

The Islamic Ruling on Transgender person

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Question

What do the noble scholars and the jurists of Islamic law say about the following matter: as female instead of male, then without medical proof, merely on his say-so, the authorities will be compelled to change his gender. After this, the individual will be regarded as a woman and all laws concerning women will be applied to him, to the extent that he will be able to **gain admission to women's educational establishments, marry a male, and his right in inheritance will be acknowledged as that which legally belongs to a female.** In this way, due to this law, homosexuality will become legal. Is it permissible for any Islamic government to introduce such a law?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

We will discuss this issue from three perspectives:

1. What is a transgender person?
2. The contraventions of Islamic law that are necessitated by the enactment of this law
3. Is it permissible for any Islamic government to implement such a law?

1. What is 'Transgender'?

Transgender is a new, Western terminology. The word 'transgender' is a compound of two words. 'Trans', meaning 'to move' or 'change', and 'gender', meaning 'biological sex'.

The following definition has been extracted from the United Nations document.

Those males and females who, deviating from their gender identity at birth, change their gender identity. For example, a male identifying as female or intersex, or a female identifying as male or intersex, identifying as being non-binary [not identifying with any gender], or ascribing to any other newly invented gender identity.

Some of these individuals undergo medical procedures such as hormone therapy or surgery.

They are also known as 'transsexuals'.

Some just exhibit a gender expression opposing their birth gender i.e. they change their mannerisms, conduct, appearance, clothing and posturing. These are also referred to as 'crossdressers'.

2. The contraventions of Islamic law that are necessitated by the enactment of this law
Taking into consideration that 'transgender' has many meanings and bearing in mind the explanation given in the question, preparing such a law and implementing it in an **unrestricted form, without incorporating necessary Shar'i stipulations and restrictions,** necessitates various contraventions of Islamic law, such as:

Opening the door to lying and deception.

Causing impediments for the implementation of Shari'ah rulings.

Opening the door to changing the creation of Allah Almighty as well as mutilation through severing of bodily limbs.

Promotion of homosexuality.

Legally permitting for males and females to adopt resemblance of one another.

Encouragement of unveiling and immodesty.

Opening the door to lying and deception

As a result of this law, anyone can claim they are a mukhannath [intersex], whereas in reality the person could be either male or female. Then, without any proof and without following Shar'i procedure, the person's claim would be accepted merely on the person's conjecture. This would open the way for clear lying and deception, which are both impermissible and haram actions that lead to Jahannam.

Allah Almighty has declared in the noble Qur'an:

لَعْنَتَ اللَّهِ عَلَى الْكٰذِبِيْنَ

Hence invoking the curse of Allah upon the liars¹

The Prophet صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ stated regarding lying,

اياكم والكذب، فان الكذب يهدى الى الفجور وان الفجور يهدى الى النار وان الرجل ليكذب ويتحرى الكذب حتى يكتب عند الله كذابا

“Avoid falsehood, for indeed falsehood leads to wickedness, and indeed wickedness leads to the hell. Indeed a man continues to speak falsehood and pursues falsehood until he is recorded with Allah Almighty as an extreme liar.”²

The Prophet صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ, condemning those who deceive, stated,

من غشنا فليس منا

“Whosoever deceived us is not from amongst us.”³

Sayyidi A'la Hazrat, the Imam of the Ahl al-Sunnah, Maulana Shah Imam Ahmad Raza Khan رَحْمَةُ اللَّهِ عَلَيْهِ states, “Treachery and breach of agreement are absolutely haram with everyone, be he Muslim, or kafir; dhimmi or harbi, musta'min or non-musta'min, asli or murtadd.”

Further to this, it is Islamic law which will judge which true khuntha [intersex person] is to be considered a man and which a woman. There complete process for this is found within the Shari'ah and a decision as to which category a particular person will belong to can only be made in light of this process. When it is necessary for the Shari'ah stipulated process to be adopted regarding real intersex people then what of a person regarding whom there is doubt over them being intersex in the first place? To abandon this process and judge merely on supposition or someone's claim alone is not correct at all. On the contrary, doing so will

¹ [Kanz-ul-Iman (translation of Quran)] (Part 3, Surah Aal-e-Imran, verse 61)

² Sunan Abi Dawood, vol. 2, p. 339

³ Al-Sahih Muslim, Kitab Al-Iman, vol. 1, p. 70

necessitate contravention Islamic law and each and every person is obliged to act upon the rulings of Allah Almighty and His Messenger صَلَّى اللهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ.

Causing impediments for the implementation of Shari'ah rulings

Accepting a false claim of being intersex will mean that outwardly the rules of being intersex will be applied to a person whereas the reality will oppose this, i.e. such rules will not actually be applicable to the person. Then, after making the claim of being intersex, as under this law, any man can declare himself a woman or any woman can declare herself a man, **difficulties will arise in the implementation of Shari'ah rulings.** For example, in the rules of inheritance, in which the rules for intersex people are separate such that the verdict about them being given the share of inheritance of a male or that of a female is made based on physical signs. So, the person who is in reality a woman, but upon her claim to be a man, she has been declared to be male, and the person who is in reality a man, but upon his claim to be a woman, he has been declared to be female, will receive a portion contrary to the portion assigned to them by the principles and rules of Shari'ah, despite the fact that inheritance is a right established in accordance with that which Allah Almighty has ordained. One will only receive that which has been ordained for him/her. However, lying and having oneself recorded as male or female falsely will necessitate consuming the right of other inheritors in some scenarios, whilst the Qur'an has mentioned a severe prohibition concerning this.

The noble Qur'an mentions:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ

And do not unfairly consume the wealth of each other⁴

Allah Almighty mentions regarding apportioning the shares of the male and female in inheritance:

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

For men is a share from that what the parents and close relatives have left behind; and for women is a share from that what the parents and close relatives have left behind, whether the (wealth of) inheritance is small or large; the share is a fixed one.⁵

Opening the door to changing the creation of Allah Almighty as well as mutilation through severing of bodily limbs

This law will open the door to changing the reproductive organs. People will find legal support and permission under this law to sever and remove their organs and thus commit the sins of changing the creation of Allah Almighty and mutilation. Bringing a change in the creation of Allah Almighty such as castration of the male or female is haram. It is stated in the Qur'an that, after becoming rejected, one of the things Shaytan said in the court of Allah Almighty was that he would instruct people to change the creation of Allah Almighty and they would do so. If today, gender is changed through surgery, it is an affirmation of Shaytan's claim and acting upon his order.

⁴ [Kanz-ul-Iman (translation of Quran)] (Part 2, Surah Al-Baqarah, verse 188)

⁵ [Kanz-ul-Iman (translation of Quran)] (Part 4, Surah Al-Nisa, verse 7)

Allah Almighty mentions in the noble Qur'an:

وَأَضَلَّنَهُمْ وَأَمْرِيَهُمْ فَلْيَبْتَئِكُنَّ إِذْ أُنْعِمَ وَالْأَنْعَامِ وَلَا مَرْتَبَهُمْ فَلْيَعْيُرَنَّ خَلْقَ اللَّهِ ط وَمَنْ يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِّنْ دُونِ اللَّهِ فَقَدْ خَسِرَ
خُسْرًا أَوْ مُبِينًا

'I swear I will definitely lead them astray, and I will certainly arouse (sinful) desires in them, and I will definitely order them that they will pierce the ears of animals (this is a ritual of idol worshippers), and I will definitely order them that they will change the creation of Allah.'

And whoever chooses the Devil for a friend instead of Allah, he has indeed suffered a manifest loss. ⁶

The Qur'anic exegete, the erudite teacher of Hadith and Tafseer, Mufti Muhammad Qasim Attari دَامَتْ بَرَكَاتُهُمُ الْعَالِيَةَ writes in his exegesis of this ayah, "The Shaytan said that he would order people and they would indeed change the creation of Allah Almighty.

It should be remembered that changing the creation of Allah Almighty in a way that opposes the Shari'ah is Haraam. There is much detail concerning this in the Prophetic Ahadith.

Regarding changing the creation of Allah Almighty, it is mentioned in the noble Sahih Muslim:

لعن الله الواشمات والمستوشمات والنامصات والمتنمصات والمتفلجات للحسن المغيرات خلق الله تعالى

"Allah Almighty has cursed those women who tattoo, those women who have themselves tattooed, the women who pluck hair from their faces and those who have this done, and those who make spaces between their teeth for beautification; those who change what Allah Almighty has created." ⁷

Concerning mutilation, it has been mentioned in a hadith:

عن النبي صلى الله عليه وسلم انه نهى عن النهبة والمثلة

"It is reported from the Prophet صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ that he prohibited looting wealth and mutilation." ⁸

Promotion of Homosexuality

Due to this law, a man can have himself recorded as a female and have sexual relations with another man; likewise, a woman can have herself recorded as a man and have sexual relations with another woman, which is a vile and disgusting act. The noble Qur'an, the Prophetic Hadith and the statements of the pious predecessors severely condemn such repugnant relations between two males or two females.

In the noble Qur'an Allah Almighty, mentioning His favours upon Prophet Lut عَلَيْهِ السَّلَام, describes the third favour as saving him from the city where its dwellers engaged in filthy acts such as sodomy, because they were evil and disobedient people. Allah Almighty states:

وَنَجَّيْنَاهُ مِنَ الْقَرْيَةِ الَّتِي كَانَتْ تَعْبُلُ الْحَبِيثَ ط إِنَّهُمْ كَانُوا قَوْمًا سَوِيًّا فَسِقِينَ

⁶ [Kanz-ul-Iman (translation of Quran)] (Part 4, Surah Al-Nisa, verse 119)

⁷ Sahih Muslim, vol. 2, p. 205

⁸ Sahih Bukhari, vol. 2, p. 829

And We rescued him from (the people of) that town which had been doing evil deeds; indeed, those evil people were disobedient.”⁹

Males and females adopting resemblance of one another

As a consequence of this law, men and women will adopt resemblance to one another, **whereas the noble Shari’ah has prohibited men and women from resembling one another** and has cursed men who adopt resemblance to women, as well as women who adopt resemblance to men. In fact, the Shari’ah has even **prohibited wearing such clothing which causes one to resemble the opposite gender**. When merely adopting resemblance has been **prohibited, then how can changing one’s gender with a man becoming a woman and a woman becoming a man be permissible?** This is an act which is thousands of times more severely hideous and repulsive than mere resemblance.

Concerning women who adopt the appearance of men and men who adopt the appearance of women, it is mentioned in the hadith of Sayyiduna ‘Abdullah ibn ‘Abbas رَضِيَ اللهُ عَنْهُ narrated in Sahih al-Bukhari, Sunan al-Tirmidhi, Sunan Abu Dawud, Sunan ibn Majah and other books of Hadith that he said,

لعن رسول الله صلى الله عليه وسلم المتشبهين من الرجال بالنساء والمتشبهات من النساء بالرجال

“The Prophet صَلَّى اللهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ has cursed those men that adopt resemblance to women and those women that adopt resemblance to men.”¹⁰

Encouragement of unveiling and immodesty

Under this law unveiling and immodesty will be encouraged, as a person would be able to go amongst women despite being a man by merely having himself recorded on paper as a woman and could thereby indulge himself in unveiling and immodesty which is severely forbidden and impermissible. Another corruption that arises from the actual surgical gender change of a male to a female and vice versa is that in such operations a person reveals their private parts to others without a valid reason and the surgeon sees and touches them, which is Haraam because it contravenes modesty, which is the loftiest attribute of human nature in the beautiful religion of Islam. **Both looking at and touching another’s private parts without a valid Shar’i reason are Haraam. It is necessary for men to cover themselves from the navel to below the knees and acting contrary to this without a Shar’i necessity is Haraam.**

Commanding women to veil, Allah Almighty states:

وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا

“And not to reveal their adornment except what is apparent itself”¹¹

It is mentioned in Sahih Muslim concerning looking at another person’s private parts:

ان رسول الله صلى الله عليه وسلم قال: لا ينظر الرجل إلى عورة الرجل، ولا المرأة إلى عورة المرأة

⁹ [Kanz-ul-Iman (translation of Quran)] (Part 17, Surah Al-Ambiya, verse 74)

¹⁰ Sahih Bukhari, vol. 2, p. 874

¹¹ [Kanz-ul-Iman (translation of Quran)] (Part 18, Surah Al-Noor, verse 31)

“The Messenger of Allah صَلَّى اللهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ said, ‘A man must not look at the body parts of a man veiled obligatorily nor a woman at the body parts of a woman veiled obligatorily.’¹² The curse of Allah Almighty is upon those that engage in sinful gazing and those that present themselves for sinful gazing. It is mentioned in Shu’ab al-Iman and Sunan al-Kubra lil Bayhaqi:

عن الحسن قال: بلغني ان رسول الله صلى الله عليه وسلم قال: لعن الله الناظر والمنظور إليه

“It is reported from Sayyiduna al-Hasan رَضِيَ اللهُ عَنْهُ that he said, ‘It has reached me that the Prophet صَلَّى اللهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ said, ‘Allah Almighty curses the one who casts the evil glance and the one who presents themselves to be looked at.’¹³

3. Is it permissible for an Islamic government to implement such a law?

It is evident from the above-mentioned discussion that if a transgender law is prepared in an unrestricted form, without incorporating necessary Shar’i stipulations it is an accumulation of many haram matters. Islam does not give permission to any Islamic government to implement such a law. In fact, implementing or supporting such a law is severely forbidden, Haraam and an action that leads one to Jahannam.

Remember! Allah Almighty created humans as the most superior and noble of creation. Just as He has made things in pairs in creation, He has made man and woman within humans so that they can continue their vicegerency on the earth, generation after generation. Like this, the entire system of the universe is functioning; in which Allah Almighty has created each human as they should be according to His Divine Wisdom. Allah Almighty gave men and women different specific organs by way of which the system of reproduction continues. If someone tries to bring about change to this universal system that Allah Almighty has created just to fulfil their sexual desires, then without doubt he will be considered the perpetrator of a forbidden act, severely sinful and deserving of Jahannam. Many rules of the khuntha [intersex person] are separate and intersex people should seek Shar’i guidance. It is necessary upon all Muslims that they live their lives in accordance with the laws given by Allah Almighty and His Messenger صَلَّى اللهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ; the good of this world and the hereafter lies in this.

May Allah Almighty protect all the Muslims from making, supporting and acting upon any such laws. آمين

وَاللَّهُ أَعْلَمُ عَزَّوَجَلَّ وَرَسُولُهُ أَعْلَمُ صَلَّى اللهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ

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¹² Sahih Muslim, vol. 1, p. 266

¹³ Al-Sunan Al-Kubra lil Bayhaqi, Kitab Al-Nikah, vol. 7, p. 159



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