

Transsexuality in Contemporary Iran: Legal and Social Misrecognition

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Abstract Sex change surgery has been practised in Iran under Ayatollah Khomeini's *fatwa* in 1982. Therefore, a medical and judicial process of transition has been regulated accordingly. However, this has not resulted in either the legalization of sex change surgery, nor in the recognition of transsexual identity within Iranian substantive law. Sex change surgery is allowed through Islamic law, rather than substantive law, in response to the existing social facts and norms, on the one hand, and structural cooperation with medical system, on the other. In this article, I argue that the Iranian heteronormative law's understanding of transsexuality has amounted to the misrecognition of trans persons' status within law and society. Using semi structured interviews, intersectional content analysis, and feminist methodologies, the findings indicate that transsexual bodies have gained meaning through religious and medical discourses within a framework of power relations, and that Iranian transsexual persons have reconstructed and redefined gender and gender relations in a way that informs their understanding of gender and sexuality beyond the existing Islamic legal and social norms. Moreover, intersectional analysis of the interviews demonstrates how the legal misrecognition of transsexuality creates space for a discourse which in itself leads to the misrecognition of other gendered identities, such as homosexuals and transwomen.

Keywords Fatwa · Iranian law · Misrecognition · Sex change surgery · Society · Transsexuality · Trans.

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Introduction

The Euro-American media¹ has widely represented the Iranian authorities as legalizing sex-change surgery while at the same time imposing punishments on gay people.² The ‘legality of sex change surgery’ has been debated in the literature and media outside Iran as an alternative way to force non-heteronormative genders to fit into categories of male and female in order to prevent acts that fall outside gender binaries (Jafari 2014, 33). In this article, I try to show that this is a simplistic analysis that misrecognizes Iranian transsexual persons’ knowledge and the socio-legal historicity of the practices of gender relations in contemporary Iran.

The Euro-American assumption of ‘forced sex change surgery’ in Iran has been used to re-emphasize the Islamic state’s oppressive gender system for political reasons, by using gender discourses to re-assert an imperial sovereignty through a general misrepresentation of the Orient (Mann 2014, 8). Accordingly, two main arguments can be identified around how sex change surgery is discussed outside Iran. One view celebrates the fact that the government of Iran forces people, especially homosexuals, to fit into heterosexual categories of male or female (cf. Jafari 2014; Bahreini 2008, 2012). Meanwhile, the other view emphasizes that the legalization of sex change surgery is the state’s manipulation of gender and sexuality (cf. Najmabadi 2014).

Initially, this article took shape against the backdrop of these assumptions regarding sex change surgery in Iran and the misrepresentation of Iranian transsexual persons not only in Iranian law and society, but also outside the country. Drawing on the information gathered from fieldwork conducted in Iran (Tehran) between 2014 and 2015, this paper explores how sex change surgery and transsexuality are discussed in the context of Iran. Thus, it argues that Iranian substantive law does not recognize transsexuality or the rights of transsexual persons, including the right to sex change surgery; even though sex change surgery is allowed and practised in Iran within Islamic legal tradition on the basis of Ayatollah Khomeini’s³ legal opinion or *fatwa*.

¹ Tait, Robert (2005) “A Fatwa for Freedom.” *The Guardian* website, published 27 July 2005: <http://www.theguardian.com/world/2005/jul/27/gayrights.iran>. Accessed 21 May 2014; Tait, Robert (2007) “Sex Change Funding Undermines No Gay Claim.” *The Guardian* website, published 20 September 2007: <http://www.theguardian.com/world/2007/sep/26/iran.gender>. Accessed 21 May 2014; Barford, Vanesa (2008) “Iran’s ‘diagnosed transsexuals’” BBC News, published 25 February 2008: <http://news.bbc.co.uk/2/hi/7259057.stm>. Accessed 21 May 2014; Tait, Robert (2009) “Iran Set to Allow First Transsexual Marriage.” *The Guardian* published 11 September 2009: <http://www.theguardian.com/world/2009/sep/11/iran-transsexual-marriage>. Accessed 29 April 2014; Von Oldershausen, Sasha (2012) “Iran’s Sex Change Operations Provided Nearly Free-Of-Costs.” *The World Post* published 6 April 2012: http://www.huffingtonpost.com/2012/06/04/iran-sex-change-operation_n_1568604.html#. Accessed 21 May 2014; Batha, Emma (2014) “Iran Pressures Lesbians, Gays to Have Sex Change Operations.” Thomson Reuters Foundation, published 26 June 2014: <http://www.trust.org/item/20140625223238-i4g9r>. Accessed 4 April 2015; Hamidani, Ali (2014) “Gay People Pushed to Change their Gender.” BBC News, published 5 November 2014: <http://www.bbc.com/news/magazine-29832690>. Accessed 20 December 2014.

² Article 234 of Iran’s criminal law penalizes the act of sexual intercourse between male parties and this is punishable by death. Article 235 punishes any homosexual acts other than penetration by 100 lashes.

³ Ayatollah Ruhollah Musavi Khomeini (1902–1989) was a clergyman educated in Islamic law and philosophy. He became a political opposition leader to the secular regime of the Pahlavi dynasty during the 1940s, and later became the leader of the Islamic Revolution in 1979. He gained the highest religious position among the Iranian population.

The overall aim of this article is to investigate how the issue of transsexuality is represented at an international level; how it is approached by Iranian law and society; and how transsexual people in Iran understand their gender. I examine Ayatollah Khomeini's *fatwa* as part of Islamic law; Iranian legislation; medical professionals' practices; and transsexual persons' experiences to demonstrate their status within Iranian law and society. I use the concept of misrecognition with reference to Nancy Fraser, who describes misrecognition as "the process of being negatively recognized and subjected to social subordination" (2001, 24). Furthermore, institutionalized misrecognition, as Fraser explains (2000a, 24) takes shape in the form of law, governmental policies and professional practices that constitute some categories of people as inferior members of society. Therefore, she states: "Misrecognition is an institutional social relation not a psychological state" (1997, 280). I argue that the failure of Iranian substantive laws to recognize transsexuality and further the medicalization of transsexuality constitute a form of misrecognition, and that misrecognition has resulted in the status subordination of transsexual persons in society. Nonetheless, transsexual persons' struggles to overcome misrecognition take shape through their understandings of their body, sex and gender in a way that rejects medicalization and opposes the heteronormative perceptions of gender and sexuality.

In the following sections, I first describe the historical background to sex change surgery in Iran. I then draw on the Iranian language and understanding of gender and sexuality before I move on to explain how sex change surgery is allowed under Islamic law and how it is treated in Iranian law. After that, I elucidate on the medicalization of transsexuality and the surgical practices that are followed by a section of the medical profession, shedding light on transsexual people's experiences and knowledge about their gender, sex change surgery and their relations with other genders. Finally, I draw on trans activism in Iran with regards to identity politics.

Background

Transsexual phenomena became a subject of medical literature in the mid nineteenth century. Magnus Hirschfeld a German sexologist, and pioneer advocates of transgender people who coined the term transvestite and wrote a book about that in 1910 known for treatment of transgender (Stryker 2008, 38). The term transsexual became popularized by Harry Benjamin, Hirschfeld's colleague, during the 1950s who defined transsexuality as being clinically different from transvestism (Hausman 1995, 122). However transsexual was first used by David O. Cauldwell in his article "Psychopathia Transexualis" in 1949 (Stryker and Whittle 2006, 40). Notwithstanding, transsexual persons may or may not change their bodily characteristics through hormonal and surgical means (Enke 2012, 19). The term transsexual is relatively new and continues to be modified across time and space around the world. Therefore, its meaning is still being constructed and it varies depending on different historical and socio-cultural contexts. Some have used 'transsexual' to describe people who identify with a gender other than the one they were assigned at birth, but others use it to include those who resist their birth gender but do not abandon it (Stryker 2008, 19). The concept of transgender is being used in international discourses. As Enke points out (2012, 20) transgender can refer to a

social movement, a social category or an identity. Moreover, identities are generally specific to the community, class, race, nationality, and location of people. Therefore, gender-nonconforming people, in many parts of the world, who transcend their genders, may not identify with this concept. I have used the term trans in this paper, as it is the term that was used by the interviewees in Iran to refer to a transsexual person who chooses to undergo sex change surgery.

Despite the recent attention, sex change surgery was practiced in Iran during the 1930s (Najmabadi 2008, 25). On the basis of a diagnosis of Gender Identity Disorder (GID), Dr. Khal'atbari led a team of doctors in conducting the first sex change surgery in Iran on 18 year-old Kubra, who wished to have her male organs removed. This case became very significant during the early years of the Pahlavi⁴ era (Kariminia 2010, 51). Ayatollah Khomeini (Iran's supreme leader between 1979 and 1989) sanctioned sex changes in his book *Tahrir-al Wasila*⁵ (volume two, page 627) in the late 1960s while he was living in Turkey as an exile. His *fatwa* was translated from Arabic into Persian, and the English translation of it reads:

To change one's sex from a man to a woman and from a woman to a man through surgery is not hindered in Islam. And if a woman feels she is masculine or if a person feels they have desires of opposite sex, and can change their sex, but are biologically man or woman, it is not obligatory for them to change and become the opposite sex. (Kariminia 2012, 104)

Iran's medical system had already certified and practised sex change surgery thirty years earlier (1930) than it was allowed by Ayatollah Khomeini. However, in 1976, Iran's medical council limited such surgery to intersex cases (Najmabadi 2014, 49), but this was changed by Ayatollah Khomeini's *fatwa* after the revolution in 1979.

In 1982, a few years after the Islamic Revolution in 1979, Ayatollah Khomeini re-emphasized the legitimacy of sex change upon acquiring a medical certificate by issuing another *fatwa*—this time in Persian. This happened when Maryam Khatoun Mulk Ara, a transsexual woman went to Ayatollah Khomeini's residence and asked him about her condition. After hearing Maryam Khatoun's question regarding her sex change, Ayatollah Khomeini responded:

There is no Islamic obstacle to sex change surgery, if it is approved by a reliable doctor. (Kariminia 2012, 78)

Maryam Khatoun was immediately given a *Chador*⁶ to wear (Najmabadi 2014, 165), even though she had not undergone sex change surgery. In the beginning of 1984, judicial and medical institutions started to regulate the process of gender transition under the supervision of Iran's judicial power. Ayatollah Khomeini allowed sex change

⁴ Pahlavi dynasty ruled Iran from 1925 to 1979.

⁵ In 1964, Ayatollah Khomeini decided to write a review of a book called *Wasilah at-Alnejat* authored by Ayatollah Seyed Abulhasan Isfihani, when he was sent into exile in Bursa, Turkey. He incorporated new ideas and turned the review into a book of jurisprudential *fatwas*. He finished the book and published it in Arabic in Najaf, Iraq, not later than 1967.

⁶ *Chador* has another meaning in Persian, namely 'tent', but as a women's dress code it refers to a long piece of clothing that covers women's bodies from head to toe apart from the face, which is the preferred type of Islamic public dress code for women in Iran.

surgery because he believed that there are no indications of its unlawfulness in Islamic sources, so he involved medics in the process. As a result, transsexuality in Iran is perceived as a psychological problem known as Gender Identity Disorder⁷ (GID), which describes the status of a person who is not content with their gender and abhors their physiological structure. A transsexual person is also known as gender dysphoric,⁸ which means someone who is discontented with their gender and does not abide by the gender roles assigned to them according to their biological sex (Kalantari and Ebrahimi 2011, 77). Hence, non-surgical treatments such as hormone therapy and psychotherapy are not deemed to be entirely effective, with surgery being suggested to treat these patients (ibid. 80). This is when the intervention of the medical system and the pathologization of transsexuality as GID amounts to the misrecognition of transsexuality. The consequence of this is inevitably the production of a medico-judicial procedure that allows transsexuals to be certified as eligible candidates for sex change surgery.

The current⁹ medical and judicial process for obtaining a certificate for sex change surgery, and subsequently the legal change of name and gender in Iran, involves 13 sessions of psychiatric treatment for self-identified transsexual applicants. These sessions are handled by a team of psychologists and psychiatrists who follow Harry Benjamin's protocol¹⁰ at the Tehran Institute of Psychiatry (TIP). If the experts at TIP are satisfied, the applicant is referred to the Legal Medicine Organization (LMO) which operates under the supervision of the Ministry of Justice. If the LMO confirms the diagnosis of GID, this confirmation is followed by a certificate for sex change surgery being given by the Administrative Court at the Ministry of Justice. Transsexual persons who undergo the surgery may ask the family court for a legal change of name and gender. In other cases, if TIP's psychiatrists diagnose the applicant as a homosexual, the person will be considered mentally ill and referred to a different section for more psychotherapy treatment. It should be noted that persons diagnosed with GID should also fulfill other requirements to be eligible for sex change surgery, which is different from being medically diagnosed. These requirements are: legal age of majority (18 years old), having completed 12 months of hormone therapy, and have lived as the opposite gender for one year (Saber et al. 2010, 209). LMO in Iran assesses the diagnosis of GID based on DSM-IV¹¹ diagnostic criteria (Aghabikloo et al. 2013, 131). What is

⁷ *Ekhtelal-e-Hoviyat-e-Jinsi*.

⁸ *Malal-e-Jinsi*.

⁹ This is based on the fieldwork I conducted in Tehran in 2014.

¹⁰ Harry Benjamin was a German born American doctor and endocrinologist. Benjamin was opposed to psychiatric treatments and defined transsexuality as a state of desiring to be the other sex (Hausman 1995, 122). The World Professional Association for Transgender Health (WPATH), formerly known as the Harry Benjamin International Gender Dysphoria Association, has published several collections of consensus opinions on transsexual medical and health care. The first version was published in 1979 and the latest version (the 7th) was published in 2012.

¹¹ Diagnostic and Statistical Manual of Mental Disorder (DSM) has been published by American Psychiatric Association since 1952 to classify mental disorders and related problems. DSM has standardized the diagnosis and treatment of transsexual persons emphasizing the need to investigate the background of the patient from childhood, clinical diagnosis, psychotherapy, hormone therapy, and body modification and changing secondary sex characteristics such as breast formation, hip fat, body hair and voices (Davy 2012, 24).

more, based on the *fatwa*, those who have received the diagnosis and the certificate for sex change surgery can live as a trans person without undergoing the surgery as long as they do not fall into sinful acts¹² (Kariminia 2012, 105).

Methodology

I employ feminist methodologies to show and understand the relation between the production of knowledge among a marginalized group of people and the dominant power that represents them. I try to shed light on social and legal policies as well as the experiences of trans persons in Iran. I draw on the work of Dorothy Smith (2005, 123) who maintains that people's experiences, especially those of marginalized people, are a fundamental source for examining ruling relations and particularly social organization. Through the study of lived reality in Iran I try to challenge the idea that objectifies indigenous people as troubled and oppressed 'others' (Smith 1999, 39). I also agree with Diane Richardson (2007, 465) that the relationship between gender and sexuality needs to be analysed historically, considering the social and cultural specificities of different contexts, in order to give space to different understandings of gender and sexuality, and avoid Western essentialist accounts of these concepts. As Richardson (2007, 470) puts it, gender and sexuality are formed within intersectional discourses of class, race and ethnicity that are themselves already embedded in different places, cultures, religions and forms of governmentality.

The data I have used for this article are from fieldwork that I carried out in Tehran during two trips; the first took place between December 2013 and January 2014 and the second was in November 2015.¹³ Altogether, 30 semi-structured interviews were conducted with different groups, including: (1) eight FTM¹⁴ trans persons, six of whom had already undergone sex change surgery, while two were booked for the operation; (2) five MTF trans persons, two of whom had not yet undergone sex change surgery; (3) two surgeons with extensive experience of conducting transsexual surgeries; (4) one psychologist at the Social Welfare Organization; (5) two trans activists; a non-trans person who is the public relation officer and website manager of Mahtaa: Centre for Protection of Iranian Transsexuals, and a transman¹⁵ who is the director of the NGO called Association for Protection of Gender Identity Disorder Patients in Iran; (6) a journalist who was

¹² Sinful acts here refers to same-sex relations that are criminalized by the law, which are the sexual conducts between two men with male bodies or between two women with female bodies. For example, a pre-operative transman cannot have sex with a female body. It should be clarified that genital organs define the sex of person in Iran.

¹³ I accessed the field and received permissions for interviews through the surgeons.

¹⁴ FTM refers to a movement in trans spectrum from female assignment at birth to male gender identity, and MTF indicates moving from male assignment at birth to female gender identity, which both may or may not include hormonal or surgical treatment (Enke 2012, 19).

¹⁵ Transman or transsexual man is used for a person born with a female body who considers themselves to be a man and lives socially as a man, and transwoman or transsexual woman is a person born with a male body who considers themselves a woman and lives socially as a woman (Stryker 2008, 20).

among the first people to cover the issue of transsexuality in Iran; (7) ten lawyers among whom one has publicly written on the legal issues of trans people in Iran; and (8) a jurist and clergyman who has published two books on the issue of transsexuality. In addition to interviews, other materials for analysis include: (1) legal documents; (2) official writings of Ayatollahs; and (3) media and press coverage. Textual discourse analysis is used to analyse the primary and secondary data.

Trans, Gender and Sexuality in Iran

In the Persian language, *jins* is commonly used to mean *sex* and to differentiate between females and males. According to Najmabadi (2013a, 213), the term also refers to *genus*, albeit different from meaning opposite kinds. *Jins* is used in the Arabic language as meaning kind, sort, product or quality, and these words are also used in Persian. *Jinsi* is also used as an adjective to refer to mean *sexual*. For example, *rafter-e-jinsi* in Persian is ‘sexual behaviors’ in English. The word *jinsiyat*, in Persian, as a translation of gender, indicates the distinction between biological sexes. However, it is generally used by Iranian feminists to refer to something more than sexual characteristics. *Jinsiyat* is also used to indicate desire and attraction that could be closely correlated to the English term ‘sexuality’ (Najmabadi 2013a, 214). In the context of this study, *jinsiyat* is widely used by trans persons to refer to the biological sexes (man and woman). *Tarajinsi* is a relatively new term that has been introduced into the Iranian language to mean *transsexual*. The prefix *tara* is an equivalent word for ‘trans’ in English, and when it comes before the adjective *jinsi* (sexual), it means *transsexual*. *Tarajinsi* is basically understood among the interviewees as a person who is willing to undergo sex change surgery. *Tarajinsiyati* is another newly circulating term in Iran that is usually confused with *tarajinsi* and means *transgender*. The prefix *tara*, before the word *jinsiyat* and with an additional *i*, creates a term which conveys a meaning related to more than biological sexes. In other words, it denotes desire, pleasure and attraction. *Tarajinsiyati* (transgender) is defined as a broader term among transsexuals in Iran, who think *tarajinsi* (transsexuality) falls under *tarajinsiyati* (transgender). However, the interviewees used the English word *trans* referring to *transsexual*.

Addressing *jinsiyat*, Hamid,¹⁶ an FTM (postoperative), explained: I was a person who had some extra organs in my body that my soul rejected, and at the same time I was missing some other necessary parts. With the surgery I made my *jinsiyat* compatible with my thoughts.

Taraneh, an MTF (postoperative) defined transsexuality as:

A state of being, which shows a person’s soul, thoughts, logic, reasoning, mood, and interests are different from his/her *jinsiyat*.

¹⁶ The names of the trans persons interviewees are pseudonym names give to them. However, the name of professionals are their real names used with their permissions.

Hamid and Taraneh used *jinsiyat* to refer to biological sex, as distinct from the non-biological meaning (soul, thoughts, interests, mood, etc.), which illustrates that although *jinsiyat* is a literal translation of the English word ‘gender’, it does not refer to gender as it is conceptualized in Anglophone culture. As Rosi Braidotti (2002, 288) puts it, cultural differences and linguistic diversity shape the practical and theoretical understanding of gender in different parts of the world. The interviews illustrate that gender, as a complex concept of self-consciousness and social identity, is embedded in the soul, thoughts and mind of a person—as opposed to the biological sex, or *jinsiyat*. Thus, trans persons change their sex (the material body) not their gender (the immaterial body).

Like any other, Iranian society has faced various social and political changes since the 1979 Islamic Revolution, and these have created a generation that experiences sexuality and does gender differently from their predecessors. Despite the Islamic state’s restrictions on sexuality, young people, especially women, have challenged ‘disciplinary power’ through initiating strategies of resistance (Farahani 2007, 28). Many women at all social levels in Iran discuss social and legal inequalities and employ strategies to resist unequal policies. This includes, for example, not wearing a head-scarf in public, making their manteaux (the public dress code for Iranian women) shorter and tighter, or pushing to beat boys in school, and go to university (Hoodfar and Sadeghi 2009, 219). The Iranian post-revolution generation, as Fatemeh Sadeghi holds (2008, 251), does not necessarily follow the Islamic ideologies imposed by the government, especially with regards to sexuality. Sadeghi argues (2008, 251) that sexuality in contemporary Iran is the construction of discursive practices and the experiences of the younger generation within power relations in different areas of life. Accordingly, Moruzzi and Sadeghi explain (2006, 25) that there are three main parallel discourses on sexuality in contemporary Iran which appear at three levels: (1) the state, through the application of *Shi’a* Islamic jurisprudence; (2) society and social practices; and (3) the individuals who make up the post-revolution generation of Iran born after the 1979 Islamic Revolution. Despite the enforcement of patriarchy and unequal gendered relations within the private (family) and public (employment and education) spheres, women, especially young women, continue to challenge the gendered policies and practices of the Iranian government (Kian 2014, 343).

Transsexuality is poorly discussed within Iranian feminist scholarship in Iran, which has largely focused on the rights of women and female sexuality, especially in the realm of law within the family and the public domain. This has made their work less focused on nonconforming genders and gender relations in society. There is, however, a significant amount of literature on the issue of sex change surgery authored by Iranian jurists and medical doctors in Iran.

The existing literature on transsexuality published by Iranian scholars outside of Iran (cf. Jafari 2014; Najmabadi 2008, 2014; Shakerifar 2011; Javaheri 2010; Bahreini 2008) shows that the debate on transsexuality in Iran revolves around the issue of medical and psychiatric treatment of GID for assigning the individual to their desired gender. In representing transsexuality in Iran, Elhum Shakerifar (2011, 329) adheres to the medical discourse of transsexualism, maintaining that most transsexuals in Iran believe that their subjective experience of sexuality (as existing

in their minds) is different from that of their bodily representations. Therefore, the demand for surgery becomes the first symptom of transsexualism. This argument is employed to distinguish their status from that of homosexuals and transvestites, who can claim no medical grounds for treatment. Freshteh Javaheri (2010, 367) defines transsexuality in Iran as a culturally and historically specific transgender practice, or an identity that engages transgendered people with medical and judicial institutions in order to gain access to certain hormonal and surgical technologies for enacting and embodying the self. Afsaneh Najmabadi in her recent work, *Professing Selves: Transsexuality and Same-Sex Desire in Contemporary Iran* (2014), draws on transsexuals' narratives on gender and sexuality in order to examine the process of filtering 'real trans' applicants from 'deviant homosexuals'. She believes that such a legal and medical process has productively generated a livable space for other 'not normal' gender identities (i.e. homosexuals) in Iran. On the other hand, Raha Bahreini (2008, 15) problematizes the patriarchal pathologization of transsexuality by the Iranian government and argues that the new system of 'the police force' comprising psychiatrists, psychologists, and surgeons, along with civilian and governmental actors, forces binary gender roles through psychotherapy, hormone treatments, and the technology of the knife in order to maintain heteronormativity among the population. Bahreini's radical argument misrecognizes the status of trans people as active members of society and dismisses their knowledge about their own bodies, sex and gender. Along with the existing literature, several recently produced documentaries¹⁷ have depicted Iranian trans people, as being either, as Shakerifar (2011, 333) puts it, oppressed entities and mostly homosexuals being forced to undergo sex change surgery, or as the exotic objects of investigation for the media. Yet, they ignore the issue of transsexual people's agency, as people who embody their desired gender within a social and legal system that denies recognition of their status.

Laws and Legality

Sex Change Surgery Under *Shari'a*

Shari'a refers to the Islamic sources (*Quran*, Prophet's Tradition, Consensus, and Reasoning) from which particular Islamic law is created and understood by the work of humankind. Islamic laws are not a set of divine rules preordained by God. As Abdullahi Ahmed An-Naim stresses: "*Shari'a* is not divine by itself, rather it is created based on human interpretations of Islamic sources and interactions during the course of history" (1991, 12). After the death of the prophet Mohammad, private scholars attained authority due to their religious knowledge which enabled them to provide guidance to people on matters that had remained unresolved during his life time. Hence, the science of law (*fiqh*) emerged (Mir-Hosseini 2000, 4). *Fiqh* (also referred to as Islamic jurisprudence) is the structure of *Shari'a* that functions as a

¹⁷ 'Inside Out' (2005), directed by Zohreh Shayesteh; 'The Birthday' (2006), directed by Negin Kianfar and Daisy Mohr; and 'Be Like Others' (2007), directed by Tanaz Eshghian.

process through which Islamic jurists strive to understand divine sources of *Shari'a* in order to transform God's commands into law.

According to Coulson (1964, 76) the divine sources are the principles of Islamic jurisprudence or *fiqh* that should be taken into account by a *mujtahid*, who is a person exercising *ijtihad*. *Ijtihad* is the process of independent reasoning by jurists, and literally means diligence in English. In the *Shi'a* school of Islamic thought, *marja'-e- taghlid*¹⁸ is a *mujtahid* and a Grand Ayatollah who provides reasoning on matters of everyday life by referring to divine sources through *fiqh* in order to respond to Muslim inquiries. *Taghlid* literally means emulation and *marja'-e- taghlid* is the person who is understood to be the source of emulation in *Shi'a* jurisprudence. *Shi'a* Muslims should emulate (*taghlid*) a jurist's justification for their inquiries. The source of emulation, who is a *marja-e-taghlid* provides legally binding opinions known as *fatwa* for their followers by using *ijtihad* and referring to divine sources. Mohammad Hashim Kamali (2008, 174) defines *fatwa* as a legal opinion of a qualified Islamic jurist in response to a Muslim question. Louis Halper (2006–2007, 1148) maintains that contrary to *Sunnis* Islamic thought and due to the notion of *Imamat*¹⁹ and the responsibility of *Shi'a* Islamic jurists during the time of occultation of the twelfth *Imam*, those who have reached the level of *ijtihad* issue *fatwas* which are binding on their followers.

The sources of law in the Iranian legal system are comprised of both secular and Islamic components. Legislation based on French and Belgian codes that was enacted before the revolution have remained in place to constitute sources of law alongside the judicial precedents, custom (*urf*) and Islamic sources (*Quran*, Prophet's Tradition, Consensus, and Reasoning) (Maranlou 2015, 58). The Iranian constitution stipulates in Principle 167 that a judge must use Islamic sources and authentic *fatwas* to rule on the matters about which the Iranian law books are silent. Transsexuality has not been addressed in Islamic sources and there had been no *fatwa* issued on the matter of sex change and transsexuality before Ayatollah Khomeini. Therefore, it is the work of jurists to create new opinions through *fiqh* and referring back to Islamic sources.

Islamic law varies with reference to its deferential contexts and should be studied by addressing human practices not the divine will. As a result, what is known as Islamic law is produced and reproduced by members of different societies (Dupret 2007, 80). Lawrence Rosen (1989, 2, 40) proposes the "locality of Islamic law" which means that the law differs depending on local customs, conditions and people's background. Ayatollah Khomeini's permission for sex change surgery as a *mujtahid* and *marja'-e- taghlid* during the early years of the revolution was based on his view of the people's needs at that time and the way in which he understood Islamic sources through *fiqh*. Moreover, because of his social and political status, his *fatwa* superseded his opponents' views. Ayatollah Khomeini's *fatwa* permits sex change surgery, but it does not recognize trans people's status either in the law or in society. This is discussed further below.

¹⁸ Different spellings are used by different scholars for translations of the terms *taghlid* and *fiqh* from Arabic into English. I do not follow a particular method for the spellings.

¹⁹ *Shi'a* Muslims believe in twelve *Imams* after the death of Prophet Mohammad.

Plurality of Legal Opinions on Sex Change Surgery in Iran

The legal opinions of Islamic jurists on the matter of sex change differ depending on their reasoning and understanding of Islamic sources. This means that different interpretations of Islamic sources can result in divergent legal opinions among jurists in response to a similar inquiry. In Iran, nine *marja'-e-taqlid* allow sex change surgery, but there are many who are against it, but Ayatollah Khomeini's *fatwa* is the prevailing view and after that the view of Ayatollah Khamenei,²⁰ which allows sex change surgery, is most important.²¹

In an interview with Mohammad, a trans activist, he expressed his concern on the matter:

There is not a single unified method of legal implementation for Ayatollah Khomeini's *fatwa*. Judges in Tehran are much more open to sex changes, and people undergo the surgery without much difficulties. However, in cities like Ardebil,²² Ayatollah Khomeini's *fatwa* has no binding force. Therefore, people come here [Tehran] for transition.

Half a century ago among Iranian jurists, the Islamic jurisprudential discourses on the issue of sex change surgery began by discussing matters relating to hermaphrodites *dujinsi* (two sexes) and psychological hermaphrodites or *khunsa* (a term used in Islamic jurisprudence to refer to intersex individuals). However, there has been a major shift in jurisprudential arguments over the past two decades on the state of transsexual people, which is now taken to describe a disparity between the body and the soul. Therefore, surgery is a way to bring the body into line with the soul, because one cannot change the soul (Najmabadi 2014, 182). There is no unanimity amongst Iranian *Shi'a* jurists on the practice of sex change surgery. Ayatollah Seyyed Yusef Madani Tabrizi, who is a highly respected *marja'-e-taqlid* addresses sex change surgery in his treatise (1989) as an unlawful act not permitted by *Shari'a*. He bases his opinion on the argument that, firstly, humans cannot alter God's creation and secondly, the disfiguration of vital organs in the human body is not lawful and is most certainly beyond the knowledge of humankind (Mir-Hosseini 1999, 37). Ayatollah Madani Tabrizi's explanation is evidently limited to divine sources, which are based on the gender binary system.

In contrast, Ayatollah Seyyed Mohammad Musavi Bojnourdi (2007, 22) argues that a sex change does not constitute interference with God's creation because, if it did, all of our everyday acts would be unlawful since we alter God's creation in everyday life. He explains: "for making bread, we change wheat to flour and from that to bread. Should we say that is not lawful?" Ayatollah Bojnourdi (2007, 23) explains that sex change surgery does not change humanity but it does alter the characteristics of human beings. He clarifies (2007, 22) that, according to the *fiqhi* (Islamic jurisprudential) rule of *heliyat* (permissibility), everything is *halal*

²⁰ The current supreme leader of Iran since 1989.

²¹ Interview with Hujatul Islam Mohammad Mehdi Kariminia, 1 November 2015.

²² *Ardebil* is a city in the west *Azərbaycan* province, which is located in the northwest of Iran.

(permissible) unless it is forbidden in the *Quran* or *Hadith*.²³ Another *fiqhi* reason that he provides for the permissibility of sex changes is based on the rule of *taslit* (control), which says that all human beings have control and power over their property and bodies, which in turn allows them to conduct permissible acts on their bodies. Therefore, undergoing a sex change is a permissible act (Bojnourdi 2007, 23). Proponents of sex changes also refer back to divine sources to support their arguments; however, their readings of divine sources and the application of Islamic jurisprudence differ from that of their opponents. As a result, in some cities in Iran not only is sex change surgery forbidden, but also the judges do not allow the legal change of name and gender.

Hujatul Islam Mohammad Mehdi Kariminia, who is known as the most trans-friendly clergyman in Iran and has been working on the issue of sex changes for the past 18 years, argues that transsexual persons have healthy bodies, but they suffer mentally from GID. Therefore, surgery is the way to treat their sickness (Kariminia 2010, 73). For Kariminia, granting permission for a sex change depends on two conditions. Firstly, it should be an issue of absolute necessity (*zarurat*) for a Muslim and secondly, it must be real (*haghighi*). However, if transsexual persons can live without committing sinful acts (same sex acts or *hamjins bazi*), they do not have to undergo sex change surgery or make bodily changes.²⁴

Iranian Laws and Regulations

The state's legislation has remained silent on the legality of sex change surgery and transsexuality, except on matters relating to the practical processes of transition and regulation for compulsory military service.²⁵ Transsexual persons are exempted from military service. The 2001 amendment to the Military Service Regulations on Medical Exemption states (Section 5, art. 33:8): "behavioural disorder (psychological imbalance), and bad temperaments are not acceptable according to military principles. This includes moral and sexual deviations such as 'transsexualism' that results in permanent exemption from military service". This is an institutionalized misrecognition of transsexuality in the form of legal policy that makes trans persons' status abject. By placing transsexuality in the category of moral and sexual deviancy, the law misrecognizes transsexual persons' status in society to the extent that most of them experience poverty and sexual exploitation. Shahrzad, a journalist in Tehran told me:

Generally the situation of trans people in Iran is disastrous. The surgeries are very costly. Families abandon them. They lose their jobs. They live in scarcity. Most of them have no roof over their heads. They are forced into sex work for little money. Especially transsexual women...

²³ Prophet Mohammad's traditions.

²⁴ Afsaneh Najmabadi's discussion with Hujatul Islam Mohammad Mehdi Kariminia in her book (2014), pp 182–185.

²⁵ According to Iranian law, boys who reach the age of 18 and are not students must undertake compulsory military service for 18 months.

When I asked Amir, an FTM (postoperative), about people's attitude towards him. He said:

I never tell anybody that I am a trans or have changed my sex, because as soon as they find out you are a transsexual, they either get scared or want to rape you...

Furthermore, the English term 'transsexualism' is used in the state's legal document, which implies that transsexuality is a medical term and thus a subject for medical science rather than the law. In 2007, Iran's Ministry of Health required the conscription authority to replace the 'psychological problem' with 'glandular disorder'. Consequently, in the amendment to Public Military Law in 2011, trans persons are exempted from the military service on the basis of 'glandular disorder' (Najmabadi 2014, 202). However, according to the interviews, this amendment has not yet been implemented in practice and they still receive a military exemption card marked with a psychological disorder.

The Civic Registration Law amendment in 1985, article 20, clause 14, states: "a person who has *changed his/her sex* can legally change their name and gender on the birth certificate upon the order of court". The Family Law Bill amendment in 2011, article 4, clause 18 says: "family court is entitled as a judicial authority to handle issues related to *sex change*". Both laws mention sex change, but do not refer to transsexual persons who undergo sex change surgery. Moreover, there has been no mention of transsexual persons' rights either before or after the sex change surgery; for example, matters regarding child custody, inheritance, and reproduction, to name but a few, are simply overlooked by the law. This is because the law does not define transsexuality because, if it did, the whole heteronormative system of law could be disrupted. Shahrzad expressed her view on the lack of legislation:

In the current political atmosphere, Ayatollah Khomeini is a red line [opposition to the system] himself. That is why his *fatwa* has not been tuned into a law...

The law's lack of understanding of transsexuality, and the legal shortcomings in the protection of transsexual persons' rights, have together created an inferior status for trans people in Iranian society. The procedural regulations regarding the process of transition in Iran emerged from official inter-organizational inquiries within the judiciary. In 1987, the Legal Medicine Organization (LMO) queried the judiciary's legal office²⁶ about sex change surgery due to receiving a number of applications. The legal office's response, which came in the form of a circular, was that, from the legal point of view, sex change surgery is not a problem (*bela eshkal*) and according to Ayatollah Khomeini's *fatwa* it is allowed under *Shari'a* (Kariminia 2012, 80).

²⁶ *Edare-e-Hoghooghi* is the Persian term for the organization that I have translated as legal office, which functions under the judiciary's power as one of the branches of the judiciary's legal department (*Moavenat-e-Hoghooghi*). It is responsible for the interpretation, clarification and reformation of the courts' precedents to identify legal shortcomings and to provide consultative orders. This office answers the legal questions asked by judges and other organizations.

Mohammad Ali Tahirkhani, director of the NGO, the Association for the Protection of Gender Identity Disorder in Iran²⁷ told me:

We want parliament to pass a law that permits sex change surgery, a proper law. LMO handles trans cases because of the judiciary's circular. A circular is not a law. A circular can be changed by the head of the organization, it does not have the power of law. We want parliament to make this a law of the land, so that it is binding everywhere.

For Tahirkhani the recognition of transsexuality and sex change surgery by the law means that the state and society will know and accept that trans persons exist as citizens who enjoy equal rights.

Wrong Body, Wrong Gender

Dr. Mina Jafarabadi is a well-known gynaecologist surgeon in Tehran, who also works as a researcher at the Reproductive Health Research Centre in Vali-e-Asr hospital. She has been performing around three FTM surgeries a week since 2008. She defines transsexuality as:

The state of a person who doesn't accept his/her body and is absolutely sure that her/his soul is the right one. Therefore, an everlasting struggle takes place to accord the 'wrong body' and everything to do with it (sexual conduct, clothing, etc.) with the right soul.

The discourse of the 'wrong body' permeates the medicalization of transsexuality in Iran, which holds that transsexual embodiment is a natural error; thus, technology can reassign gender to bring it into accord with the body (Halberstam 1998, 143). This is a dominant discourse which implies that the body of a transsexual person should be made closer to the mind of that person. The religious discourses, however, say that the 'healthy body' of the person should become closer to the soul, because the soul cannot be changed, but the material of the body can.

Dr. Shahriar Kohanzad is a urologist, specializing in transsexual surgery who has been performing MTF surgeries since 1998. He told me that it is very difficult to diagnose what he calls 'confirmed real identity' (*hoviyaat vaghei taedshodeh*), because there are many commonalities between homosexual and transsexual identities. This has created difficulties, especially among traditional families, where social stigmas are stronger. He explained:

It is difficult to distinguish between sexual deviances and sexual behaviours. I have had patients from the most religious and traditional parts of Qom [known as the most religious city in Iran]. I do a lot of thinking before I apply the knife. During the past few years, 90 % of patients whom I have visited were undoubtedly homosexuals. It is very hard even for them to recognize their identity.

²⁷ <http://gid.org.ir/>.

Dr. Jafarabadi's interpretation is pitched against Dr. Kohanzad's explanation. She believed:

Someone who comes to me and asks for the most difficult and painful surgery to dispose of her breasts and womb is definitely not a homosexual. The need to change one's body is symptomatic of transsexuality. By contrast, a homosexual accepts his/her body but seeks same-sex relations. If she/he demands surgery, then she/he is not a homosexual anymore.

Dr. Kohanzad claimed that transsexual persons suffer from psychological distress and therefore they need psychotherapy. He explained that transsexual people are confused about their gender identities, and suffer from gender dysphoria:

I don't agree with the word transsexuality: I personally think these people have a problem with self-recognition that is a form of identity disorder. Their representations of themselves are different from the real selves. Gender identity is very secretive, and the therapist is responsible for unveiling the real identity of the person when he/she is in conflict.

This is a similar argument to Hakeem (2008, 193) who maintains that transsexuality cannot be explained biologically, because the minds of individuals experience different conditions during their formative years—an idea that needs more psychotherapy. Hakeem (2008, 195) states that patients with conflict about their gender may call themselves transsexuals but deserve psychotherapy for treatment.

Dr. Jafarabadi was certain that transsexual persons will never have a good 'normal life', either before or after surgery. Medically speaking, she argued:

Surgery results in complete loss of sexual desires, especially in the cases of male-to-female transition. They are not able to satisfy their sexual partners after the surgery, which causes frustration, depression and, in many cases, suicide.

Trans people whom I interviewed believed that it is very degrading to lower the value of humankind merely to sexual desires, so they understand their sexuality as involving not only sex, but also other social practices, forces and struggles that challenge unjust institutionalized discourses about them and their status.

Above all, Iranian transsexual persons reject the idea that they are suffering from a medical condition, but they do not challenge the view of medicalization, because it is considered the only way in which they can be seen and acknowledged by the law, family and society. Surgeons play an important role in discussing the option of sex change surgery with the families of trans people by using medical arguments rather than religious justifications. It is due to these medical views that many families permit their children to undergo sex change surgery. Moreover, medics have had an influence on the formation of some aspects of state law, to the extent that the English term 'transsexualism' has entered into the Iranian state's legal documents.

I am a Trans

The interviews with trans people indicate that transsexuality is conceptualized as a state of the body being in disharmony with the soul²⁸ or the mind. In his elaboration on the meaning of the soul, Samin, an FTM (postoperative), said:

The soul is the interests, thoughts and feelings I have. When I say that my soul is different from my body and they didn't match, it is more complicated than what you hear. When your soul wants something that does not match with your body, you are in big trouble – I mean from choosing the colour of your socks to the style of your hair...

For Samin, feelings, acts and behaviours can still be meaningful without needing material bodily significations. In other words, biological sex guarantees nothing and does not determine his gender. This illustrates that the body gains meaning within the discourse of power relations, so he has reconstructed his gender by claiming autonomy over his body. However this occurs once again within the discourse of power, which misrepresents and misrecognizes his being as a transsexual. For Hamid, an FTM (postoperative), transsexuality is a state of being misplaced with a different soul. He believes that the soul is wrong, not the body. Following Noor Ali Elahi (the spiritual leader of a mystical sect called Ahle Haqq), Hamid described his thoughts on transsexuality as:

...God is too busy to create souls every second for every person who is born. Therefore, the souls that we receive are from previous bodies. They get mixed up in the air when trying to capture the right bodies.

Hossein, an FTM (preoperative at the time of the interview), believed that there is a verse in the *Quran* that states: “there are children whose souls are different from their bodies; this is a divine command from God to test humankind” (source was not provided). There is no reference to transsexuality in the *Quran*, but Hossein bases his definition of transsexuality on a divine source that is more authoritative than a human's interpretations. These examples indicate that every person understands transsexuality according to their knowledge and experiences of gender and gender relations, which does not necessarily follow Islamic jurists' reasoning.

The interviews show that, the moment a person self-identifies as a trans, they are no longer struggling with any type of inner conflict or confusion. Those who self-identity as transsexual (pre or post-operative) have no sense of confusion, guilt or resistance around sexual relations. However, transition does not occur at the moment of realization or when undergoing the surgery. It might take years until the person feels secure.

Hanieh, an MTF (preoperative at the time of the interview), explained that she was barely 18 when she identified herself as a transsexual, and although she was

²⁸ The soul is the English translation of *ruh* which, regardless of its theological and philosophical meaning in Persian is used to imply the immaterial part of humankind as against the body, which is material. Transsexual interviewees used this term to express their situation of incongruence between the body (*jism*) and the soul (*ruh*).

determined to stay true to her gender identity, it took her a long time to discover herself:

Ever since [10 years ago] I identified myself as a trans, I have got more confident in expressing my desires and feelings without being afraid. I can openly say that I pluck my eyebrows, remove body hair and wear women's underwear, because I am a trans and I live this way.

Najmabadi (2014, 283) maintains that different performances (wearing make-up, cooking, doing the laundry, clothes, driving, doing heavy work) create a sense of being either a man or a woman—not genitalia. Therefore, she perceives (ibid., 298) transsexual gender identity as a form of 'self-assignation' based on conduct and behaviour, including sexual, rather than a distinction between sex and gender. I would like to add, as the interviews explain, that it is not merely through performances that one's gender is constructed; rather, it is the obeying and disobeying of forced gender relations that constitutes one's gender and gender performativity that is, according to Susan Stryker (Stryker and Whittle 2006, 10, 11), the way of being under social and political forces.

Mehran, an FTM (postoperative), challenges social inscriptions of gender norms on his body, and he simply rejects the social and cultural norms that create his gendered subjectivity. He said:

I could appear in public wearing men's clothes, so that others identified me as a man, but that did not satisfy me. It is important how I see myself. The problem is the contradiction between my physical self and the image I have in my mind of myself. I wanted to have congruence between my body and my mind. It was not an issue for me to have sex with women before the surgery, because in my mind I did not have a female body, but Iranian women do not usually have sex with female bodies.

What is more important for Mehran is the self-recognition of his body and gender, not the way others see him. Society recognizes him as a man if he appears in men's attire, but that does not change his views of himself. He claims ownership over his body, which has been misrecognized since birth through others' (mis)recognition. He wants to be recognized as he sees himself. Although the body matters, according to Mehran's explanation, a pre-operative transsexual man's sexual desire for a heterosexual woman constructs the gender, not that person's physical body.

Compared with offline politics, transsexual persons have been relatively active in cyberspace by distributing news and information on transsexuality and the process of transition, as well as sharing their personal experiences. However, every transsexual person with whom I spoke strongly resisted being identified as a member of a transsexual community or being associated with other self-identified transsexuals in public. This helps them to avoid the threat of belonging to an identity group in social relations which, according to them, will make their situation worse than it already is within the family and society. At the same time, transsexual activists do not intend to discuss 'human rights' issues, because they wish to avoid politicizing their cause. Rather, they fight to be understood and accepted as normal

members of society with basic needs such as insurance, employment, medical and health care. Taraneh, an MTF (postoperative) warned me:

Don't you ever mention human rights when you work on this issue, because as soon as you do, you make it political and then you are in big trouble. We are keeping away from going in that direction; it is not good for us...

Clearly, trans people's struggle for recognition in Iran is not based on identity politics, but on a status model. As Fraser describes it (2000a, 23), the status model focuses on the recognition of the individual in full participation in social interactions rather than group identity. She adds (2000b, 112): "The identity model lends itself too easily to repressive forms of communication, promoting conformism, intolerance and patriarchy". The status model of recognition highlights a struggle to overcome status subordination and foster parity of participation. For Fraser, status recognition tackles the problem of gender injustice, which is rooted in cultural values. Furthermore, it deconstructs the traditional understanding of identity politics in such a way that it remedies gender misrecognition (Fraser and Honneth 2003, 13).

Transwomen, Transmen

The social and legal misrecognition of transsexuality has created space for discourses which lead to the status misrecognition of transwomen. The term 'real trans' was widely used by transmen who believed they have truly embodied transsexual identity. Hamid, an FTM (postoperative), expressed his sadness for transsexual women and claimed that he was a 'real trans', because he was not playing around:

I think they [transwomen] are miserable and fake, I do not approve of them; they have destroyed our image in society. They try to get the certificate and do whatever they want... I am the 'original product' (*jins-e-vaghei*), I am a 'real trans' (*trans-e-vaghei*) – look at me.

According to the interviews, the dominant perception in Iranian society in general, and among transmen, in particular, is that transwomen are fake (e.g. homosexuals) who just want to be prostitutes. Taraneh, a transwoman (postoperative), believed that transsexuals of her type had created a lot of problems for trans and non-trans people. She referred to them as 'businesswomen' by which she meant prostitutes who use a trans identity just to make money. She said:

... Our kids (*bach-e-ha*) are immoral, they have problems themselves. They paint a bad image of us in society. Trans is growing in Iran like a tsunami, and most of them are these kids who wear tight shorts, cross-dress as women and go on the streets to make money. Whereas, transmen are good people, because they only want to have a family, find a job and settle down ...

The legal misrecognition of other non-heteronormative genders has amounted to the social misrecognition of transsexual women as inferior members of society. The

patriarchal regime of gender relations and gender misrecognition within Iranian law and society have created a space in which trans people can resort to homophobia that reproduces sexism and reinforces patriarchal cultural values (Msibi 2011, 71). For instance, many interviewees, particularly transmen showed negative attitudes towards homosexual persons. They regarded homosexuals as mentally sick people. Some believed that on many occasions permission for sex change surgery has been wrongly given to homosexuals by the authorities. Oppression of male femininity in Iran can be historically traced back to the mid twentieth century. Najmabadi (2013b, 8) describes the cases that were reported in journals about the shame, insult, injury and arrest of those who refused their manhood. Even heterosexual men actors who played female roles had awkward social positions. Ali, a transman (preoperative at the time of the interview), pointed out:

Those who are not really trans misuse the law by pretending to be trans. I know people who have identified themselves as trans, got the certificates and have lived without surgery for eight years. They do not intend to get the surgery anyway...

Amir, an FTM (postoperative), similarly believed:

Homosexuals change their toilets, not their sexes. A lesbian can act as a boy but can never become a man capable of providing for the family, or take responsibilities. What's more, they cannot satisfy their wives.

Creating distinctions between homosexuality and transsexuality is the result of structural homophobic law and a society that relegates homosexuality to pathology and relates transsexuality to a new model of masculinity at the individual level.

Sex Change Surgery

According to Ayatollah Khomeini's *fatwa*, sex change surgery is not obligatory for a person who has the desire to be opposite sex (see introduction). However, the law neither legalizes sex change surgery, nor does it recognize transsexuality. Therefore, it remains a taboo in society and among the families of trans people because it breaks the cultural rules of gender. The misrecognition of law has caused many transsexual persons to live their social lives hidden behind their identities, both prior to and after the surgery. As a result, covert surgery, without the knowledge of families, appears to be very common among transsexual persons in Iran.

In January 2014, Fari, a 28-year-old transsexual woman, was considering undergoing sex change surgery. She explained that she had gone through a lot of pressure not to be a trans; she was raped by men, battered and injected with testosterone, to be 'fixed' as a man and forced into marriage. Her father and brothers had threatened to kill her if she had the surgery. None of these extinguished the flame, which is how she referred metaphorically to her feeling of being a trans. In March 2014, she underwent the surgery without the knowledge of her family, and stayed in a hotel to recover. Despite undergoing the surgery, she returned home as a 'man' and continued going to work as a 'man'. In November 2015, her boss found

out about the surgery and fired her. Her family abandoned her, her child was taken away from her and she had to move to another city.

Fari's experience is a clear example of how misrecognition by the law subordinates the status of trans persons in society and subjects them to gender inequalities and discriminations.

Amir, an FTM (postoperative), explained why he did not inform his family about such a big decision in his life:

No one in my family knows that I have removed my womb and breasts apart from my mother, because she paid for the expenses. As soon as my brothers and father find out, I will be dead. That is why I haven't told them. They have already beaten me severely few times, when I came out as a trans.

Mehran, an FTM (postoperative), also did not tell anyone in his family about the surgery except his sister, who helped him through the process:

If I come out as a trans and talk about my surgery, my family will have to bear the shame. Besides, it might cause problems for my other siblings, as they might lose their jobs and families, and even worse than that is that they might never be able to get married because of me. That is why I have kept it a secret.

The medico-judicial process governing sex change surgery does not preclude the misrecognition of transsexual people's status in Iranian law and society either before or after the surgery. Hossein, an FTM transsexual (preoperative at the time of the interview), explained why his parents are against the surgery:

My father says he has no problem with me having the surgery, but he is concerned that I am doing it without realizing that I will never be able to function as a man because of my future artificial penis. He says I won't be able to satisfy my woman and will be barren forever. My mother always mocks me about my relationship with my fiancée, saying, "What is it in you that makes your girlfriend attracted to you? You don't even have a penis".

Nancy Fraser explains:

To be misrecognized is not simply to be thought ill of, looked down upon or devalued in others attitudes, beliefs or representations, it is rather to be denied the status of a full partner in social interaction, as a consequence of institutionalized patterns of cultural value that constitute one as comparatively unworthy of respect or esteem Fraser (2000b, 113–114).

Many families of transsexual persons use the terms a 'proper man' or a 'proper woman' to oppose sex change surgery. According to dominant cultural and social values, a trans person will never be a 'proper man' or a 'proper woman' after the surgery. This form of misrecognition pushes transsexual persons to the margins, destabilizes their status in society and hence leaves them vulnerable to violence and discrimination.

Transsexual persons' insistence on having the surgery does not mean that their bodies will be welcomed in heteronormatively constructed spaces after the surgery. On the contrary, those who decide to undergo surgery often know that they will lose

their families, job opportunities, future careers and even previous work experience. Nevertheless, none of the people with whom I talked expressed any regrets, because what mattered most to them was achieving inner comfort and peace. Ali, an FTM (preoperative at the time of the interview), was certain that the surgery would not change him into a man but would bring his body closer to his soul. He said:

Every psychotherapist I have visited so far has told me not to go for the surgery, because it doesn't make any difference, because... boys and girls have almost the same rights these days. But they don't understand that it does make a huge difference to us mentally. I might not be able to satisfy a woman sexually after the surgery, but I am sure I will have inner peace, which is the difference that matters for me.

Sex change surgery is seemingly considered to be the one and only way for Iranian trans persons to claim their gender identities, in spite of the social exclusion. Upon the official granting of the permission from the judiciary to undergo sex change surgery, transsexual persons can pass as trans by carrying the certificate until they are ready to undergo the surgery. As mentioned earlier, according to the *fatwa*, if there is no risk of conducting sinful acts (same-sex sexual relations), the surgery is not obligatory immediately after being diagnosed as trans and granted the medical certificate for the surgery. There are many factors, including financial problems and emotional challenges with families that can delay the surgery for years. Therefore, those who take years between receiving the diagnosis and undergoing the surgery do not perceive their acts and relations as sinful, but healthy.

Conclusion

In this paper I have explored the status misrecognition of Iranian transsexual persons at the international, national and individual levels through an examination of international media and literature, Ayatollah Khomeini's *fatwa*, Iranian law, medical professionals' practices and trans persons' experiences. The paper demonstrates while transsexuality and trans persons in Iran are misrepresented internationally, their status is also misrecognized in Iran at the structural level (legal and social), and at the individual level, among both trans and non-transsexual people.

Iranian law misrecognizes trans people's status and regards transsexuality as a matter of medical science, not a subject of law. Ayatollah Khomeini's legal opinion asserts the legitimacy of sex change surgery upon medical approval without providing an Islamic understanding of transsexuality, because transsexuality is a relatively new subject in Islamic law and jurisprudence. The current discourses among Iranian jurists are more focused on the lawfulness or unlawfulness of sex change surgery in *Shari'a* rather than the status or social relations of trans people before and after such surgery. This arises in part because the knowledge of Islamic jurists and Islamic laws, including Islamic sources, are limited on this subject.

The lack of a legal definition of transsexuality, on the one hand, and the Islamic law's heteronormative perception of gender on the other, have inevitably led to the

misrecognition of transsexuals' status in society to the extent that they are not regarded as full members of society even by their own families, because they fall outside the boundaries of heteronormativity due to the removal of their sexual reproductive organs.

The medicalization of transsexuality in Iran has been relatively effective in helping to change the attitudes of their own families, from abhorrence to humanitarianism. Iranian transsexual persons reject the notion of GID (Gender Identity Disorder) and other medical representations, while at the same time believing that the involvement of medical professionals in the process of transition has helped to strengthen their status in society. In the current climate of the Islamic Republic of Iran, medical doctors enjoy the privilege of being regarded (or arguably misunderstood) as contributing to society from a politically-neutral standpoint which lies beyond religious and ideological debates.

I have shown from the interviews that Iranian transsexual persons have defined transsexuality and their gender relations through ways that are different from existing legal and social norms while defying the Anglophone literature and media's misrepresentation of trans people's lived reality in Iran. With reference to Nancy Fraser I show that the status misrecognition of transsexual persons in Iran results in institutionalized subordination that in turn leads to inequality and violence. However, transsexual persons in Iran struggle to overcome this misrecognition by redefining gender and reconstructing gender relations through their practices both prior and after undergoing sex change surgery. They believe that the body is not the marker of one's gender, and that gender is more fluid than being fixed at birth. This challenges the idea of a gender binary distinction and the boundaries of gender in Iranian law and society. Thus, sex change surgery is not understood by Iranian transsexuals as a way to fit themselves into the category of male or female; neither is it perceived as the last resort to live as a full member of society. Rather, it is understood as bringing the body closer to the soul. I have shown that the misrecognition of transsexuality at the structural level (legal and social) amounts to a status misrecognition of transsexual women and homosexuals at the individual level. Transsexual women are misrecognized by transmen as a fake gender resembling homosexuals.

Transsexual persons' struggles in Iran are concentrated on gaining recognition by the law and society, which they believe will remedy their status subordination. Misrecognizing transsexual persons, or dismissing their knowledge and self-consciousness about their sex, bodies and gender will not eliminate transsexuality or transform it into 'normal' heterosexuality. I hope that this article gives a real account of the socio-historically specific understanding of gender by the Iranians who reconstruct their bodies and disrupt gender relations in a patriarchal system yet again within Islamic framework.

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