female, according to Islamic law. Therefore, it is

necessary to specify the dominant gender of obvious neuter. So sometimes the clear neuter is attached to the male and sometimes to the female. In the first case, he has the right to marry a woman, and in the second case, he must marry a man. Therefore, if an obvious neuter, who has male sex, marries a man, this marriage is null and void. If an obvious neuter, who has a dominant female gender, marries a woman, this marriage is also void (Kriminia, 2009, p. 136).

Regarding the effect of transgender people's gender change on marriage, experts have proposed two theories. Some people believe that sex change will not invalidate the marriage, and another promise considers sex change to invalidate the marriage.

A prominent reason for supporters of the theory of the marriage void is the necessity of gender differences between married couples in Iranian law. They believe that gender difference should be considered as a condition for marriage both during marriage and during the marriage, and in other words, the gender difference is a condition both in the beginning and the continuation. In practice, when the head of the office wants to register a marriage, he refers to the birth certificate of the parties to confirm the gender difference, and if the birth certificate indicates this gender difference, he can issue the marriage sermon and register it in the official marriage office (Ghaemzadeh, 2013, p. 42). Therefore, gender difference is a basic condition that must be stable during the marriage contract and will be invalidated by gender change. Another reason for rejecting the theory of annulment and accepting the theory of void is that the general rules of transactions can be applied in marriage to the extent that it is compatible with its special nature. Annulment in marriage has an exceptional aspect and cannot be compared with other contracts. As a result, one should be satisfied with the cases stipulated in the law (Katouzian, 2016, p. 20). Another reason is that annulment means the forced dissolution of a contract, and this definition distinguishes it from rescission and cancellation, which happen according to a will. In all the cases where the legislator has used the word (annulment), the contract is automatically dissolved without the need for additional legal action. If the legislator has not mentioned the annulment of marriage in any case and has not mentioned its rulings, since marriage is a special contract, and due to its special nature, it cannot be applied to all the general rules of contracts, in changing gender The vote to annul the marriage does not seem correct (Kiriminia, 2011, p. 64)

Regarding the annulment of marriage due to gender change, supporters of this theory argue that the theory of annulment does not seem correct because in cases where the annulment of marriage is declared, the annulment verdict shows that due to the absence of one of the basic conditions despite the existence One of the obstacles to marriage is that no legal relationship

has been established between the parties. And it does not affect what has happened because a void contract does not exist legally, and it is like no contract has been signed between a man and a woman. But the dissolution is in a case where the marriage takes place with all the necessary conditions and leaves the traces of a valid marriage and is dissolved after some time. In this assumption, the relationship between husband and wife is legitimate during the time they spent together, and their children have the right lineage. Opponents of the theory of nullity of marriage due to gender change have also expressed another argument: since at the time of marriage, the transsexual person had all the symptoms of sex change of one of the two sexes, and based on this, his gender was determined, and based on the apparent evidence, there was no mistake in determining his gender at the stage of concluding the marriage, therefore, the marriage in this stage is doomed to be true. However, because during the marriage, a gender change has taken place to match the physical or psychological gender, and the parties have now the same gender, the marriage is invalidated (Bariklou, 2004, p. 98).

The effect of gender change on the cost of marriage

What seems to be more in line with the legal principles is that if the party's sexual problem existed at the time of the marriage and he was aware of it but did not inform the other party of his situation, the other party can claim damages based on the rule of pride. and demand the customary cost of the marriage ceremony from the other party who has changed gender, unless the person who has changed gender proves that if he had disclosed his status and the other party had been informed of his problem, he would have continued to do so. He would marry her, in which case he is not a guarantor of compensation. But if the sexual problem of gender change arises after marriage, it can be considered as the guarantor of the other party's marriage expenses because the evidence of the guarantee is not applicable in this case (Bariklou, 2004, p. 120).

The effect of gender change on marriage gifts

According to Article 1037 of the Civil Code, engagement gifts can be returned if the engagement is broken. This rule can be extended to the period after engagement and in marriage. As a result, if the same gift is available, based on articles 803 and 1037 of the Civil Code, the donor can return it to his/her property. Therefore, gender change does not spoil the ownership right of the gift-recipient, but the donor has the right to return it to his/her property, of course, if the same gift has not been changed and is still in the property of the gift-recipient.

The effects of gender change on wife's alimony in permanent marriage

Whenever there is a change of gender after marriage, in the discussion of the obligation of alimony or fall, various

assumptions can be considered, some of which are described below. If a man changes gender after marriage and becomes a woman, the previous marriage is invalid and payment of alimony is not obligatory. If a woman changes her gender after marriage and becomes a man, the previous marriage is invalid and the payment of alimony as a Shariah ruling will not be lost due to usufruct (Seyyed Mohammad Sadr, 1996, p. 644). In other words, alimony must be paid to the woman. However, after gender change, a woman is no longer recognized as a wife, and after the definite change of subject, there is no reason to ask for alimony (Kriminia, 2009, p. 283).

If a man changes his gender and becomes obscure neuter, his previous marriage will not be invalid because according to Islamic jurisprudence, obscure neuter has complete gender ambiguity and it is unknown whether he is a man or a woman. Therefore, after changing the gender and turning the man into obscure neuter, marriage does not have the issue of male and female, because according to the assumption, the male's gender has changed and it is doubtful whether he is male or female. It is more likely to say that after changing a man's gender and turning him into obscure neuter, there is doubt as to whether he is a man or a woman. In this case, the former status (of being a man) is recognized and he is still considered a man according to Sharia. Therefore, the issue of marriage, i.e. man and woman, will remain constant after the change. Therefore, Khanthai Mohm is still obliged to pay the wife's alimony (Kiriminia, 2009, p. 284). One possibility is that the marriage will be annulled due to the change of the woman's gender to an ambiguous neuter, so the payment of alimony will not be obligatory. Another possibility is that because there is doubt about being a man or a woman, the former state (being a woman) is accepted. Therefore, the former marriage is established, and after the gender change of the wife, the payment of alimony to the ex-wife (ambiguous neuter) will still be obligatory (Kriminia, 2010, p. 284)

When a man becomes an obvious neuter, he should be placed in one category (male or female) based on Sharia evidence. If he joins the male gender (masculine neuter), no change is occurred in the state of his former marriage since he was a man before the surgical operation, and after the gender change, based on the evidence, he is again placed in the category of men. Therefore, he is still obliged to pay alimony to his wife. However, if he becomes a female neuter, that is, a neuter who joins the group of women based on Sharia evidence, the former marriage is invalid and the obligation to grant alimony is also void. Therefore, he is not obligated to pay alimony to his ex-wife (Kriminia, 2009, p. 284).

Whenever a woman changes her gender and becomes neutered, that too of the neutral feminine type, her previous marriage will be maintained and she can still demand alimony from her husband because she was completely female before the surgery

and now After the gender change, it has been added to the category of women from the point of view of Sharia. But as soon as he becomes male-neutral, the former marriage does not have male and female issues, because, in the new situation, two men exist. Therefore, the former marriage is invalid and payment of alimony will not be obligatory (Kiriminia, 2009, p. 285).

The effect of gender change on wife's alimony in temporary marriage

In a temporary marriage, the husband does not need to give alimony to the wife. If one of the spouses changes gender, it is natural that there will be no change in the issue of alimony because alimony was not obligatory and necessary for the couple from the beginning and it will be the same after gender change (Kriminia, 2009, p. 288). Whenever the wife stipulates the payment of alimony in a temporary contract and the husband accepts it and a temporary contract is concluded based on that, granting alimony will be obligatory as in a permanent contract. In this case, if one of the spouses changes gender, it is natural that the temporary contract will become null and void due to gender change, and the obligation to grant alimony will also disappear. Alimony as a condition of temporary marriage is conditional. When the condition is rejected, its condition will also be lost (Kriminia, 2010, p. 288).

The effect of gender change on the issue of parental alimony

The maintenance of relatives, like parents, consists of housing, clothing, food, and furniture, of course, to the extent of meeting the needs, taking into account the level of affordability of the person (Civil Code of Iran, Article 1204). The maintenance of the father is the responsibility of the children and the children of the children, with the observance of the next of kin. Changing the gender of the child does not affect this Sharia ruling, because this ruling is focused on the child, and whether it is a boy or a girl has no effect on this Sharia ruling. The reason for this is that changing the child's gender does not exclude him from being a child. In any case, even if a boy or girl has the financial means, it is necessary to pay alimony to his parents even after the gender change (Kriminia, 2009, p. 333).

Effects of gender change on child support

If the father changes his gender and becomes a woman, is he still responsible for the maintenance of his children or not? There are two possibilities.

The first possibility is that the change in the father's gender cancels all duties imposed on his former gender. If this is the case, the obligation to pay child support will also be canceled. In justifying this possibility, they say that one of the duties of the father is to pay alimony. A father is someone who has the characteristics of a man, and if the father changes his gender and becomes a woman, he is no longer a father, and we should

not put the rules of fatherhood on him. Therefore, the obligation to give is also removed from her because she is a woman and the title of father is not true for them (Kriminia, 2009, p. 69). The second possibility is that changing the gender of the father and turning him into a woman has no effect on the alimony of the children, and he is still obliged to pay for the alimony of his children. For justifying this possibility it is reasoned that changing the father's gender does not exclude him from being a father, because from the traditional point of view, this person is still the father, and in the community, he is considered (the father who has changed gender). Although she is now a woman, people know her (father). So, in general, he was and is the father before and after the gender change, and he is also responsible for paying the children's alimony (Arianpour Kashani, 2011, p. 115).

There are two possibilities regarding the change in the mother's gender and the duty of alimony for the children. The first possibility is based on the assumption that alimony is paid by the mother, and now it has been removed from the attributes of (being a woman) and (being a mother) after changing gender. Therefore, the obligation to pay alimony is canceled (Kriminia, 2010, p. 70). The second possibility is that even though the mother has left the attribute (of being a woman), she has not left the attribute (of being a mother) and she is traditionally considered a mother in society, even though she changed gender and became a man. Therefore, (the mother) does not become (the father) by changing her gender, and her duties as a mother are not removed from her. Therefore, the duties of a mother are still in place after the gender change, and she still has to provide for the expenses of her children.

The effect of gender change on the right to marry

In Iranian law, considering that if the signs of one gender prevail over the other, the rules of the dominant gender are applied to him and a person is obliged to follow the rules of these persons, it can be concluded that if the experts determine that the neutral (whether it is difficult or clear) is attached to a specific gender, through the first method and based on authentic evidence, it is possible to rule that a person is attached to the gender desired by the experts, and as a result, he benefits from the right to marry the opposite sex and other rights (Bariklou, 2004, p. 124). Regarding mentally neuters, experts consider factors such as physical sexual symptoms, psychological sexual tendencies, chromosomes, and the shape of the brain to be effective in determining a person's gender if the opinion of reliable experts is that psychological neutrality should change gender, he can. Another issue that can be investigated is the right of a person who marries such persons, because, in most cases of sex change, a person is not complete in terms of sexual organs and some of his organs are artificial. So, can the other party cancel the marriage because of the defect in the transgendered person?

It seems that if a transgendered person is a man and does not have a normal penis, and the wife is not aware of his gender change and lack of some reproductive organs, Article 1123 of the Civil Code let the wife break the marriage since "Quran" in paragraph one of this article gives the right of marriage termination for her. If the wife does not have a natural penis, and the husband was unaware of it before marriage, the same article let him the right of terminating the marriage (Bariklou, 2004, p. 125).

The effect of gender change on iddah

If the wife changes her gender for any reason and becomes a man if she intends to get married immediately, can she get married or should she keep the iddah of divorce or dissolution of marriage?

Of course, the iddah of divorce or the iddah of termination is valid if intercourse took place between the couple before the sex change, but if there was no intercourse before the sex change, the need to maintain the iddah is eliminated. With this explanation, the question is raised that if the couple had sex before and the wife changed sex, is it necessary to keep iddah or can she immediately marry the opposite sex after changing sex? In this case, it is not necessary to keep the iddah and the woman can immediately marry the opposite sex after changing gender. To prove the above claim, it should be said that iddah and other rulings such as menstruation and childbirth are rulings of women, and the necessity of these titles in terms of occurrence and survival requires the existence of a woman. Therefore, when a woman leaves being a woman due to gender change and becomes a man, the iddah is also canceled (Mothari, 1983, p. 200). In other words, the ruling of iddah is without a doubt one of the rulings that are reserved for women and there is no possibility of proving it on men, therefore, as soon as a woman changes gender to a man, this ruling is not applied to her and the obligation to keep iddah from her is nullified. (Momen, 1996, p. 115). In general, it does not mean that the ruling remains when the subject disappears if other rulings do not remain when their subject is eliminated, such as the sanctity of looking at him and the obligation to cover him. (Kriminia, 2015, p. 310)

If the husband changes his gender and becomes a woman, it is natural that his previous marriage will be dissolved, but as a woman, is she obligated to maintain the iddah? The conversion of a man into a woman has been attended only by Ayatollah Seyyed Mohammad Sadr. He believes that it is not necessary to keep iddah; whenever a man becomes a woman, his marriage is invalidated, and he does not need to maintain iddah (Seyyed Mohammad Sadr, Vol. 3, p. 644).

If a woman is in the period of iddah, such as the iddah of divorce, the iddah of dissolution, or the iddah of death, and she changes gender at this time, is it necessary for her to remarry

after the end of the iddah, or can she marry immediately? According to Imam Khomeini (RA), if a woman changes gender during the iddah, her iddah will be invalidated, even the iddah of death. The fact that the iddah is invalid at this time is due to the change of the subject because the woman is no longer a woman due to the change of gender, and therefore the special rulings of women are excluded from her, and the rulings of men will be performed for her.

The effect of gender change on permanent marriage dowry

Whenever a permanent marriage contract is concluded and after that one of the spouses changes gender, it is natural that the former marriage is dissolved. There are several possibilities regarding dowry payment: The first possibility is that regardless of sexual intercourse, it is not the responsibility of the couple to pay the dowry; Also, regardless of the party who changes his/her gender, and regarding the annulment of the previous marriage, the husband is not obliged to pay the agreed dowry. The reason for this possibility can be explained as follows: the reality of marriage is the exchange of a woman's obedience with a dowry, and gender change causes the termination of this exchange, and inevitably each of the two changes returns to its place, and as a result, the entire dowry of the property. He becomes a husband.

The second possibility is that in case of gender change and annulment of the former marriage, the couple is obliged to pay the full dowry, whether the gender change is before or after the sexual intercourse. If a woman changes her gender after marriage and becomes a man, the marriage becomes invalid from the moment of the gender change. In addition, if the husband has sexual intercourse before gender changes, he must pay the full dowry of the woman, and if it has not happened, halving the dowry is imprecise and it is better to pay it completely. Also, if a woman marries a man and the man changes his gender, the marriage becomes invalid from the moment of gender change, and in case of intercourse, he must pay the woman's dowry, while if there is no intercourse, the strong agreement is that he must pay the dowry. (Mousavi Khomeini, Vol. 2, 1987, p. 559). In summary, conditions of dowry payment differ based on the party who changes his/her gender.

The third possibility, regarding the dowry, is that if one of the spouses changes gender after marriage, the former spouse is responsible for paying the entire dowry, and if the change occurs after marriage, the former spouse is responsible for paying the entire dowry, and whenever If the change is made before custody, half of the dowry is the responsibility of the couple. If the wife has received more than half, it is necessary to return the surplus to the former spouse. According to Ayatollah Mohammad Momin, it is better to differentiate between two situations: If the change of gender is after marriage, then paying the full dowry is obligatory; But if the

change of gender is before the husband, then paying half of the dowry is obligatory and the precaution is to compromise (Momen Qomi, 1994, p. 118). Ayatollah Mohammad Ebrahim Janati says that if a woman changes gender after marriage and becomes a man, the marriage becomes null and void from the time she changes sex, and the man must pay her half of the dowry if he has not had intercourse with her, or the full dowry if he has had intercourse with her. A man who changes his gender after marrying a woman, his marriage is invalidated from the moment the change occurs, and in case of sexual intercourse, he must give her the full dowry, and otherwise half of the dowry (Janati, 2013, p. 95).

The effect of gender change on dowry in temporary marriage

In a temporary marriage, the dowry is returned for the duration of the violation. Therefore, if the woman changes her gender, she must return the dowry for the duration of the violation. Of course, if the wife has changed her gender with the husband's permission in a temporary marriage, she is not a guarantor because in this case, the husband himself has done it, perhaps allowing her to change the gender and extend the period. Dowry in a temporary contract, unlike a permanent contract, is one of the important elements of the contract. In a temporary contract, it is a form of exchange or similar permission, based on which the dowry is in return for or subservience of the wife. If this important pillar, the dowry, is violated, the temporary marriage is void, and if the wife does not comply during a part of the temporary marriage, the dowry will be reduced by the same amount. But if the couple spends the rest of the period in the temporary marriage, they must pay the full dowry. Accordingly, if the couple changes gender in the temporary marriage, they must pay the full dowry. It seems that he has spent time and has given up on continuing his life. And if the wife changes gender in a temporary marriage, the amount of the dowry will be reduced by the amount of the violation.

The effect of gender change on inheritance

If a person changes his gender and then one of his parents dies, will he inherit according to his current gender or according to his previous gender? For example, if a boy becomes a girl, will his share of inheritance be the same as that of a boy or girl?

All the Shia jurists who have paid attention to this issue consider the current gender of the children as the criterion of inheritance in these cases (Seyyed Mohammed Sadr, 1996, p. 139). In terms of their relationship and their birth from the same parents, the conversion of their two titles does not remove them from the "sister and brother relationship" (Kharazi, 2000, p. 259), in other words, the title of brother for males and the title of the sister for It is female. After changing the male and female gender, the title of siblings also changes. Rulings such as inheritance and the like apply to titles specific to men or women, such as daughter, son, sister, brother, and the like, and

the rulings do not remain with the change of gender because their subject does not apply now. Therefore, if a person is a boy and changes his gender before his father's death, he will not inherit like a boy, but like a girl, because the criterion is whether these titles were applied at the time of the heir's death or not. Therefore, if the heir dies and is left with a new son (after a sex change) and a new daughter, the current man inherits twice as much as the woman. This is also the case with other classes (Kharrazi, 2000, p. 260) because the proofs of inheritance refer to the previous male and female (before gender change), and also include the new male and female. If the gender changes after the death of the parents and before the division of the estate, is the current gender the criterion for paying the inheritance share or the gender at the time of the heir's death? It seems that in this case, the gender of the heir at the time of death should be the criterion. The reason for this is clear because the fact that a person has changed gender after the death of his father or mother, then his right has been proven and the subsequent gender change has no effect on this issue. For example, if she changes her gender and becomes a girl after her father's death, her share of the inheritance is the same as her brother's. Also, if a girl changes her gender after her father's death and becomes a boy, her share of inheritance is the same as her sister's (Kiriminia, 2007, p. 348).

Transgender parents may not inherit from their child at all and the relationship of inheritance is completely interrupted. To justify this possibility, it can be said that after the death of the child, for the parents to inherit from their child, the parent's title must remain at the time of the child's death, although these titles have changed. In other words, after changing the gender of the father (the current woman), he is neither the father nor the mother; Also, after the change of gender of the mother (currently male), she is neither father nor mother. Therefore, during the death of a child, there is no title of "father or mother" so he can inherit from his child based on the truth of this title. It has only been examined as an animal. Even if there is doubt about the authenticity of the title of "father and mother" after gender change, it cannot be said that the inheritance relationship between father and child or mother and child is interrupted due to gender change. In other words, gender change is not an obstacle to inheritance. Iran's civil law, which is based on Imamiyyah jurisprudence, has mentioned some obstacles to inheritance. For example, Article 880, says "Murder is one of the obstacles to inheritance" and Article 881, says that an infidel does not inherit from a Muslim. Article 882, and 883 refers to the prohibition of "blasphemy" and "denial of causation" and transgender parents can inherit from their children (Kiriminia, 2007, p. 349).

A transgender parent inherits from a "deceased" child. Imam Khomeini and other Islamic Shia jurists have accepted the principle of inheritance.

The effect of gender change on family titles

Whenever a brother changes gender, he becomes a sister, and whenever a sister changes gender, he becomes a brother. In general, the following two points should be considered when changing the gender of a brother or sister. The first point is that the meaning of attribution is "relative affinity". Relative kinship means the birth of one from the other, such as the relationship between father-child and mother-child, or the birth of two people from the same origin, such as the ratio of two sisters or two brothers or one brother to one sister to each other. After gender changes, the relative affinity does not disappear, so if the "child" changes gender, he is still the child of the same parents. In other words, the father-child and the mother-child relationship does not change before and after gender change. The second point is that each relative title becomes its counterpart, that is, the title of brother becomes sister and the title of sister becomes a brother.

What was said about relative kinship is also true for foster kinship. For example, a person's relationship with his brother or sister-in-law is causal, so when the brother-in-law changes gender, he becomes (sister) and when the sister-in-law changes gender, he becomes "brother-in-law". (Kiriminia, 2009, p. 321). Whenever a father changes gender, he does not become a mother, and when a mother changes gender, she is not recognized as a father. Therefore, family titles in the discussion of changing the gender of the father or mother are an exception to the rest of the family titles (e.g., brother, sister, uncle, aunt). What was said about "parents" is also true about "grandfather and grandmother". In other words, if the grandfather changes his gender, he does not become "grandmother", and changing the grandmother's gender does not make him (grandfather). The reason for this is the same as what was said about "parents". Ayatollah Mohammad Momin says: The exclusivity of the title of father and mother to the father and mother in the case of the formation of the child's fetus is only about the father and mother, and the grandfather and grandmother are also the same both in terms of the subject and in terms of the ruling. (Kiriminia, 2009, p. 325)

Effect of gender change on guardianship of children

Whenever a mother changes sex, she will never find guardianship over her children, but in the absence of a father, the guardianship of the children will be the responsibility of the ruler of Sharia. If a woman changes and turns into a man, it is not proven for guardianship over her children. Rather, the guardianship of children belongs to the paternal ancestor, and in the absence of a paternal ancestor, the guardianship of the children will belong to the ruler.

The customary agreement about guardianship is that the proof of the father's guardianship over minors, and a mother turned into a man is not traditionally recognized as the father, while the requirement of the "guardianship" principle is the absence

of guardianship proof (Ahmad Motahari, 1983, p. 201) In other words, the titles (father and mother) are special titles that whenever one of them changes, it does not become a relative of that title, while titles such as (brother and sister), (aunt) and uncle) and (uncle and aunt) are among the titles that the change of gender of each one causes the appearance of that title, i.e. brother becomes sister and sister becomes brother, uncle becomes aunt and aunt becomes uncle and also uncle becomes aunt and uncle. He becomes an uncle, although the change of gender does not change the title (father) to (mother) or vice versa. Therefore, if a mother changes her gender and becomes a man, the title of "father" is not fixed for him, but it is traditionally said that this is a mother who has become a man (not a father). In summary, the title of "father" did not happen. From the point of view of Sharia, the father is the one from whose semen the child was born. Gender change is still known as mother. (Momen, 1996, p. 115) It is necessary to point out that there is no special term in the definition of the father in Sharia, and the term water (father) does not have a Shariah truth or a Shariah truth. Rather, Sharia has also signed the same conventional meaning (father) and the conventional meaning is the father of the person from whose sperm the child was born (Kriminia, 2010, p. 338) Imam Khomeini (may Allah be pleased with him) says in this regard: Whenever a man's gender changes to a woman, it appears that his guardianship over his children will fall. : Whenever a man changes gender to a woman, his wilayat is invalidated (Sadr, 1996, p. 644). By changing the gender of the father and turning him into a woman, the title of father is removed from him, so his guardianship over his children also falls. But it must be said that the title of the father must be accompanied by the attribute of masculinity, and it is assumed that the father changed his gender from male to female. Therefore, the title of the province is lost from him. (Momen, 1996, p. 117)

According to the second point of view, changing the gender of the father and turning him into a woman does not affect his guardianship over his children, and he has the right to guardianship as in the case before the change. Therefore, repeating it is avoided. (Karimnia, 2010, p. 340)

Conclusion

The first and most important legal effect of gender change, which can be important in other categories as well, is its effect on the marriage contract. In short, it can be said that gender change dissolves the marriage contract since the most important pillar of marriage from the Shari'a point of view is the need for differences between It is of two sexes, and gender change disrupts this difference, so the continuation of a marriage between two people of the same sex remains, and such a marriage is void and ineffective. Although changing the gender dissolves the marriage, it generally does not affect the dowry because the dowry is given to the unmarried wife of the

owner. However, if one or both of the spouses change their gender after the marriage and before marriage because the dowry was determined for the duration and survival of the marriage, the issue of dowry payment is also eliminated when the cause (continuity of marriage) ends. Of course, this opinion has serious opponents. This changes after marriage, and if one of the spouses changes gender after marriage since the rights and obligations of the couple are based on the valid contract, it is also obligatory to pay dowry.

Iddah and other rulings such as menstruation and childbirth are special rulings for women. The obligation of these titles depends on the occurrence and survival of the woman's existence, so when a woman leaves being a woman due to gender change and becomes a man, the iddah is also canceled, so it is kept. Having iddah is not obligatory for a woman who has changed her gender and she can get married immediately after changing her gender.

Also, gender change cancels the maintenance of the wife in a permanent marriage. Changing the gender of the father does not affect the obligation to pay alimony for the children. This lack of alimony for the children is in the best interest of society and the children because the child has no role in the change of the father's gender and there is no reason to be left undecided and without expenses in society. But if the mother changes gender and he becomes a man, he does not have guardianship over his children because despite "becoming a man", he has not become a "father" and the custom also does not recognize this mother as a father. Gender change does not cause the loss of relationships and family titles, but only the title of the relationship. It changes, but the rule of privacy with incest remains the same

Regarding the inheritance share of a transgender person from his parents, the criterion is the current gender. In terms of time, the status of the heirs during the death of the heir will be the criterion of action. Regarding the inheritance of transgender parents from their children, the former come parents inherit 2/3 and 1/3 of their children, respectively. Of course, other possibilities are weak. Therefore, changing the gender of parents has no effect on the amount of their inheritance from their children.

Gender change does not affect a person's civil responsibilities, but it is effective in some criminal responsibilities. Gender change does not remove criminal responsibility, however, the current gender (time of punishment) is considered for punishment.

In the non-intentional crime whose punishment is money, in the case of a person whose gender does not affect the amount of money, the imam in the case of Mujni against, considering that in the case of self-money, the woman's money is half of the man's money, the criterion is the gender of the person at the time of the request (Mujni against), not Before that, then the

new gender is the criterion of action, not the old gender. This ruling is derived from society's custom. In the crime of pure wrongdoing, the ransom is paid to the wise, and the wise is the father, son, and relative male relatives. Also, the new gender is the criterion of action. Therefore, if a woman changes gender and becomes a man, she is automatically included in the list of wise men, and on the contrary, a man who changes gender and becomes a woman is excluded from the number of wise men. To improve and correct the situation of people applying for gender change, approving appropriate laws to determine the legal status of transgender people (transsexual, psychologically neutral, or a person who wants to change gender) and to know the effective factors in the tendency of biological, psychological, social phenomena,... it is suggested.

Acknowledgment: Non

Conflict of Interest: Non

Funding: Non

Ethical statements Non

References

1. Al-Sadr, Seyyed Mohammad, 1996 AD, Beyond Jurisprudence, Beirut, Dara Azwa
2. Bariklou, Alireza, 2004, legal works on gender change, Tehran, Ba'ath Publications
3. Dayani, Abdur Rasul, Azar and December 2001, Medical Ethical Rights (Gender Correction), Proceedings, No. 29
4. Dehkhoda, Ali Akbar, 1998, dictionary, 10th edition, Tehran, Tehran University Press, New Era
5. Jannati, Mohammad Ebrahim, 2012, treatise explaining the issues of the consultation section, Qom, Ansarian Publishing House.
6. Kariminia, Mohammad Mahdi, 2009, medical law chapter (gender change issues facing it), second year, number 4
7. Kariminia, Mohammad Mahdi, 2010, gender change from the point of view of jurisprudence, volume 1, Qom, published by the Fiqh Center of the Athar Imams.
8. Katouzian, Nasser, family law, 10th edition, Tehran, Sohami publishing house
9. Madani Tabrizi, Hassan, 1996, New Issues, Tabriz Danesh Publications
10. Momin, Muhammad, 1996, (Speech about gender change) Fiqh Ahl al-Bayt magazine, 7: 10.
11. Motahari, Ahmad, 1991, Tahrir al-Wasila Documentary (Al-Masal Mustadhdeh) Qom, Khayyam Publication.