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هجة الإسلام الدكتور محمد مهدي كريمي نيا (الكاتب المسؤول)

أستاذ مساعد وعضو هيئة تدريس بجامعة علوم ومعارف القرآن الكريم ، طالب في هوزة العلميه قم ، إيران

kariminia@quran.ac.ir

الدكتور احمد اميدوار

أستاذ مساعد وعضو هيئة تدريس بجامعة علوم والمعارف القرآن الكريم، إيران.

omidvar@quran.ac.ir

هجة الإسلام دكتور سيد محمد إسماعيلي

أستاذ مساعد وعضو هيئة تدريس بجامعة علوم ومعارف القرآن الكريم ، إيران

Esmaili@Quran.ac.ir

مجتبى أنصاري مقدم

طالب دكتوراه في علوم القرآن والحديث ، جامعة ميبد ، محاضر في علوم القرآن والحديث ، كلية الإلهيات ،

مجمع شهيد محلاتي للتعليم العالي ، إيران

mojtabaansari6767@gmail.com.

Re-interpretation of verse 119 of Surah An-Nisa 'on transgenderism with emphasis on Imam Khomeini's thoughts'

Hojjatoleslam Dr. Mohammad Mahdi Kariminiya (Responsible Author)
Assistant Professor and Faculty Member of the University of Holy Quran
Sciences and Education , Student and Researcher of Qom Seminary , Iran
Dr. Ahmad Omidvar

Assistant Professor and Faculty Member of the University of Holy Quran
Sciences and Education , Iran

Hojjatoleslam Dr. Seyed Mohammad Esmaili

Assistant Professor and Faculty Member of the University of Holy Quran
Sciences and Education , Iran

Mojtaba Ansari Moghaddam

PhD student in Science , Quran and Hadith, Meybod University , Iran ,

Lecturer in Science Quran and Hadith , Faculty of Theology , Shahid
Mahallati Higher Education Complex

المستخلص Abstract

من القضايا الناشئة في الفقه الإسلامي "تغيير الجنس". بالإضافة إلى تغيير جنس الشخص، فإن هذا يغير الوضع القانوني للأشخاص. الهدف من هذا البحث هو في البداية تلخيص تاريخ هذه القضية في الفقه الشيعي، وشرح وجهة نظر التوراة والإنجيل والقرآن الكريم بالإضافة إلى لمحة عامة عن أنواع تغيير الجنس. في وقت لاحق لشرح وجهة نظر الإمام الخميني بوضوح في أبعادها المختلفة، بما في ذلك: جواز تغيير الجنس، وتأثير تغيير الجنس على الزواج، والنفقة، والمهر، وحضانة الأبناء، والألقاب العائلية والميراث. منهج البحث هو الرجوع إلى فتوى الإمام الخميني في هذا الموضوع في كتابه تحرير الوسيلة. وكتائج بحثية، ينبغي أن يقال: وفقاً للإمام الخميني، فإن تغيير الجنس جائز، لكنه سيؤدي إلى إلغاء زواج سابق وتغيير ألقاب الأسرة. بالإضافة إلى ذلك، ستستند حصة ميراث المتحولين جنسياً إلى الجنس الجديد. منهج البحث هو دراسة ميدانية وكذلك وصفية وتحليلية. لفهم موضوع تغيير الجنس، والمتحولين جنسياً، وثنائيي الجنس، كان العمل الميداني مطلوباً. من أجل فهم وجهة نظر الإمام الخميني تم تطبيق الأساليب الوصفية والتحليلية.

الكلمات المفتاحية : القرآن الكريم ، الآية 119 النساء ، التفسير، تغيير الجنس ، الإمام الخميني .

One of the emerging issues of Islamic jurisprudence is "gender reassignment." In addition to transforming a person's gender, this changes the persons legal status. The purpose of this research, is initially to summarize the history of this issue in Shiite jurisprudence, explaining the view of the Torah, the Bible and the Holy Quran as well as an overview of gender reassignment types. Subsequently to clearly explain the view of Imam Khomeini in its various dimensions, including: the permissibility of gender reassignment, the effect of gender reassignment on marriage, alimony, dowry, custody of children, family titles and inheritance. The research method is to refer to Imam Khomeini's fatwa's on this topic in his book Tahrir al-Wasilah. As a research finding, it should be said: According to Imam Khomeini, gender reassignment is permissible, but it will cause the annulment of a previous marriage and changed family titles. Additionally, the share of the transgender person's inheritance will be based on the new gender. The research method is field-study as well as descriptive and analytical. To understand the subject of sex change, transgender, and intersex people, fieldwork was required. In order to understand Imam Khomeini's point of view descriptive and analytical methods has been applied.

Key words : Holy Quran , verse 119 Nisa , Tafsir, gender reassignment , Imam Khomeini .

Introduction:

Gender reassignment is the transformation of a person's gender. Be it, from male to female, from female to male, from intersex to male or female, or even from male or female to intersex. Although issues such as hermaphrodites and transvestites have a history in Islamic jurisprudence, there is no long history of discussing gender reassignment. The change of gender raises many jurisprudential and legal questions, most of which are about "family law." Gender reassignment is a topic that it is difficult to provide comprehensive research on. In the past, turning a boy into a girl and vice versa was considered impossible, but in recent decades, thousands of gender reassignments have taken place in Iran and abroad.

While in the past this debate had only a theoretical aspect, today it has become a practical issue due to its external realization and its frequency in different societies. It has involved not only Shiite jurists, but also Sunni and Christian scholars. Among the question that the discussion of gender reassignment surgery raises is such as: Is gender reassignment surgery permissible? When one or both spouses transition, does the marriage remain or is divorce necessary? If a woman transition to a man, can she claim the dowry of a previous marriage? If a man transition to a woman is he obliged to pay the dowry? Will there be a change in the wife's alimony? If a man transition to a woman, will he lose the right of guardianship and custody of children? If the mother transitions and becomes a man, can she gain custody of the children? If a boy transition to a girl, is her share of inheritance based on her current gender, or does she receive an inheritance share based on her former gender? The same question arises if a girl becomes a boy, will his share of the inheritance increase? Also, if a parent transitions, will there be a change in their share of the inheritance from their dead child? The issue of family titles, for example: father, mother, brother, sister, child, uncle and aunt, what is the situation after gender reassignment?

The fatwa issued in 1985 (1364 SH) by Imam Khomeini, to Maryam Khatoon Molkara, is referred to as "the beginning of the jurisprudential debate on gender reassignment" in Iran and the Islamic world. However 22 years earlier, Imam Khomeini had explicitly raised the issue of "void of haram by gender reassignment" and some other issues. The context is that the late Imam Khomeini was deported from Qom to Turkey by the Shah of Iran in 1964 (1343 SH), following the bloody events of June 6, (15'th Khordad), and the beginning of the Islamic Movement. During his

stay in the Turkish city of Bursa, he wrote a book called "Tahrir al-Waseela" in two volumes. At the end of the second volume of the above book, new issues have been raised, including 10 important issues in the discussion of gender reassignment. It was later published 1968 (1347 SH) in Najaf, Iraq. Imam Khomeini's view is the beginning of the jurisprudential and legal discussion of gender reassignment in the Islamic world, and before him, no Islamic jurist or scholar has raised these issues.

Imam Khomeini has been the most important source of jurisprudence to explain the jurisprudential and legal status of gender reassignment after the Islamic Revolution of Iran. To date more than a thousand patients have received license for gender reassignment (Mirjalali 2009 [1388 SH], 36). An Iranian surgeon (Bahram Mirjalali¹) says that in the last 30 years, he has performed about 1200 gender reassignment surgeries in Iran (ibid.).

Shiite Marāje Taqlid, has, on the basis of inquiries from religious followers raised this issue in addition to practical treatises and "Istifta'at". There are more than 350 religious answers and issues from more than thirty jurists and Marājas in the discussion of gender reassignment and intersex. (for example: Makārem, Istiftā'āt, Volume 1; ibid., Resale-ye ahkām barāye bavouvan, redigeret af Aliān-nejādi; Fāzel, Jāme'e al-Masāyil, Volume 2; Sanei, Istiftā'āt-e pezehki; Montazeri, Istiftā'āt, Volume 2; Jannāti, Istiftā'āt, Volume 2; Fazlullah, Fiqh Al-Hayat; Madani Tabrizi, Al-Masā'il al-Mustadha, Volume 1; Hosseini, Ahkam al-Moghtarbin, according to the fatwas of the ten references of tradition; Sayyed Sadegh Shirāzi, Al-masāyil al-Tabiye).

Several contemporary Shiite Scholars and jurists has since written jurisprudential/legal books and articles in this field, under the influence of Imam Khomeini's point of view. (for example: Duzduzāne, 2009 [1387 SH]; Mo'men, 1994 [1415 AH], article "Taḡyir al-Jens"; Kharazi, 1999 [1420 AH]; Sadr 1996; Meshkini, 1958 [1337 SH], article "Taḡyir al-Jensie"; Ghaeni, 2001 [1422 AH]; Kariminiya, 2001 [1379 SH]; Kariminiya 2011 [1389 SH]; Bārik Lou, 2003 [1382 SH]; Bārik Lou, 2004 [1383 SH]) In the current article, the jurisprudential effects of gender reassignment is discussed. Both obligatory and situational effects are examined according to Imam Khomeini's point of view.

1. Definition of lexical and idiomatic expression of Imam Khomeini:

"Taghyir" Is an Arabic word that means any transformation that may change the condition or the state of an object, so that the new state differs

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from the previous state in one way or another. This word is also used in Persian in the same meaning (Ibn Manzour, 1984 [1405 AH], 5/40; Tarihi, 1979 (1368 SH), 3/431; Dehkhoda, 1958 [1337 SH], the word "taḡyir"). The Persian word "jens" means "goods and commodities" or the nature that includes defined "types." (Dehkhoda, 1958 [1337 SH], the word "jens"; Amid, 1981 [1360 SH], 1/539). "jens" in the meaning "male and female" is a new usage and has no roots in the lexical situation. In Persian, "jensi" means "genitals" and has sexual connotations as well as meaning male and female. (Dehkhoda, 1958 [1337 SH], the words "jens" and "jensi"; Omid 1981 [1360 SH], 1/706). "jensiyyat" means the state or nature of gender and having sexual desires (ibid). The combination of these two words "taḡyir-e jensiyyat" is not defined in dictionaries due to its novelty, but it means any change in the male, female or intersex gender, so that the current gender is different from the previous gender. The medical use of the term, corresponding to "gender reassignment" in English, does not seem to be much different from its literal meaning and what is common among people. Of course, gender reassignment is different from "genetic alteration" or "chromosome alteration"; Because in such practices, a person's gender does not change, but changes or modifications are made to the "gene" or "chromosome" of individuals. Obviously, changes or modifications in genes can bring about changes in behaviour, mindset and personality, but the new situation can never be called "change of gender." Islamic jurists who have spoken about gender reassignment have usually not spoken about its "jurisprudential meaning," and in fact they have meant the same literal and customary meaning of gender reassignment. According to some Islamic jurists, the concept of "gender reassignment" is obvious and does not need to be defined. (Meshkini, 1998 [1377 SH], 153). Others have defined gender reassignment as "converting a man to a woman or vice versa" (Mohseni, 2003 [1382 SH], 1/111; Sadr, 1996, 6/133; Sadr, 2020 [1442 AH], 3/642). Since gender reassignment also involves the change of an intersex person to a man or a woman, and vice versa, gender reassignment can be defined as: "the change of a person's gender from male to female, or from female to male, from intersex to male or female, or from male, or female to intersex."

Gender reassignment in a general definition includes gender reassignment in animals and even plants (Sadr, 2020 [1442 AH], 3/642; Ghae'ni, 2001 [1422 AH], 1/220; Sabzevari, 1998 [1419 AH], 9/305).

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Although Imam Khomeini did not explicitly define gender reassignment, according to the 10 issues, he specifically addressed it in the first issue of Tahrir al-Wasilah, where he by gender reassignment meant the transformation of a man into a woman, or vice versa, and the transformation of an intersex person into a man or a woman.

2. Context for the discussion of gender reassignment:

2-1. History of the discussion of Hermaphrodites and Crossdressers:

Throughout history people with intersex condition has been found in all societies. This is not a new phenomenon. According to jurisprudential texts and narrations, it is clear that since the beginning of Islam, people have rarely lived in society as "intersex" or "hermaphrodite." From time to time the 12 Shiite Imams (peace be upon them) have been asked about the question of gender determination in relation to congregational prayers, inheritance and the like. (Hurr Āmeli, 1991 [1412 AH], 17/576, Abvābe Mirās al-Jensi, 2. Chapter, 5. Hadith; ibid., 17/573, Abvābe Mirās al-Jensi, 1. Chapter, 1. Hadith, 2 og 4; 5. Chapter, 5. Hadith; ibid., 17/284; ibid., 20/338; Majlesi, 1982 [1403 AH], 22/136; 76/65; 100/258; 110/166; Kulayni 1988 [1367 SH], 5/550; 8/71)). Subsequently, Islamic jurists have answered questions related to hermaphrodites in their jurisprudential books. (Mousavi Bojnourdi 1992 [1413 AH], 2/56; Meshkani, 1998 [1377 SH], 233; Sadr, 1996, 6/135).

Likewise in all societies, there has been people who cross dress as a pretext in order to gain access to forbidden areas. In Islamic jurisprudence it has been referred to as "imitation" (or disguise.) This act is forbidden in Islam, and in a hadith Ibn Abbas says that the Messenger of God cursed the man who pretended to be a woman, and the woman who pretended to be a man. (Abu Jabib, 1998 [1419 AH], 124).

2-2. An overview of the Torah and the Bible in the discussion of gender reassignment:

The Torah does not provide a specific ruling on hermaphrodites, but according to Jewish scholars, gender reassignment in the case of intersex people is permissible only if it is for the purpose of treatment (Saleh, 2003, 52) In the case of male to female gender reassignment or vice versa, no comment has been made by Jewish scholars.

No specific law can be deduced from the Bible, but from the point of view of the Catholic Church from the seventeenth century onwards, there has been a debate about surgery on intersex people, but there is no single view. In some cases The Catholic Church has commented on the

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permissibility, and in some cases, the impermissibility of surgery on intersex people (ibid., 53-55). The Protestant Church has, though, for centuries allowed for the performing of surgery on intersex people. (Ibid., 55) Most recently in 2003 The British Catholic Church has declared that gender reassignment from men to women and vice versa are forbidden and sinful. Their main reason is that this act causes a "change in God's creation", which is similar to the argument of Sunni scholars. (Kariminy, 2010 [1389 SH], 197 onwards)

2-3. The view of the Holy Quran on the issue of gender reassignment:

One of the most common arguments against gender reassignment surgery is the prohibition of changing God's creation. All opponents of gender reassignment surgery, Sunnis as well as some Shiite jurists, such as Ayatollah Tabrizi and Ayatollah Hadi Najafi, (Hosseini, 1999 [1420 AH], 439; Najafi, Bita, 162), is based on verse 119 of Surah An-Nisa :

وَالَّذِينَ هُمْ وَلِمَنِ هُمْ وَلِأُولَئِكَ أَزْوَاجُ كُلِّ مَن يَخُذْ
الشَّيْطَانَ وَلِيًّا مِّن دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرًا مُّبِينًا

According to this verse, Shaytan says that: "I mislead people, arouse desires in them and command them (to do superstitions) to pierce the ears of cattle and change the creation of Allah." Then God says in the continuation of the verse that; "those who have chosen Shaytan instead of Allah as their guardian will suffer obvious harm."

In recent years, when the emerging issue of gender reassignment has been raised, a number of Sunni scholars and jurists have cited the above verse to substantiate the prohibition of gender reassignment. (Muhammad Kana'an, 1981 [1402 AH], 284; Al-Jizani, 2008, 2/96). In their view, there is no legal necessity for transitioning, and doing so is a surrender to Shaytan, who "vow to deceive the children of Adam through forbidden acts, such as changing God's creation." (Muhammad Kana'an, 1981 [1402 AH], 285). They consider that, as reproductive organs is necessary for marriage and reproduction, the removal of such is contrary to the divine nature. (ibid.). Some Sunni jurists, rule that, not only gender reassignment, but also plastic surgery, genetic-manipulation and even exaggeration in makeup, is a "change of God's creation" and therefore according to the above verse, is forbidden. (Qaradawi, 1988 [1409 AH], 155).

However it is clear from Sunni commentary books that verse 119 of Surah Nisa does not refer to the modern debate on gender reassignment surgery. Some Sunni Quran commentators have considered the turning

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slaves into eunuchs, the castration of human beings, the castration of animals, the cutting off of an animal's ears, the removal of an animal's eyes, the prohibition of halal meat, the worship of the moon, the sun, etc. as examples of changing the creation of God. According to some of them "change of God's creation" also means "change of God's religion." This meaning is considered similar to the verse "لا تبدل لخلق الله" (Sura Ar-Rum 30:30), which means "Do not change God's religion!" (Tabari, 2000, 4/362-367; Rāzi 2001, 4/323; Ālousi, 1999, 5-6/195; Tha'labi, 2002, 3/388; Ghāsemi 2005 [1426 AH], 3/1133-1136; Abduh, 2003, 5/361).

Some Suni scholars believe that according to the verse under discussion (Surah An-Nisa 4:119), change in creation is sometimes an apparent and physical change, and sometimes a spiritual change, such as misleading people and entertaining them with desires. Both changes are in line with evil intentions and leads people away from serving God. Therefore, any kind of change and distortion that is done with evil motives and ungodly goals and deeds is reprehensible and illegal according to the above revelation. Some commentators believe that in these verses, God forbade cutting off the ear or blinding the eyes of an animal and then dedicating it to idols, calling it a "change in God's creation." The purpose of creating such animals is to eat their meat and using them for riding and carrying cargo. Such blessings have been created for the use of human beings in order to gain the necessary power to worship and serve God. Otherwise, they have strayed from the purposes of creation and have fallen into the trap of Shaytan. (Ghaeni, 2001 [1422 AH], 2/220).

In pre-Islamic Jahiliyyah (time of ignorance), whenever a camel had given birth several times, its ear was cut off, or it was split open, or its eyes were cut out, and in this way it was dedicated to the idols. They then abstained from riding on it and slaughter it. (Tarihi, 1989 [1368 SH], 3/431).

According to some Quran commentators, a change in creation is not absolutely rejected, because certain things such as circumcision, amputation of the umbilical cord, removal of excess body hair and shortening of the hair, and even some medical surgeries are among the things that the divine law did not forbid. On the contrary it is even mandatory. (Sabzevāri, 1998 [1419 AH], 9/289-305).

Verse 119 of Surah An-Nisa is not discussing the change of gender because this change does not alter the status of being human. It only

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changes one attribute (ex. male) to another attribute (ex. female). Therefore, is not correct to issue a ban based on this verse. Shiite jurists, who believe in the permissibility of gender reassignment, have not used verse 119 of Surah An-Nisa, in order to prove the sanctity of gender reassignment either.

In the vast majority of cases, gender reassignment surgery occurs due to physical or mental distress. Whenever gender reassignment is done to alleviate pain and there is no other cure, it can not be considered a change in divine creation. Therefore it is justifiable not to consider it an evil deed.

2-4. History of sex reassignment surgery:

Surgery done on intersexuals (or hermaphrodites) is not an emerging phenomenon. Such persons change their gender into one of two sexes: male or female. What makes this issue so sensitive is the gender reassignment of people who have no apparent physical problems. They are people who are suffering from sexual identity disorder only because they consider themselves to belong to the opposite sex. Sometimes in society there are men who consider themselves women and sometimes there are women who consider themselves men. Today, it is possible for these people to become the opposite sex through surgery, which in Arabic is referred to as "الخنثى الروانى" and in English as "transsexual". There is no equivalent in Persian, but the word "Tarājensiyat" (transgender) or the term "ekhtelāl-e hoviyyat-e jensi" (sexual identity disorder) can be suggested for it.

The first gender reassignment took place in 1930, according to which a man became a woman in a surgery (Kariminiya, 2010 [1389 SH], 50 and onwards). The first gender reassignment operation in England took place between 1942 and 1948, when a woman named "Laura Dillon", the daughter of an Irish aristocrat, transitioned to a man and changed his name to "Michael Dillon." In 2002 the British government announced that they were in the process of drafting the Gender Recognition Act, which was passed in 2004. Since 2005 British transgender people were able to apply for a new identity card. About 5000 of these patients live in the UK (ibid., 53). In 1952 the first gender reassignment took place in the United States. The New York Times, published an article with a catching headline, raising awareness of gender reassignment as a social issue and drew public attention to it. (Bārik Lou, 2003 [1382 SH], 64). In 1982, in Egypt, a person named "Sayyid Abdullah" consulted a psychiatrist who

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found that the patient was suffering from "sexual identity disorder." Treatments with male hormones proved useless, and finally in 1988, Seyyed Abdullah changed his gender and chose the name "Sally" for herself. After many attempts, in 1989 she succeeded in obtaining a new identity card (Ibid., 66).

2-5. Jurisprudential aspects of gender reassignment proposed by Imam Khomeini:

Imam Khomeini's views on the issue of gender reassignment include the following issues: Permitting gender reassignment, reality of gender, Gender reassignment after marriage, Gender reassignment of a couple together, Fall of Iddah², Change of titles, Inheritance, Maharamiat³, Relation to nursing siblings, Discovering the true gender, guardianship and custody of children. (Khomeini, 1987 [1366 SH], 2/558-560). A detailed explanation of each will follow.

Imam Khomeini opened a new chapter in this regard after his return to Iran by issuing a new fatwa. A person named "Fereydoun," who after Gender reassignment changed name to "Maryam Khātoon Molkārā," took useful steps in this regard. In 1977 [1356 SH], that is, a year before the victory of the Islamic Revolution of Iran, Molkārā wrote a letter to Imam Khomeini and explained to him the mental distress of "sexual identity disorder" that she was severely suffering from. In 1978 she went to visit Imam Khomeini's residence in France and met closely with Imam Khomeini. She asked for religious permission to change gender, but due to the acute conditions of the Islamic Revolution, the case was delayed. After the victory of the Islamic Revolution, Fereydoun / Maryam reached Imam Khomeini, through some high-ranking officials, and told the story again. Imam Khomeini agreed to approve Maryam's wish for a sexchange and in 1985 the office of Imam Khomeini issued this following fatwa for her:

"In the name of God, gender reassignment has no legal problems in sharia-law, as long as it is prescribed by a qualified physician. God willing, you will be safe and those you have mentioned will hopefully take care of you." (Kariminiya, 2010 [1389 SH], 420).

3. Different categories of gender reassignment:

First category: In some Intersex cases, the external genitalia are not fully formed and the inherent gender is hidden. However through surgery the inherent gender of these people is unveiled. According to Imam Khomeini, it is not obligatory to change the shape of the genital nor to

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discover what is hidden. That is unless surgery is required for performing religious duties or in order to avoid religious prohibitions and other sins. (Khomeini, 1989 [1368 SH], 2/559, Issue 2). According to Imam Khomeini, if a person undergoes Gender Reassignment Surgery, it does not change the persons gender, but reveals the inherent gender which is hidden, even if the person apparently belongs to the opposite sex before surgery. Religious obligations require a person to follow the rulings related to the inherent gender of that person. Therefore, if a person knows inside that they are of a certain gender, what is obligatory on that gender is obligatory on them, and what is haram for that gender is haram for them, thus they must follow the Islamic rulings concerning that gender. (ibid.).

The second category that wants to change their gender is the intersex people, whose religious guidelines and laws have been mentioned in the hadith and in Islamic law. (Hurr-e Āmeli, 1991 [1412 AH], 17/576, Abvābe Mirās al-Jensi, Chapter 2, 5th hadith; ibid., 17/573, Chapter 1, 1st hadith; Heli, 2008 [1387 SH], 2/174; ibid., 2004 [1383 SH], 177).

Intersex people are divided into "problematic intersex" and "non-problematic intersex". Problematic intersex or "complete intersex" or "true hermaphrodite" are terms for those who have both male and female genitals. They are a combination, and it is not clear whether they are male or female. These people are required to observe religious precautions, and for example, marriage is forbidden for them. (Sadr, 1996, 6/135; Meshkini, 1998 [1377], 233-234; Musavi-e Bojnordi 1992 [1371 SH] 2/55). Although problematic intersexed requires gender reassignment and gender determination more than non-problematic intersexed, non-problematic intersex people, who's genital are ambiguous, but lean to either male or female, is likewise in a dilemma regarding their gender and therefore requires surgery.

Regarding gender reassignment of intersex people, Imām Khomeini has generally said that it is not haram to undergo a surgical procedure to change gender to man or woman. (Khomeini, 1989 [1368 SH], 2/558). Therefore, in his view, there is no difference between problematic intersex and non-problematic intersex in this regard. Some Shiite jurists, however, is of the opinion that it is only obligatory for complete intersex people to undergo surgery and choose a single gender that suits their condition. Provided they have physical and economic capacity. (Kariminiya, 2010 [1389 SH], Didgāh-e Ayatollāh Tabrizi; Judiciary

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Jurisprudential Research Center, Treasury of Jurisprudential Opinions, Answer to Question 5868, Ayatollāh Makārem; Montazeri, 1996 [1417 AH], 113).

Meanwhile, one of the Shiite jurists has opposed the change of gender on intersex people, even if they are non-problematic intersexed. (Hosseini Shirāzi, 2006 [1427 AH], 119). According to him, the problematic-intersex should choose either the masculine gender, and interact with others as a man, or choose the feminine gender and interact with others as a woman without surgery. (ibid., 124).

The third group who want to change their gender are transgender people suffering from gender dysphoria (transsexuals or "mentally intersex"). These people seems to be physically healthy and have no ambiguity or defect in the genitals, but are suffering from severe mental pain and consider themselves to be born in the wrong body. Medical and psychiatric treatments has proven ineffective in treating these people and, they are usually offered gender reassignment surgery to match their physical sex as much as possible to the gender psyche they feel they belong to. The desire and insistence of this group for surgery is very high. (Ghazāei, 1994 [1373 SH], 568; Goudarzi, 1991 [1370 SH], 2/1219; Dayāni, 2001 [1380 SH], 10; Kouchekiān Zalbovā, 2004 [1383 SH], 1).

Most gender reassignment questions revolve around this issue. According to most Sunni jurists, gender reassignment of this group is forbidden. (Al-Jizāni, 2008, 4/96; Muhammad Kana'ān, 1981 [1402 AH], 284). However, Imam Khomeini and about 10 Shiite mujtahids and jurists, counting: Ayatollah Sistani, Ayatollah Khamenei, Ayatollah Fazel, Ayatollah Montazeri, Ayatollah Sanei, Ayatollah Janati, Ayatollah Mousavi Ardabili, Ayatollah Mo'men, Ayatollah Kharazi, has ruled gender reassignment of this group as permissible. (Khomeini, 1989 [1368 SH], 2/558; Ayatollāh Sistani at the address: "www.sistani.org", Judiciary Research Center, Treasury of Jurisprudential Opinions, Question 5280; 2/517; Kariminiya, 2010 [1389 SH], 423, author's referendum with Ayatollāh Fāzel; ibid., 1996 [1417 AH] 2/517; Sāne'i, B, 1998 [1377 SH], 92-94; ibid., A, 1998 [1377 SH], 1/465; Jannāti, 2003 [1382 SH], 2/254; Judiciary Research Center, Treasury of Questions, No. 5868,) (Viewpoint of Ayatollāh Mousavi Ardabili); Fattāhi, 2001 [1380 SH], 2/690 (from Ayatollāh Mo'men's point of view).

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Imam Khomeini's explicit fatwa on the permissibility of gender reassignment includes the change of gender from male to female and female to male, as well as the change of intersex to one of the two sexes. According to Imam Khomeini, gender reassignment is not forbidden at all. This is important because some people might get the wrong impression that Imam Khomeini's view on the permissibility of gender reassignment is only relevant to the intersex people. This is confirmed by the fatwa issued by Imam Khomeini in 1985 to a transgender patient, specifying that gender reassignment with the prescription of a qualified physician is not a legal problem. (Kariminiya, 2010 [1389 SH], 136 & 201). Although Imam Khomeini's view in Tahrir al-Wasilah is general and therefore includes transgender patients with sexual identity disorder, his recent fatwa has been specifically about such patients. Imam Khomeini continued his reference to the issue of transgender patients with sexual identity disorder by the following definition: "a woman who feels the tendencies of the male gender in herself or the man who in himself feels the tendencies of the female gender" (Khomeini, 1989 [1368 SH], 2/559, issue 1).

Some of Imam Khomeini's students have mentioned arguments for the above fatwa. (Mo'men, 1994 [1415 AH], 109; Kharāzi, 1999 [1420 AH], 241; Montazeri, 1996 [1417 AH] 2/517). The most important reason, from their point of view, is that there is no evidence from the Quran and the Hadith for the prohibition of gender reassignment. As long as the demand for the gender reassignment is not from a "healthy person" (cis person) and the patient is not in fear of the surgery, the license for gender reassignment is valid. The basic condition is that gender reassignment should not be associated with haram and un-Islamic matters such as: haram touch and haram view. The gender reassignment of an immature child who has not reached the age of fertility is permitted with the permission of the child's guardian. (Mo'men, 1994 [1415 AH], 109). Also, a person who changes their gender or at least creates the effects of the opposite sex, through the use of hormones, has not committed a haram act either.

Imam Khomeini's words are clear that gender reassignment is "non-haram", which means it is "Mubah" (allowed in a neutral sense). He goes on to say that such a change of gender is "not wajib" (not obligatory). Thus, neither intersex people, who has traces of the opposite-sex, nor transgender (transsexuals) with opposite-gender leaning, are obliged to

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change their gender. According to the above, intersex people, even "problematic intersexed", do not need to undergo surgery and free themselves from sexual duality or sexual ambiguity. Of course, this is the case unless religious duties are abandoned or haram acts is performed as a consequence of the duality. Otherwise, providing a person has the financial and physical ability to change his or her gender, then the persons gender must be changed in order to remove sexual ambiguity.

The fourth category of gender reassignment is the transition of a man or a woman to intersex. This type of gender reassignment is not mentioned by Imam Khomeini. What he has addressed is the transformation of a man into a woman or vice versa, as well as the transformation of an intersex person into one of the two sexes, male or female. He also referred to surgery as uncovering the hidden gender.

Of course, normally, people are not inclined to "intersexize" their masculine or feminine gender. On the other hand, it is possible that gender reassignment surgery will be performed incomplete, so that the person will not become completely opposite sex. Futhermore, if it is not possible to return to the former sex, a person may inadvertently become intersex. (Sadr, 1996, 6/133; *ibid.*, 2020 [1442 AH], 3/642).

The fifth category of gender reassignment is gender reassignment in "healthy people" (cis-gender people). That is, some people who do not have a physical problem nor suffers from gender dysphoria and only want to change their gender out of fleeting desires. Since there is no urgency or rational justification for their desire, in practice, doctors often oppose gender reassignment in this group.

The sixth category of gender reassignment is gender reassignment in animals. Sometimes this change occurs due to humans and sometimes animals change their sex due to natural factors. (Sarcheshmeh-pour, 2005, [1384 SH], 42-44; Kariminiya, 2010 [1389 SH], 60). The second case is outside the jurisprudential scope, because Islamic jurisprudence is responsible for expressing the religious rules of the actions of the obligated. Therefore, whenever events such as gender reassignment occur in animals due to natural factors, there is no jurisprudential discussion about it.

What is caused by humans, and has been common since ancient times, has been the castration of animals which meat are halal to eat. The goal is to improve or increase the meat of halal-meat-animals such as sheep and cattle. Imam Khomeini and many jurists have not said

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anything about the permissibility or impermissibility of this kind, but according to one of the Shiite jurists, the conversion of an animals sex into the opposite sex is absolutely permissible. (Sadr, 2020 [1442 AH], 3/642). According to one of the professors, castration of animals is permissible, as long as it does not lead to heresy. (Qā'eni, 2001 [1422 AH], 1/220). Sunni scholars have mainly commented on the following verse: "فَلْيَغَيِّرُنَّ خَلْقَ اللَّهِ" (Surah An-Nisa 4:119) under the title: "Khasa al-Haywan" (castration of animals). There is no single view of the Sunnis in this regard. According to some of them, castration of animals is forbidden. (Al-Qāsemi, 2005 [1426 AH], 3/1133) According to others it is permissible. (Zamakhshari, 1987, 2/1564; Neyshābouri, 2/449; Baghavi Shāfe'i, 1/703). Some believe that changing animals to improve meat it is permissible, but not for other reasons. (Ālousi Baghdādi, 1999, 5-6/195).

The seventh category of gender reassignment is gender reassignment in plants and it means the transformation of a male plant or tree into a female plant or tree and vice versa. Imam Khomeini and other jurists have not spoken about the "permissibility or impermissibility of changing the sex of plants," but this is certainly permissible and no prohibition can be imagined for it.

4. Jurisprudential and legal effects of gender reassignment according to Imam Khomeini :

The overwhelming majority of Sunni jurist has limited them selves to the discussion of whether gender reassignment surgery is permissible. Shiite jurists on the other hand has examined its legal repercussions on a host of jurisprudential matters. Such as marriage, dowry, alimony, guardianship, custody, inheritance, and family titles.

[Translators note in conversation with the author: Imam Khomaini was of the opinion that, gender reassignment surgery unveils the inherent gender of the patient that was hidden before the surgery. Therefore as a general rule, the person who has undergone gender reassignment surgery should follow the rules that apply to a "healthy person" (cis-person) of the same gender, as the gender, that has been revealed by the surgery. This is only a general rule and there are exceptions to this as exemplified below.]

4-1. The effect of gender reassignment on marriage:

In Islamic jurisprudence there is a necessity of gender difference in marriage. In other words; same-sex marriages are not legitimate in Islam

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and are seen as examples of sodomy and fornication. (Mo'men, 1994 [1415 AH], 111; Mohammad, 1996, 6/138; Kharāzi, 1999 [1420 AH], 274).

Same-sex intercourse is one of the major sins in Islam. Even if, in a post-marriage case, it turns out that the husband is not a man or the wife is not a woman, the previous marriage is void and there is no license for the marriage to survive. Therefore if a person changes their gender after marriage, the marriage is automatically annulled. There is no need to terminate the marriage by divorce as the marriage is considered void.

Whenever the pillar of marriage is violated for any reason, including the change of sex of one of the spouses, the previous marriage is annulled. (Mo'men, 1994 [1415 AH], 109; Motahari, 1982 [1403 AH], 197). Imam Khomeini emphasizes that if a woman or a man changes gender after marriage, the marriage will be annulled after the change. (Khomeini, 1989 [1368 SH], 2/559).

Sometimes both spouses might want to change their gender. In some cases, the couple's transition does not take place in sync with one another. That is, the gender reassignment of a couple takes place over a period of time. Imam Khomeini says that "in case a couple changes their gender in such a way that the man become a woman and the woman become a man, and if the change of gender between the two is not at the same time, the marriage is void." This is a similar situation to where a man alone or a woman alone changes their gender after marriage. This is because, with the first sex-change (for example the husband), the previous marriage is annulled. Then the second change of sex (for example the wife) has no effect on the verdict. There is no validity for the previous marriage.

If a couple changes their gender at the same time; Imam Khomeini believes that there are two possibilities in the survival or non-survival of a former marriage: The first possibility is that the former marriage is void, as in the previous cases. The second possibility is that the previous marriage is the same, provided the woman becomes a man, in which case he is obliged to pay alimony to the wife, and the man becomes a woman, in which case she is obliged to obey her husband. Imam Khomeini has chosen the path of precaution and believes that the religious precaution is for the two to remarry. Furthermore the current woman can not marry another person, unless she divorces with the permission of both, although it is not unlikely that their marriage will continue. (Khomeini, 1989

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[1368 SH], 2/559; Sāne'i, B, 1998 [1377 SH] 105-106; *ibid.*, A, 1998 [1377 SH], 1/465).

Some Shiite jurists, explains Imam Khomeini's words, concerning the persistence of a former marriage, in which both couples have changed their gender at the same time, in a different way. They believe that in this case, there is a possibility that the "principle of former marriage" can be adopted. Although some characteristics and traits, such as "masculinity" and "femininity" have changed in the new situation, the alteration of these characteristics and traits does not change the unity of the marriage. So, if we have doubts about the survival or non-survival of the previous marriage, we can issue the *istehhab* (approval) of marriage. (Motahari, 1982 [1403 AH], 199). Other Shiite jurists is of the opinion that the previous marriage will be annulled even if the couple changes their gender at the same time. The reason for this is, that in the conclusion of a previous marriage, according to custom, the man must remain a "man" and the woman remain a "woman." However, after gender reassignment of both, these features has changed. Therefore, there is no substance for maintaining the *istehhab* (validity) of the previous marriage. (Kariminiya, 1989 [1368 SH], 268; Motahari, 1982 [1403 AH], 199). The effect of gender reassignment on temporary marriage is the same as permanent marriage.

4-2. The effect of gender reassignment on dowry:

Gender reassignment also affects a wife's dowry in a permanent marriage. In this regard, there are four possibilities:

The first possibility is that the payment of dowry is not necessary at all, whether intercourse has taken place or regardless which one of the spouses has changed gender. This possibility is not accepted by the jurists. (Mo'men Qomi, 1994 [1415 AH], 111; Kharāzi, 1999 [1420 AH], 252). The reason for this is that dowry becomes obligatory due to marriage and does not disappear with the dissolution of marriage due to gender reassignment. Dowry does not disappear after other reasons for dissolution of marriage either. For example: death, divorce and annulment of marriage.

The second possibility is that the payment of dowry is obligatory in any case; Whether intercourse has taken place or not. This opinion is in line with Imam Khomeini. He believes that if a woman gets married and changes her gender after marriage and becomes a man, the marriage will be void from the time of the change. The husband will have to pay the

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entire dowry if he has had intercourse before the change. If he has not had intercourse, half of the dowry will fall, but paying the entire dowry is more in compliance with the rules of jurisprudence. Also, if a woman marries a man, and the man changes gender, her marriage will be void from the time of the change. In case of intercourse, he is obliged to pay the dowry of the woman, and in case of non-intercourse, it is recommended he pay the dowry.

According to Imam Khomeini, there is a difference between the gender change of the wife and the husband in paying the dowry. If the wife changes gender before intercourse, it is recommended of the husband to pay the entire dowry, but if the husband changes gender before intercourse, it is obligatory for the husband to pay the entire dowry. In other words, if the husband invalidates the marriage by changing his gender, he must pay the entire dowry in any case. (Kariminiya, 2010 [1389 SH], 295). Some of Imam Khomeini's students believe that if the couple did not have intercourse before the change, the woman's dowry should be paid in full, but as a precaution they should compromise. (Khodādādi, 1996 [1375 SH], 252-253; Montazeri, 2004 [1383 SH], 2/408; *ibid.*, 2002 [1381 SH], 115).

The third possibility is that if one of the spouses change their gender after intercourse, the payment of the entire dowry is the responsibility of the ex-wife. If the change is before intercourse has taken place, only half of the dowry is paid by the husband, and if the wife, has received more than half, it is incumbent on the former wife to return the surplus. (Mo'men, 1994 [1415 AH], 114; Jannāti, 2003 [1382 SH], 2/255). The reason for this possibility is that according to several narrations and respected fatwas, the payment of the entire dowry is due to penetration. Therefore, whenever a couple separates before intercourse due to divorce or gender reassignment, it will be obligatory to pay only half of the dowry.

The last possibility is that if the gender reassignment is done by the wife without the consent of the husband, it is not obligatory for the husband to pay the dowry. If however the husband changes gender, he must pay the wife's dowry. (Sāne'i, A, 1998 [1377 SH], 1/465; *ibid.*, B, 1998 [1377 SH], 105).

In a temporary marriage, if the husband changes his gender, he must pay the entire dowry, and if the wife changes her gender, the amount of

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the dowry is reduced by the amount of time left to the end of the marriage contract. (Kharāzi, 1999 [1420 AH], 255).

4-3. The effect of gender reassignment on alimony:

When a spouse changes gender, the marriage is annulled and the Islamic obligations such as the husbands liability to pay alimony to the wife, are void due to the annulment of the marriage. (Sadr, 1996, 6/138 og 145; ibid., 2020 [1442 AH], 3/664, question 3706 & 3708). The fall of the wife's alimony due to the change of gender of one of the spouses is one of the obvious and clear matters of Islamic jurisprudence. Hence, Imam Khomeini did not mention it. According to Shiite jurists, the change of gender of the father has no effect on the obligation of alimony for the children, and he is still obliged to pay alimony to his children. Furthermore, the change of the father's gender, according to Iranian civil law, does not exclude him from "being a father." (Mo'men, 1994 [1415 AH], 115; Kharāzi, 1999 [1420 AH], 258).

Maternal gender reassignment has no effect on child support, because this duty was not the responsibility of the mother in the first place. It was the exclusively duty of the father and in his absence, it is the duty of the paternal grandfather. Only in the absence of the father and paternal grandfather, child support will be the responsibility of the mother. Assuming she has the financial strength to pay, only then child support will be the responsibility of the mother. With the change of her gender, this duty will still be her responsibility. In addition, if the parents are financially incapacitated, it is obligatory on their children, if they can, to provide for them. Changing the gender of the child has no effect on this ruling, because this responsibility applies to children. Being a girl or a boy has no effect on it.

4-4. The effect of gender reassignment on "iddah":

According to Shiite jurists, the iddah of women is void in case of gender reassignment surgery, whether the man or the woman changes their gender. (Khomeini, 1989 [1368 SH], question 5). This regardless of whether iddah is due to divorce, void of marriage or death. Even including the change of the wife's gender. Therefore, if a woman changes her gender at the time of 'iddah, her iddah will be abrogated. Even if her iddah is caused by the death of her husband (ibid.).

The most important reason for the jurists in not finding basis for iddah in case of changing the wife's gender is the change in circumstances. Being that, iddah is only relevant for women. So

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whenever the "circumstance" changes, and the female becomes male due to gender reassignment, the application of the law also changes. Hence, iddah is void. (Motahari, 1982 [1403 AH], 115; Sadr, 1996, 6/144; Kharāzi, 1999 [1420 AH], 254).

Imam Khomeini has only referred to the "the change of the wife's gender during the time of iddah." One contemporary Shiite jurist has referred to the effect of the husband's gender reassignment in regard to 'iddah. (Sadr, 2020 [1442 AH], 3/644, question 3706; *ibid.*, 1996, 6/138). He believes that whenever a husband becomes a woman, the marriage is void. It is not obligatory on her to keep 'iddah, because, as a husband he was not able to become pregnant. So the new transgender woman has the right to marry any man she likes without the waiting period (*ibid.*).

4-5. The effect of gender reassignment on family titles:

Among the effects of gender affirmation surgery are family titles or relative titles, such as: brother, sister, uncle, aunt, father, mother. Imam Khomeini believes that if a brother or a sister changes their gender, the family relationship will not be severed between the two, but the brother will become a sister and the sister a brother. (Khomeini, 1989 [1368 SH], question 7). Also, two brothers become two sisters if they change their gender, and vice versa. An "uncle" that changes gender, becomes aunt and an aunt becomes an uncle after gender reassignment surgery.

Regarding the change of parents gender, Imam Khomeini believes that if the father changes his gender, he is neither the transgender father nor the transgender mother. Likewise if the mother changes gender, the transgender man is neither the mother nor the father. (*ibid.*). This statement of Imam Khomeini has not been accepted by other contemporary jurists. According to them, what was said about the change of relationship or the reversal of the relationship of brother, sister, uncle, aunt does not apply to parents. Therefore, the father will remain the father and the mother will remain the mother even after gender reassignment surgery. (Mo'men, 1994 [1415 AH], 115; Kharāzi, 1999 [1420 AH], 258). Because family titles, in addition to having religious and legal effects, are also cultural, and members of society will say in the face of these people: This is a father who has changed gender and is now a woman, not a mother Or they will say: this is the mother who has changed her gender and is now a man, not a father. (Mo'men, 1994 [1415 AH], 115; Kharāzi, 1999 [1420 AH], 258).

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Another reason for this is that the basis for the title of a parent is based on the role in insemination. According to jurisprudence, "a father" is the one whose child is born from his sperm and "a mother" is the one whose child is born from her egg. This does not change with the change of gender of the father or mother. (Mo'men, 1994 [1415 AH], 116). Imam Khomeini believes that what has been said about blood relatives also applies to breastfeeding relatives such as foster father, foster mother, foster brother, foster sister, etc.

4-6. The effect of gender reassignment on the issue of mahramiat:

Imam Khomeini believes that if a mother changes her gender, and becomes a man, like the father, those who are lawful for her son are maharram to her, although the ruling is incomplete. Also, if the father's gender changes and he becomes a woman, it appears that she is mahram to her son, although she is not considered his mother. If a married woman changes her gender and becomes a man, he is a maharram to his former mother in lore, but the ruling on this issue is incomplete (Khomeini, 1989 [1368 SH], question 8).

4-7. The effect of gender reassignment on the issue of guardianship:

Imam Khomeini believes that when a man changes his gender to a woman, his guardianship over his children is revoked and the transgender woman has no guardianship over her children after the change. Also, when a woman changes her gender, the transgender man will not gain guardianship over his children. In this case, the guardianship and custody of the children will be for the paternal grandfather. In the absence of the paternal grandfather, a sharia-court will have the guardianship over the children. (Ibid., Issue 6). The above verdict has also been accepted by one of the contemporary jurists. (Sadr, 2020 [1442 AH], 3/644, question 3706).

On the other hand, some jurists believe that the guardianship of the father does not disappear with the change of his gender. This is because the title of "father" and "mother" is one of the special titles that will not disappear after the change of gender. These titles as well as the essence of father and mother will remain. Therefore even the previously existing guardianship can be accepted. (Mo'men, 1994 [1415 AH], 115).

4-8. The effect of gender reassignment on the issue of child custody:

Imam Khomeini has not commented on this, but according to other jurists, it can be said: when the mother changes her gender during the time she has been given custody of the child, she still has custody

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capacity. This is because with the change of gender, the attribute of being a woman has disappeared from her. Not the attribute of mother. Also, the father's custody is not revoked in case of gender reassignment surgery, because custody of the child is assigned to the father, since the title father does not change after gender reassignment surgery. (Motahari, 1982 [1403 AH], 201; Mo'men, 1982 [1403 AH], 115; Sadr, 1996, 6/145).

4-9. The effect of gender reassignment on inheritance:

Imam Khomeini believes that whenever a person changes gender while their parents are alive and then one of the parents dies, the criterion of inheritance is the current gender. Thus, the transgender son receives twice as much inheritance as his sister, even if she has her self been a son before. Imam Khomeini believes that a problem remains in the law of inheritance of parents and grandparents. If the father changes gender, he is neither the current father nor the current mother in Imam Khomeini's view. Also, if the mother changes gender, the transgender man is neither mother nor father. In this case he believes that the issue is problematic. Will they inherit based on roles in reproduction, or based on kinship and priority, or will they not inherit at all? Therefore is better to say that they should inherit, and their inheritance is determined by the roles in conception. Therefore two-thirds of the inheritance is reserved for the father, at the time of insemination, even if he later changes his gender and become a woman. One-third of the inheritance is reserved for the mother, at the time of insemination, although she later becomes a man. As a precaution they should make this compromise with each other. (Khomeini, 1989 [1368 SH], question 7).

5. Conclusion :

According to Imam Khomeini, changing the gender of a woman to a man or vice versa, as well as changing an intersex person to either, male or female, is legal in sharia law. If the change of gender takes place after marriage, the marriage is void from the time of the change. If the husband has intercourse before the change, he must pay the full dowry of the wife, and if he has not had intercourse, it is better if he pay the full dowry rather than half of it. Also, according to Imam Khomeini, if a woman changes her gender at the time of "iddah" the obligatory waiting period will terminate, even in case of the death of her husband. If a brother and his sister changes gender, the brother becomes a sister and the sister becomes a brother. If an uncle changes gender, they become an aunt, and if an aunt changes gender, they become an uncle. If a father

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changes gender, the new woman is neither the father nor the mother, and if the mother changes her gender, the new man is neither the father nor the mother.

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- 1 Dr. Bahram Mirjalali is as of the time of writing the only capable surgeon in this field in Iran.
- 2 Iddah is the term for the period a widow or divorced woman must wait before a new marriage can be entered into
- 3 Mahramiat is the term for the family members you have a confidential relationship with and with whom you are not allowed to marry.