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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الْحَمْدُ لِلَّهِ الَّذِي أَحْرَقَ الْكُفْرَ
وَأَبْطَأَ الْبَغْيَ وَأَسْرَعَ الْيَقِينَ

Male, Female, or Other: Ruling of a Transgender Post Sex Change Procedures

Introduction

Before a child even enters the world, doctors strive to determine one of the most basic and core identities of the child, i.e. its sex. The Sharia legislates laws that vary based on the sex of the individual, such as rulings pertaining to prayer, hijab, travel, inheritance, marriage, and most other chapters of jurisprudence. This paper addresses whether the Sharia recognizes changes in the sex of an individual if one has undergone Sex Reassignment Surgery and/or hormone therapy to adopt characteristics of the opposite sex, as this impacts several aspects of Sharia laws. For example, if a woman decides to change to a man through the above procedures, does the Sharia not require hijab or a *mahram* for her, grant her a different share of inheritance, and permit her to wear the two sheets of *ihram* in Hajj? Likewise, if a man hopes to become a woman and undergoes such procedures, does the Sharia require him to stand in the woman's rows of prayer, remove the obligation of the congregational Friday prayer, and allow him to marry a man? This subject also guides one's interactions with non-Muslims who have undergone such procedures, such as whether a Muslim woman can shake hands with a man who underwent sex change procedures to adopt a female identity.

For clarity, one must understand that gender, often used synonymously with sex, also entails social and cultural aspects, such that a person may choose to identify as a gender different than his sex, which is the case with transgenders who identify with a gender that differs from their biological sex at birth. Hence, this paper uses the term sex, as opposed to gender, to refer to one's biological classification as a male or a female. Additionally, a transman refers to an individual who was born a woman but now self-identifies as man,

while a transwoman refers to an individual who was born a man but now self-identifies as a woman.

Defining Sex

Medicine defines a sex based off the presence of the Y chromosome in an individual; men have a Y chromosome, whereas women do not. The Sharia accepts this definition, as long as the external genitalia do not indicate to the contrary at birth, such as in the rare cases of Androgen Insensitivity Syndrome, where external female genitalia develops despite a Y chromosome, in which case medical doctors also classify the baby as a female despite a male genotype.¹ Moreover, it is important to note that medicine and, more importantly, Islam define sex as either one of two: male or female. The Quran, when referring to the creation of humans, limits the creation to men and women,² in pairs,³ and that individuals fall in one of four categories: those granted daughters; those granted sons; those granted both; and those granted neither.⁴ The Sharia recognizes neither a third sex nor a combination of both sexes in one individual.⁵

The Sharia does, however, accept that certain substances can change into others such that an entirely new set of rules apply. When wine converts to vinegar, for example, it no longer carries the ruling of impurity and impermissibility, but rather becomes pure and *sunnah*. This type of change is only considered when the substance completely transmutes into an entirely new substance, as opposed to superficial changes, such as changing from solid to liquid and vice-versa.⁶ One must analyze the degree of changes a transgender undergoes via Sex Reassignment Surgery and hormone therapy to understand whether the individual transmutes into another sex thereafter.

Sex Reassignment Surgery

Sex Reassignment Surgery (SRS), commonly referred as a sex change operation, is a set of medical procedures that aims to transform the physical aspects of one's body in order to resemble the opposite gender. The numerous possible procedures one may opt-into include changes to both the upper and the lower body, including the genitalia. However, the body contouring, breast augmentation, facial masculinization/feminization surgery, and other upper body surgeries clearly do not transform a person into another sex; rather, it helps the person resemble the opposite sex. Similarly, surgeries on the genitalia do not actually implant or bring about the private parts of the opposite gender onto a person; instead, one's own body parts are either inverted, grafted, or implanted to resemble the opposite sex. Evidenced by the fact that plastic surgeons perform these surgeries, a

transgender merely instills superficial, physical changes onto oneself that produce no actual sexual transformation.

Hormone Therapy

Men and women both produce testosterone and estrogen, albeit in vastly different amounts. Hormone therapy for transmen involves increasing the testosterone levels within the body to induce male characteristics, such as facial and body hair, while it involves increasing the estrogen levels for transwomen to induce female characteristics, such as breast formation.⁷ However, the hormone therapy brings about mostly physical changes, such as redistribution of body fat and the other examples mentioned above; the internal body does not fundamentally change. The genotype (presence or absence of the Y chromosome) cannot change and the body will never naturally produce the elevated levels of hormones induced through such treatment. The transgender individual will continue to be on a life-long treatment, forcing the body to act in a particular manner while the body fights back to return to its nature. The hormone therapy, similar to the SRS, does not transmute the body or otherwise truly convert the person into another sex. It only helps the person feel like another sex.

Furthermore, one may pursue hormone therapy with or without SRS, meaning that a transman may still retain ovaries and a uterus, which makes it possible for her to become pregnant and deliver a child. Hypothetically, if one assumes that hormone therapy transforms one's sex, then in the cases of transmen who have carried pregnancies and delivered multiple children, it would mean that a man gave birth and the children have two fathers and no mother!⁸

Differentiation from Intersexes

Based on the above facts and upon consulting with numerous Muslim endocrinologists, including those who administer hormone therapy to transgender individuals, it is evident that neither Sex Reassignment Surgery nor hormone therapy result in a genuine transformation from one sex to another, even if it results in some physical changes. These procedures fall under the prohibition of changing the creation of Allah (*taghyir khalqillāh*), which the Quran explicitly identifies as a tool of *Shayṭān*.⁹ The results of such procedures extend only to apparent resemblance of the opposite sex, not a conversion into it. The Prophet (peace and blessings be upon him) forbade distortion of the body,¹⁰ including the genitals,¹¹ and cursed the one who imitates the opposite sex,¹² these procedures being an extreme example of it.

Although the scholars agree on the impermissibility of the surgery and that true transformation into a new sex is impossible, some have stated that the transgender individuals who have undergone these procedures will adopt the rulings of the sex they outwardly resemble. They derive their ruling from the guidance of the jurists on determining the sex of an intersex (*khunthā*), a person with ambiguous genitalia, based off the apparent physical attributes.¹³ However, one can see the clear inconsistency between stating that a man who undergoes SRS and hormone therapy does not transform into a woman, yet adopts the rulings of a woman, and that a woman who undergoes such procedures remains a woman, yet adopts the rulings of a man. The flaw in the logic stems from comparing transgender individuals to intersexes, although the two are entirely different. The jurists' guidance on analyzing intersexes based on their outward attributes aims to solve for the unknown sex of the child. The rulings of intersexes establish the birth sex; it does not apply on cases where one's sex was already established. In fact, the jurists explicitly state that their guidance on intersexes applies prior to puberty, as any ambiguity around one's sex ends at that point.¹⁴ The discussion of intersexes relates to *tabyīn al-jins* (clarifying the sex), while the discussion of transgenders relates to *tabdīl al-jins* (changing the sex). Hence, any analogies on intersexes do not hold weight.

Conclusion

Since neither Sex Reassignment Surgery nor hormone therapy genuinely transform a person into another sex, nor is such possible, a transgender individual who undergoes either or both procedures remains the same sex and the rulings of that sex continue to apply.¹⁵ Given that such a person outwardly resembles an opposite sex, some rules based off precaution shall apply, the details of which fall outside the scope of this resolution and for which one may consult his/her local *Dār al-Ifiā'*.

Although one's gender dysphoria, a psychological condition where one feels at odds with their biological sex,¹⁶ may encourage one to undergo such procedures, one must remain aware of the grave sin in doing so. One does not have full rights over one's body, but rather one must treat it in accordance with the laws of the Sharia.¹⁷ At the same time, although one regards and treats such individuals as per their original sex, one must also maintain compassion for the individuals themselves, even if one disapproves of their actions, especially since psychological illness underlies such behavior. Any taunting, discrimination, or other harassment of transgender individuals is both illegal and not in the spirit of the Sharia.

And Allah knows best.

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Sha'bān 5, 1438 – May 2, 2017

¹ “Gender and Genetics,” World Health Organization, accessed April 8, 2017, <http://www.who.int/genomics/gender/en/index1.html>.

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً
وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا (النساء: ١)

أَلَمْ يَكُنْ نُطْفَةً مِنْ مَنِيٍّ مُبْنًى * ثُمَّ كَانَ عَلَقَةً فَخَلَقَ فَسَوَّى * فَجَعَلَ مِنْهُ الزَّوْجَيْنِ الذَّكَرَ وَالْأُنثَى (القيامة: ٣٧-٣٩)

لِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ يَخْلُقُ مَا يَشَاءُ يَهَبُ لِمَنْ يَشَاءُ إِمَّا ذَكَرًا وَمِنْ ذَكَرٍ أَوْ يَهَبُ لِمَنْ يَشَاءُ الذُّكُورَ * أَوْ يُزَوِّجُهُمْ
ذُكْرَانًا وَإِنثَاءً وَيَجْعَلُ مَنْ يَشَاءُ عَقِيمًا إِنَّهُ عَلِيمٌ قَدِيرٌ (الشورى: ٤٩-٥٠)

والشخص الواحد لا يكون ذكرا وأنثى حقيقة فإما أن يكون ذكرا وإما أن يكون أنثى (بدائع الصنائع،
كتاب الخنثى: ١٠/٤٦١؛ العلمية)

ومنها إذا وقع الكلب في الملاحظة... وجه قول محمد أن النجاسة لما استحالت وتبدلت أوصافها ومعانيها
خرجت عن كونها نجاسة لأنها اسم لذات موصوفة فتعدم بانعدام الوصف وصارت كالخمر إذا تخللت
(المرجع السابق، كتاب الطهارة، فصل فيما يقع به التطهير: ١/٤٤٢؛ العلمية)

[لا] يكون نجسا... [ملح كان حمارا] أو خنزيرا ولا قدر وقع في بئر فصار حمأة لانقلاب العين به يفتى (الدر
المختار المطبوع برد المختار، كتاب الطهارة، باب الأنجاس: ١/٣٢٦-٣٢٧؛ سعيد)

[قوله لانقلاب العين] علة للكل وهذا قول محمد وذكر معه في الذخيرة والمحيط أبا حنيفة حلية قال في الفتح
وكثير من المشايخ اختاروه وهو المختار لأن الشرع رتب وصف النجاسة على تلك الحقيقة وتنتفي الحقيقة
بانتفاء بعض أجزاء مفهومها فكيف بالكل فإن الملح غير العظم واللحم فإذا صار ملحا ترتب حكم الملح

ونظيره في الشرع...العصير طاهر فيصير خمرا فينجس ويصير خلا فيطهر فعرفنا أن استحالة العين تستتبع زوال الوصف المرتب عليها اهـ (رد المحتار، كتاب الطهارة، باب الأنجاس: ١/٣٢٧؛ سعيد)

مقتضى ما مر ثبوت انقلاب الشيء عن حقيقته كالنحاس إلى الذهب وقيل إنه غير ثابت...والحق الأول بمعنى أنه تعالى يخلق بدل النحاس ذهباً على ما هو رأي المحققين أو بأن يسلب عن أجزاء النحاس الوصف الذي به صار نحاساً ويخلق فيه الوصف الذي يصير به ذهباً على ما هو رأي بعض المتكلمين من تجانس الجواهر واستوائها في قبول الصفات والمحال إنما هو انقلابه ذهباً مع كونه نحاساً لامتناع كون الشيء في الزمن الواحد نحاساً وذهباً (المرجع السابق)

⁷ “Transgender Hormone Therapy,” Froedtert and Medical College of Wisconsin, accessed April 8, 2017, <http://www.froedtert.com/endocrinology/transgender-hormonal-therapy>.

⁸ “Pregnant man gives birth to baby girl,” The Guardian, accessed April 8, 2017, <https://www.theguardian.com/world/2008/jul/04/usa.gender>.

⁹ وَلَا ضَلَّانَهُمْ وَلَا مَتِّبِينَ لَهُمْ وَلَا مُرْتَمِّئِينَ أَدَانِ الْأَنْعَامِ وَلَا مُرْتَمِّئِينَ خَلْقِ اللَّهِ وَمَنْ يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِنْ دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرَانًا مُبِينًا (النساء: ١١٩)

¹⁰ نهى النبي صلى الله عليه وسلم عن النهي والمثلة (صحيح البخاري، كتاب المظالم والغصب، باب النهي والمثلة: ٣/١٣٥؛ دار الطوق النجاة)

¹¹ رد رسول الله صلى الله عليه وسلم على عثمان بن مظعون التبتل ولو أذن له لاختصينا (المرجع السابق، كتاب النكاح، باب ما يكره من التبتل والخضاء: ٧/٤) ومن جملة التبتل والرهبانية الخضاء وهو في هذه الشريعة حرام باتفاق العلماء بل صرح والدي رحمه الله تعالى وغيره بأنه من الكبائر (حسن التنبيه لما ورد في التشبه: ٨/١٨٤؛ دار النوادر) خضاء بني آدم فذلك منهى عنه وهو من جملة ما يأمر به الشيطان (المبسوط للسرخسي، باب إجارة الدور والبيوت: ١٥/١٣٤؛ المعرفة)

¹² عن ابن عباس رضي الله عنهما قال لعن رسول الله صلى الله عليه وسلم المتشبهين من الرجال بالنساء والمتشبهات من النساء بالرجال (صحيح البخاري، كتاب اللباس، باب المتشبهين بالنساء والمتشبهين بالرجال: ٧/١٥٩؛ دار الطوق النجاة)

قال الملا علي القاري: في الزي والخضاب والصوت والصورة والتكلم وسائر الحركات والسكنات...فهذا الفعل منهى لأنه تغيير خلق الله (مرقاة المفاتيح، كتاب اللباس، باب الترجل: ٧/٢٨١٨؛ الفكر)

13 (فتاوى دار العلوم زكريا، كتاب الصلاة: ٢٧١/٢-٢٧٢؛ زمزم)

(آب كى مسائل آور أن كا حل، متفرق مسائل: ٦٥٢/٨؛ مكتبة لدهيانوي)

(كتاب النوازل، كتاب الحظر والإباحة: ٢٣٣/١٦-٢٤٠؛ المركز العلمي)

(جديد طبي مسائل، ٦٥-٦٧؛ دار الدعوة والإرشاد)

14 وليس يكون الخنثى مشكلا بعد الإدراك على حال من الحالات (المبسوط للسرخسي، كتاب الخنثى: ١١٢/٣)

(المعرفة)

15 (حاشية آب كى مسائل أون أن كا حل، متفرق مسائل: ٦٥٢/٨-٦٥٧؛ مكتبة لدهيانوي)

16 “Gender dysphoria,” US National Library of Medicine, accessed April 8, 2017,

<https://medlineplus.gov/ency/article/001527.htm>.

“What is Gender Dysphoria,” American Psychiatric Association, accessed April 8, 2017,

<https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

17 ويؤخذ منه أن جنابة الإنسان على نفسه كجنابته على غيره في الإثم لأن نفسه ليست ملكا له مطلقا بل

هي لله تعالى فلا يتصرف فيها إلا بما أذن له فيه (فتح الباري، كتاب الأيمان والنذور، باب من حلف بملة

سوى ملة الإسلام: ٦١٠/١١؛ دار الحديث)