

Effect of sex change on outcomes and rules of former marriage and possibility of next marriageEhsan Nazari (M.A) (Corresponding author) ¹, Saeed Khradmandi (Ph.D)²¹ Department law, college of private law, Kermanshah Branch Islamic Azad University, Kermanshah, Iran
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Abstract: : Sex change alters former marriage conditions greatly so that if either clarifies nullity of former marriage or results in termination of marriage by disappearing spouses sexual difference, where former marriage cannot be restored even by second sex change. If a marries person suffers no hardship caused by his/her current sex, he/she has no right to change his/her sex without his/her spouses consent. With disappearance of prior sex, some marriage outcome like required keeping of the period of divorced wife disappears because they are dependent on former subject and sex. But some of other outcomes like marriage portion remain since, as a rule, they are under obligation after sexual intercourse. Of course, interference of such factors as wife's action during limited period marriage results in deduction of marriage portion relative of the left period of marriage. Based on his/her new sex, a sexually changed person is allowed to marry a person with opposite sex although care needs to be paid to his/her close family members. After changing sex, father, mother, and child titles do not change and parent-child marriage is not allowed because of its respect. Such marriage respect remains unchanged for other lineal close family members. But for causal kinsmen, reference needs to be made to criteria of Islamic law; and in relation to obligations like marriage, a woman newly changed into a man is allowed to marry her former mother-in-law.

[Ehsan Nazari, Saeed Khradmandi, **Effect of sex change on outcomes and rules of former marriage and possibility of next marriage.** *Nat Sci* 2014;12(3):30-48]. (ISSN: 1545-0740). <http://www.sciencepub.net/nature>. 5

Keywords: Sex change, Marriage, Marriage portion, Period of a divorced woman, Close family members.

1. Introduction

A sex change applicant's familial relations, especially issue of marriage, is one of subjects on which sex change has a lot effects and outcomes, as a result of which new topics and problems are raised in jurisprudence and law. Effect of sex change on familial relationships can be studied in 2 parts generally. First, married a couple relationships; that is marriage dependence and its effects like marriage portion and separate allowance, and second, relationships of father/ mother seeking sex change with their children, which needs to be examined seriously. With changing sex, dissolution of marriage results and conjugal dependence, which is crucial element and essence of family strength, disappears, therefore, rights and obligations of spouses toward each other, including marriage portion and separate allowance, and toward their children, including separate allowance, child custody, and guardianship, need to be examined legally seriously. Dealing what happens to the former marriage conditions and what change are made in their former rights and obligations, especially rights and obligations of a wife like marriage portion and period of a divorced woman. In addition, conditions of gifts and costs of engagement and marriage as well as the role of spouses, permission in the possibility of sex change will be examined and issues of their right to marry after changing sex, especially to marry former lineal and causal close family members, will be addressed.

2. Post- sex- change conditions of marriage contract

Here a fundamental question is that if one of or both spouses change their sexes, what conditions will arise to marriage contract need to be examined based on different assumptions and states.

2-1. Necessity of distinguishing sex determination from sex change

Unlike liberal European and American countries where people are legally allowed to marry others having the same sex of their owns, in Islamic law, difference in couple's sexes is one of canonical evident when reciting marriage vows and after that, which is agreed.

Upon by all Islamic cults (Mo'men Qomi, Sheikh Mohammad (1994); (Kalamāte Sadideh fi Massāe'l Al-Jadideh", Nashr-e Eslami Publication, Qom, p.109. Sadr, Seyyed Mohammad (1992) *Māvarāol Fiqh Dār Al-Azwa*", vol.6, p.138) Beirut Based on this, some legal authors believe when one of couple changes his/her sex, marriage contract will be terminated since having different sexes is a precondition to establish marriage and to its survival. Another justification strengthening this view is that since at the time of reciting marriage vows, parties have opposite sex seemingly there is no reason to nullify marriage and it is concluded correctly given the proof of appearances, but with changing sex during the period of marriage and with spouses becoming of the same sex, necessity and possibility

of contract survival is destroyed and, as a result, marriage contract is terminated; and like other continuous contracts such as lease, frustration of contract subject is one of causes terminating it (Bāriklu, Alireza (2004, Fall) " Legal effects of sex change", the Humanities Instructor Quarterly, series 8, no.3, p.112); because under article 481 of civil law: Lease is nullified whenever subject of hire is out of profitability due to some defect which cannot be resolved; and article 496 of the same law provides that locations is nullified due to the loss of subject of hire on the loss date. Although legislator has used word nullified in both mentioned articles, meaning of it is lease termination in these cases, as legal authors wrote (Kātousiyān, Nāsser (2007). "Civil law in present order". Mizan, edition 14th, pp.343-353).

Above view may be criticized. Although marriage is dissolute on date of sex change, such dissolution cannot be termed "termination" because for marriage, termination has exceptional aspects and is not comparable with other contracts, as a result, letter of law suffices. Weakness of this criticism is apparent, but above view attribution is also difficult to accept. In fact, sex change does not always mean change contingency in the sex of one spouse and sometimes it discovers prior sex of one or both spouses in the past and even at the time of concluding marriage contract. Changing body neutral sex, including problematic and non-problematic neuters having male/ female sexual signs, falls into the last category. Based on this, the view of body neuter's marriage condition is accepted poorly because neutral state has both sexes' gender signs and such persons embark on marrying on the basis of dominance of gender sign of one sex over the other on since jurists consider neutral individuals' marriage lawful in the case that one sex be dominant over the other (Tabrizi, Javad: a neutral person whose being male/female is known is subject of others' rule; Mousavi Ardebili, Abd Al-Karim: if a neutral person is recognized as a woman but having man look, she is not considered a man and is not allowed to marry a woman and is subject of other's rule; Bariklu, Alireza (2004, Fall). "Legal effects of sex change; The Humanities Instructor Quarterly, series 8, no.3, p.5). But with changing sex, it is known that gender signs of new sex are more dominant in neutral person and some things was wrong with determination of dominant gender signs at the time of concluding marriage contract. Such a mistake results in marriage nullification because gender plays such an important and fundamental role in marriage that, conventionally, it can be said that it is considered as customary nature of contract subject, and making a mistake about such nature results in contract nullification (Bariklu, Alireza (2004, Fall). "Legal

effects of sex change". The Humanities Instructor Quarterly, series 8, no.3, p.115; Shahidi, Mehdi (1998). "Contracts conclusion and obligations", vol.1, p.178, Nashr-e Hoghoughdan, Tehran). In this case, therefore, sex change cannot be regarded as a cause of marriage termination with reference to proof of appearances.

In brief, in cases where former sex is discovered, nullification of former marriage contract is clarified while in cases being considered a psychic neutral individual's sex change is an instance merely, marriage contract is terminated.

2-2. one of spouses' sex change

For post- sex- change conditions of marriage contract, a distinction needs to be made between the assumptions stating that one of spouses change his/ her sex and assumption stating that both spouses change their sexes. Therefore, effects and rules of each one should be addressed independently. Under different articles like 1035, 1059, 1067, 1122, 1123 and 1124, Iranian civil law points to necessity of different sexes at the time of being married. Article 1067 of civil law states the precondition of accuracy of marriage contract is that wife and husband are determined in such a way that none of them has any doubt about the other's entity. So with one of spouses' changing his/ her sex, marriage is terminated because its continuation is not possible and legitimate after changing sex. In addition, real difference between parties' sexes is the precondition of accuracy and survival of marriage contract throughout the period of marriage; therefore, in the case that this precondition is ruled out during the period of marriage, marriage contract is terminated. Based on this, some jurists assert if a man marries a woman who changes her sex later and become a man, marriage contract is nullified on date of change (Mousavi Khomeini, Rouh Allah. (1990). " Tahrir Al-Vasileh" vol.2, p.663, 3rd edition, Esmāiliyan Publications, Qom) since male-male or female- female marriage is not legitimate and survival of marriage is not possible after the wife changes into a man, and marriage contract is terminated due to because of its subject.

With regard to Iranian civil law, jurists have consensus on the necessity of difference between sexes of parties of marriage and argue that in the case that only one of spouses changes his/ her sex the marriage is nullified at the time of changing sex since male- male or female- female marriage is not legitimate and its survival is impossible. In practice, when a notary is to marry a couple and register it he refers to their certificates of nationality in order to obtain sex difference, if so, he can recite marriage vows and register it on marriage registry book (Kariminia, Mohammad Mehdi. (2000, Oct-Nov). "Sex change in the view of legal canon", Mārefat

Quarterly, no.36, p.627; Mo'men, Mohammad. (1996). "Sex change, canon of the household of the prophet of Islam". Yr.2, no.7, p.97; Kharazi, Mohsen. (2000, Fall). "Sex change", Specialized Magazine of Canon of The Household of the Prophet of Islam", yr.6, no.23, p.112). Since sex difference needs to be considered as the precondition of marriage accuracy both at the time of concluding marriage contract and throughout the period of marriage in other words, it is the precondition at the beginning of as well as continuation of marriage, sex change results in termination of marriage contract, of course, it is the court that obtains sex change on the basis of experts' opinions and announces marriage nullification (Diyani, Alireza. (2000). "Family law". 1st edition, p.37, Omid-e Danesh, Tehran). In fact, the court order is of a declaration aspect rather than a constitutional one. It is worthy to note that some legal authors believe that marriage nullification has a retrogressive effect and marriage contract is nullified from the beginning since sex change indicates the lack of fundamental precondition of marriage accuracy at the time of concluding its contract, therefore, it discovers nullification at the time of concluding marriage contract because mentioned precondition is the real difference between marriage parties' sexes (Bariklu, Alireza (2004, Fall). "Legal effects of sex change". The Humanities Instructor Quarterly, series 8, no.3, p.113; Tabatabaei, Seyyed Mohammad Ali. (1999). Riyaz Al-Massael Fi Bayane Ahkam Al-Dalayel) while none of jurisprudents require the existence of marriage nullification effect in the period of time before changing sex that difference between sexes existed in reality. But if it is known that the difference between couple's sexes existed superficially, not really, it becomes clear that marriage contract was not concluded between 2 opposite sexes, but between 2 same ones which is wisely nullified (Bariklu, Alireza (2004, Fall). "Legal effects of sex change". The Humanities Instructor Quarterly, series 8, no.3, p.336). So considering thinkers' manner and jurists' opinions as well as paying attention to law articles related to marriage accuracy, it is clarified that real difference between couple's sexes is the precondition of marriage accuracy which if not realized, marriage contract is not concluded accurately; and one sex changed, it becomes clear that sexes of contract parties have not been really different and marriage is nullified from the time of concluding marriage contract so marriage nullification has a retrogressive effect (Bariklu, Alireza (2004, Fall). "Legal effects of sex change". The Humanities Instructor Quarterly, series 8, no.3, p.114).

As mentioned earlier, said view assumes superficial sex change and is based on this reasoning

that with changing sex, it is discovered that marriage contract has been concluded between 2 same sexes from the very beginning, therefore, it is nullified from the very beginning (time of concluding contract of marriage). In other words, it is possible that a person thought to be a woman changes into a man and it is recognized that signs of masculinity were dominant in her and that a mistake was made in this regard so according to said view, nullification of marriage is wise and defensible. But another assumption can be outlined, that is, assumption of real sex changes. Suppose that a neutral (bisexual) person, whose either masculinity or femininity aspect is dominant, marries another person with opposite sex, but as time passes, signs of sex change appear (if possible) to him/ her due to evolution occurred in his/ her physical condition and, eventually, sex change is realized by a surgical operation resulting in disappearance of sex difference which existed at the time of concluding marriage contract. In this case, is the marriage concluded accurately nullified or not? Since sex difference needs to be regarded the precondition of marriage both at the time of concluding marriage contract and throughout the period of marriage, in other words it is a precondition both at the beginning and in continuation, marriage is terminated with change sex. Of course, it is the court that must obtain sex change based on expert opinion and issue the order if marriage termination from the date of realization of sex changes (Emami, Assad Allah; Safaie, Hossein. (2001). "Family law", vol.1, edition 8, pp. 44-45, Tehran University). Clearly, unlike the 1st assumption, in the 2nd one, marriage contract is accurate until 2 sexes difference continues, but it is terminated from the moment of difference disappearance and of spouses' becoming of the same sex.

2-3. both spouses' sex change

As a rule of thumb, this case is similar to the former one and there is no lawful permit for survival of former marriage because immediately after that one spouse changes his/ her sex, e.g. the man changes into a woman, they become of the same sex in new case so former marriage disappears. Now, if the woman changes his sex after some time, conjugal dependence does not result, requiring a new marriage contract conclusion. But this assumption itself is imaginable in 2 sorts: first, spouses attempt to change their sexes at different times; and second, they do that at the same time (Bariklu, Alireza (2004, Fall). "Legal effects of sex change". The Humanities Instructor Quarterly, series 8, no.2, p.7).

2-3-1. Spouses' sex change at different times

In the case that spouses do not change their sexes simultaneously, immediately after that one of

them changes his/ her sex, the marriage tie between them is dissolute. For example, if the wife attempts to change her sex, marriage is terminated and, now, if the husband attempts to change his sex after his wife, marriage is still terminated because once the wife change into a man, she because of the same sex as her husband's so restoration of former marriage requires a reason or new marriage contract even if the husband attempts to change his sex following his wife (Mousavi Khomeini, Rouh Allah. (1990). "Tahrir Al-Vasileh" 3rd edition, vol.2, p.663-664, Esmāiliyan Publications, Qom).

In other words, immediately after that one of spouses changes his/ her sex, for example, the husband changes into a woman, both spouses have the same sex in new case so the former marriage disappears. Now, if the wife changes her sex after some time even though a short time, even after a few seconds, marriage dependence does not result and requires a reason (new contract)(Kariminia, Mohammad Mehdi. (2000). "Sex change in the view of legal canon", Mārefat Quarterly, no.36, p.77; Mousavi Khomeini, Rouh Allah. (1990). " Tahrir Al-Vasileh" 3rd edition, vol.2, p.627, Esmāiliyan Publications, Qom).

2-3-2. Spouses' sex change at the same time

There is some disagreement on survival of marriage contract between spouses who change their sexes simultaneously. In other words, if both spouses change their sexes simultaneously and the husband changes into a woman and the wife into a man, there is some disagreement on their marriage survival and conjugal dependence:

2-3-2-1. Theory of marriage survival

Some of contemporary jurists accept probability of marriage termination as a required prudence, but, eventually, they prefer probability of marriage survival and say required prudence dictates that marriage contract be repeated and current woman (previously a man) should not marry another man unless she divorces her ex- spouses although it is not unlikely that former marriage be still firm and these 2 persons be still spouses after changing sex (Mousavi Khomeini, Rouh Allah. (1990). "Tahrir Al-Vasileh" Problem 4: Al-Ahvat Tajdid-e Nekah va Adam-e Zavaj Al- Mara'h Va ..., 3rd edition, vol.2, p.559, Esmāiliyan Publications, Qom). Reasoning of this view is that the truth of marriage is nothing more than one's being a spouse for the other. Here these 2 persons are still a spouse for each other. In addition, following the surgical operation, survival of marriage is placed under doubt and marriage presumption of continuity (Esteshāb) is executed (Kharrāzi, Seyyed Mohsen. (2000, Fall). "Sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.110)because in

presumption of continuity flow, the precondition is the presence of requirement and no obstacles exist since the truth of marriage is one's being a spouse for the other, for which the surgical operation creates no obstacles, therefore, marriage presumption of continuity is executed. To justify said view, some authors wrote: the truth of marriage is nothing more than validity of each one's being a spouse for the other.

But since each of parties has particular incipient and natural features, particular rules have been followed for each one. Thus, in the case spouses change their sexes simultaneously, requirement of continuity presumption is their marriage survival since survival of credit spouseless is a possible task and there is no reason for its disappearance (Tabātaba'ei, Seyyed Mohammad Ali. (1995). "Riyaz Al-Massāel Fi Bayan-e Ahkam Al-Dalayel". 3rd edition, vol.1, p.107, Āl Al-Beit-e Al-Ahya Institution, Qom).

According to this view, in this assumption, only the state and quality of marriage are different before and after surgical operation while current husband has been a wife previously and vice versa but, in the new condition, the truth of marriage- one's being a spouse for the other- remains unchanged. The conclusion of this view is that, after changing sex, duties of spouses are different from previous ones. Moreover, it can be said that with surgical operation on each of spouses' genital organ, their external being is not prevented, rather it remains unchanged conventionally and requirement of marriage evidence is that marriage contract remains in its effect so long as spouses have external being and death, divorce, and termination have not resulted in their marriage dissolution (Motahari, Ahmad. (1982). "Mostanad-e tahrir Al-Vasileh Al- Masaa'el Mostahdes"., p.200, Khayyam Publications, Qom).

It is worthy to note that announcer of above view, who considers marriage remained, argues the prudence dictates that they marry each other again and current wife has no right to marry another man unless she divorces her current spouse(Mousavi Khomeini, Rouh Allah. (1990). " Tahrir Al-Vasileh",3rd edition, vol.2, p.627, Esmāiliyan Publications, Qom).

2-3-2-2. Theory of marriage dissolution

Contrary to previous view, some of other contemporary jurists believe that, for sex change, the former marriage disappears(Kariminia, Mohammad Mehdi. (2000). "Sex change in canonical (Fiqh) and legal views", MārefatMagazine, no.36, p.76-78; Mo'men Qomi, Sheikh Mohammad. (1994)." Kalemāt Al-Sadideh Fi Massa'el Al-Jadideh". P.110, Nashre Eslami Institution, Qom).because titles of wife/ husband and roles and

obligations the spouses have in marriage contract are not a sort of mere credit titles with no characteristics and features of committed persons/ spouses, which can be subject of presumption of continuity due to sex change. In fact, given the different obligation of marriage parties and the importance of personal conditions and features of each party to the other, it can be argued that their difference is real and intrinsic and requirements of the rule of marriage contract subordinating to intents (Al- Oqoud Tābeāh Lil- Qossoud), and of article 194 of civil law, providing the necessity of parties' agreement on and matched intents about the type and subject of marriage contract, state that marriage contract does not remain unchanged after changing sex since to impose a husband's obligations on the current man and vice versa is a task for which none of spouses has had an intention.

Moreover, marriage truth is not merely validity of spouse hood, but it is validity of the man's husband hood for the wife and vice versa at the time of concluding marriage contract and, certainly, with changing sex, former spouses can no longer be husband/ wife, therefore, presumption of marriage continuity is not possible. In other words, for marriage, in addition to the espouse hood relationship between parties, another requirement exists: the man be a husband for the woman who is his wife, which is termed "dissimilar parties relationship" in logic, that is, there is a specific relationship between 2 things/ persons only from the side of one party, which does not exist from the side of the other. For example, parental relationship between Ali and Javad is unilateral because Ali is Javad's father. Son hood relationship, which is exclusively unilateral, is of this type of relationship. While sisterhood/brotherhood relationship existing between 2 women/ men is mutual, which is termed "similar parties relationship" in logic? Relationship between wives and husbands is of the type of dissimilar parties' relationship, which disappears after changing sex. Therefore, the former marriage contract (presumably through accurate conclusion) is terminated and marriage parties need new marriage contract to continue living with each other.

Conclusion of studying reasons of these 2 views is that the truth of marriage and spouse hood, although it is a credit concept, is comparative and accessory and invariable and is not a sort of similar parties relationship, therefore, it is not capable of surviving and, certainly, disappears after changing sex. So presumption of marriage continuity is impossible, legally, to impose of a husband on the current man and of a wife on the current woman is a task for which none of parties has had an intention. So based on the requirements of the rule of marriage

contract subordinating to the parties' shared intention on the type and subject of the contract, and of article 194 if civil law, it seems that the second view is stronger so the marriage contract does not remain after changing sex (Asghari Āghmashhadi, Fakhr Al-Din., and Abdi, Yasser (1999). "Rules and effect of sex change". The Humanities Instructor Quarterly, series 12, no.3, p.8).

3. Role of each of spouses' permission in changing sex

Another question which can be asked in relation to sex change of one or both spouses is that in the case one of spouses decides to change his/ her sex, should he/she obtain the other's consent or not? In other words, can each of spouses change his/her sex without obtaining the other's permission and consent? This question can be examined in the form of interference of conjugal rights and the role of permission in taking action to change sex. In general, whenever sex change is lawful, 2 following cases are imaginable for each of spouses: first, urgency to change sex, and second, no urgency to change sex. Rules for each case differ from the others, as will be stated in following sections.

3-1. Lack of necessity of obtaining spouse's permission

In the first case, to perform surgical operation of sex change is required and essential for husband/ wife on the basis if special conditions. In this assumption, undoubtedly, there is no need to obtain husband's or wife's consent and rule of secondary necessity prevail the evidence of primary rules that deal with spouse rights. In other words, each of spouses who is subject to necessity rule due to specific conditions can embark on changing sex even with disagreement of the other one. Some of jurists said, "If the wife is among those persons for whom sex change is necessary, there is no need to obtain the husband's permission" (Ayatollah Lankarāni. (1999) (Quoted by Khodādādi, Gholamhossein) "Marriage and sexual issues". P.141, Hafez Publications).

3-2. Necessity of obtaining spouse's permission

In the second case, not embarking on sex change inflicts little damage on the applicant and living with his/her current sex imposes no hardship on him/her, therefore if seems necessary to obtain husband's/ wife's consent in order to avoid causing a loss to him. Her and to observe his/ her rights; and in the case each of spouses attempts to change his/ her sex without obtaining his/ her spouse's consent he/ she will commit a religiously prohibited act. Next, we will consider reasoning for incidence of religiously prohibited acts regarding each of spouses (Kharrāzi, Seyyed Mohsen. (2000, Fall). "Sex change". Specialized Magazine of Canon Law of the

Household of the Prophet of Islam, yr.6, no.23, p.110).

3-2-1. Veneration of wives' sex change without obtaining their husbands' consent

Some believe that to attempt to change sex without the husband's permission means departing from his obedience and getting the title of shrewdness (No shoüz) if it interferes with husband's rights such as sexual pleasure and so on. In other words, since the wife's act interferes with the husband's rights such as enjoyment, it means departing from obeying him and getting the title of Noshouüz which is religiously prohibited based on the evidence produced and consensus of jurists; (Some evidence of Noshouüz veneration includes: Surah Nessa, Verse 34: Meaning that: Advise that group of women of whose revolt and disagreement you fear; if it does not work, keep aloof from them in bed; and if there is no remedy but violence in order to force them to fulfill their duties punish them. Mohammad Ibn Moslem's authentic narration from Imam Sadegh (Greetings to Him):

Meaning that: A woman went to see the Prophet of Islam (Peace be upon Him) and asked, "Dye God's messenger! What are duties of a wife toward her husband? He ordered that," Obey him, don't give charity without his permission, don't observe a recommended fast without his permission, and don't deprive him from yourself even though he is on a camel saddle, etc." Kolleini, Mohammad Ibn Ya'ghoub. "Al-Kafi", 1st edition, vol.5, p.507, Dār Al-Kotob Al-Eslāmīeh (house of Islamic Books).

In detail, given the evidence of Islamic law, whenever a wife deprives her husband from having sex, except for times when there is some lawful obstacle, she commits Noshouüz, that is, since such deprivation implies that she refrains from having sex with her husband despite she is able to obey him and/or she creates an obstacle on having sex, for example, by changing her sex without her husband's permission and preventing him from enjoying, changing sex is a sort of cruelty and prohibited religiously because it impairs the husband's rights.

Article 1108 of Iranian civil law states: Whenever a wife with no legitimate obstacle refrains from fulfilling her conjugal duties, she is not entitled to be paid expenditure. Mentioned article is equivalent of Noshouüz in Canon law (Fiqh). According to this article, except for cases where there is some lawful obstacles like menstruation, parturition, required fasting, and/ or any required religious actions the time for doing which is limited, a wife is not allowed to refrain from fulfilling her conjugal duties. With this view, whenever a wife prevents her husband's enjoyments by changing her sex, she is considered Nāshezeh (Shrew) and the

husband can require her to obey through referring a court. But if the wife obtains her husband's permission prior to change her sex, her act will be lawful and will not be the subject of abovementioned article (Kharrāzi, Seyyed Mohsen. (2000, Fall). "Sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.110).

To the contrary, some criticized the comparison of sex change to Noshouüz is an act committed by the wife and is based on 2 titles of womanhood and wifehood while sex change eliminates the wife's title of wifehood and her husband has no longer any rights to her, now, Noshouüz applies. In addition, the wife is no longer a woman that it can be said the husband has the right of enjoyment of her since by maintaining the subject, conjugal dependence, it is necessary to obtain the husband's consent while sex change eliminates the subject and with elimination of subject, if cannot be ordered to obtain husband's consent, therefore, such comparison is nullified (Kharrāzi, Seyyed Mohsen. (2000, Fall). "Sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.111).

3-2-2. veneration of husbands' sex change without obtaining their wives' consent

For husbands' attempt to change sex without their wives' consent, the husband's act, seemingly, contradicts the wife's legal and legitimate rights like concubinage and other rights produced by realization of marriage contract so his act is one of evident instances of rights impairment and as a result, it is a sort of cruelty and religiously prohibited.

Of course, according to one of contemporary jurists, this justification can be provided that sex change and divorce are similar and like divorce which does not need the wife's consent, sex change does not need it, too, although this comparison can be considered an all-separating one lacking lawful evidence and proofs. Provisions of article 1102 of civil law indicate that spouses have mutual rights and duties toward each other. As legislators gave husbands the right of family head and required wives to obey and follow them, they also provided some rights for wives and required husbands to regard them. Among these rights are expenditure and concubinage ones. On this basis, Noshouüz is not an adjective merely specific to wives, but husbands can be considered Nāshez (male shrew) due to avoidance of fulfilling their required duties (Mohaghegh Dāmād, Seyyed Mostafa (2002). "Family law". 3rd edition, p.204, Islamic Sciences Publication Center, Tehran). So it can be said that because the man's changing sex without his wife's consent impairs her rights, he is considered Nāshez, therefore, his wife has personal

stand in judicious. The result is that if not changing sex does not inflict much damage on the applicant (husband) and he is not in hardship caused by living with his current sex. It is not lawful for him to change his sex without his wife's permission and the only lawful way for a married man to change his sex is to obtain his wife's consent (Kharrāzi, Seyyed Mohsen. (2000, Fall). "Sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.111).

4. Relationship between restoration of former sex and that of conjugal dependence

Having changed his/her sex, if the man/ woman changes into his/her initial sex again, can it be ordered for conjugal dependence to return or does its creation need a new marriage contract? The answer may be that because common law considers extinct restoration lawful, it dictates that this man is the same former one, therefore, its total effects such as his wife's spouse hood, possession of his property, etc are resulted to him (For transformation of water into vapor and, next, into water, Sheikh Mohammad Ali Araki issued an order on its analog: custom considers the mist resulting from vapor nothing but the water transformed into vapor. In their view, water transformed into vapor and, again, into water and the latter water is the same as the former one. Esteshāb is not required so that some fault can be found that doubt time is apart from certainly time. Arāki, Sheikh Mohammad Ali. (1952). "Esteftā'āt" (Religious decrees), vol.1, pp.26-31, Al-Hādi Printing-house, Qom, Kharrāzi, Seyyed Mohsen. (2000, Fall). "Sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.135). The problem this statement is that common law not only dictates this person is the same initial man but also dictates this person has evolved from a changed and transformed woman. Thus, since in the state of womanhood, there is no conjugal dependence as common law dictates, there is some conflict between these 2 rules and conflict causes abortion. Therefore, necessity of new contract must be considered unless it is said that there is no conflict between lack of necessity and necessity of conjugation and they are unit able because their union is possible, that is, there is no cause for a woman's conjugation who has changed from a man into a woman, but a man's objectivity with former man necessitates conjugation and there is a cause for conjugation between them, therefore, with restoration of former sex, former marriage is restored and, in this regard, there is no difference between permanent marriage and limited- period one (The result of accepting marriage restoration is that if the wife of a man marries another man after her former husband's sex change and before he who changed into a woman

returns to his first sex, her marriage to the second husband is nullified due to her former husband's restoring to his former sex).

But in the perspective of legal logic, last reasoning is difficult to accept since, as mentioned earlier, sex change does not block order of conjugal effects so that it can't be restored due to obstacles disappearance (Ezā Zāl Al-Māne' Aad Al-Mamno'e (after dissolution of obstacle, restoration is prohibited). rather really changing sex results in marriage contract termination and once it is dissolute, its restoration is not possible with sex restoration and requires a new cause. Also, presumption of marriage continuity is impossible since, as we know, conjugation has disappeared at a point of time, instead nullity presumption of continuity can be executed and lack of conjugation and its restoration can be ordered.

5. Marriage right after changing sex

Marriage right is considered as one of basic rights of a natural person and its importance to humans' mental and physical health is undeniable. Based on this, a question is raised: Is a sexually changed person allowed to marry a person having sex opposite to his/her new sex, or does he/she face some limitations in this regards?

In this regards, there are no specific regulation in Iranian law. Some jurists believe that a problematic neutral person is not titled to marry and choose a wife/husband because his/her sex is not known and specified (Kātouziyan, Nāsser. (1998). "Family law". 3rd edition, vol.1, p.66, Enteshār Stock Company). According to this view, certain attaining of this condition is essential for marriage, and in the case of doubtful sex, prudence dictates that marriage must be avoided. According to Sunnite, a person changed sexually does not have competence to marry because he/she is neither a perfect male nor a perfect female while marriage is a task for which recognition of certain sex is essential. And since sexually changed individuals are not able to have sexual intercourse, their marriage is not right and legitimate (Salimifar, Mansour. (2006). "Sex change and its religious rule", p.104, Dissertation of Tehran University). Maybe the basis of this word is that Sunnite believe in impossibility of sex change; and such a person, in fact, loses his/ her former sex through a surgical operation, but he/she acquires an opposite sex so he/she gets into a sexually complicated trouble and becomes an instance of a problematic neuter.

Comparatively, a British neutral woman married a man in 1970 and, then, she filed a petition for divorce. The judge in questing that case rejected divorce petition, reasoning that woman (plaintiff) could not be divorced because for any average and

normal persons the concept of woman (female human) does not include neuters, therefore, that marriage contract was not concluded accurately so that the wife could be divorced. That case has guided British judges in the cases of sexually changed persons for the last 30 years. In another case, a person, Goodwin, who had been a male at birth, attempted to change his sex by a surgical operation in 1958, but British government did not recognize sex change although it is among those European countries where sex change is allowed. That person filed a complaint regarding her respective government to European Court, arguing the government violated articles 8 and 12 of European Human Rights Convention in 2002. British government reasoned that state parties of Convention are not of the same opinion on this matter, therefore, this matter was left to domestic laws of countries; as a result, no articles of Convention have been violated. But European Court refused to accept the reasoning and issued an order in favor of mentioned person, reasoning that marriage rights is one of basic and required rights of any persons, but, in national law, sex determination based on what recorded at birth deprives neutral and sexually changed individuals from marriage right, violating article 12 of Convention. While law of some countries like Singapore, Australia, and some state of the United States of America provides marriage right of sexually changed persons; and sex change is legally permitted in most European and the U.S. countries where the persons mentioned can enjoy all rights of new sex, one of which is marriage, the acquired. But based on the views of Imamiyeh Foqhahā (jurisprudents who believe in 12 Imams), in Iranian law, if the signs of one sex dominate the other in neuters, rules for dominant sex are resulted to him/her an he/she is required to follow rules for dominant sex. Thus, if experts (of forensic medicine) recognize that a neutral person (whether problematic or non-problematic) belongs to a specific sex, an order is issued to attach experts' intended sex to that person so he/she can enjoy all rights of dominant sex including right to marry a person with opposite sex. For psychic neuters, because experts of sex determination consider such factors as body sexual distinctions, psychotic sexual interests, chromosome, and brain shape effective in determination of a person's sex, if trustworthy experts believe that psychic neuter needs to change sex, he/she can marry given his/her new sex (Reza'ie Charkhlu, Hamid. "Legal consequences of sex correction in Iranian legal system and procedure of European Human Rights Court, 12,25,2011, <http://hamid65rezaie.persianblog.ir> and trans legal treatment, 01,25,2011, <http://helpmf.blogfa.com>).

6. Marrying former close family members after changing sex

Once a person's sex has changed, seemingly, former lineal titles relationships between him/her and his/her relatives change, for example, former mother (a woman) is no longer a mother after changing sex and, in addition, she (a new man) is not considered a father. Since rules are followed according to the titles, rules change as titles change and it is likely former mother (now, a man), to whom title of father does not apply, can marry his daughter and vice versa. In the following sections, we will address this and other probabilities and examine separately the possibility for a sexually changed person to marry his/her former lineal/causal close family members.

6-1. marrying former lineal close family members

Here we examine privities relationships between parents and children as an obvious instance of lineal close family members. Rules for other lineal close family members are outlined in a separate discussion.

6-1-1. Mothers' sex change and marrying their daughters

Whenever a mother changes her sex and into a man, it is not imaginable for him to marry his sons because a man is not allowed to marry another one, but is he allowed to marry his daughter? To answer this question, it must be said that such a marriage is not lawful since veneration subject is to marry daughters. After a mother changes her sex and transforms into a man, daughters are his children as prior to sex change and marrying them is religiously prohibited (In honorable verse (Surah Nessa, Verse23) phrase "Your daughter" applies to new men). In addition, the reason why rule of marriage veneration is issued is that he (new man) was the mother and this title applies even after changing sex. In other words, the criterion is parenthood- childhood which remains unchanged because the mother is someone from whose ovum the children have originated, and with incidence of divergence origin (creation from ovum/sperm), new man is still considered a mother and this title is not variable. Following holy legislator, article 1045 of Iranian civil law has prohibited marrying lineal relative and as law words are based on customary semantics and as public custom does not have any misgivings about permanence of the woman's children's childhood relationship with her after mother's sex change into a man, and if is asked, "whose son/daughter is that person?", the answer is: "this man's child", although he was previously a woman, therefore, marrying them is absolutely prohibited according to clause 2 of mentioned article and due to the confidence in this fact that attribution of child title to sons and daughters of sexually changed person is still rightful.

6-1-2. Father's sex change and marrying their sons

Question is that if a father changes into a woman through sex change, is current woman (previously a father) allowed to marry her sons or not? The answer is that current woman's marrying her sons is religiously prohibited because the father is someone from whose sperm the children have originated and, with this customary norm, title of father applies to her after changing sex. On the other hand, since in the position discussed, the current woman can look at her sons lawfully (According to the verse: " ", Sorah Nour, Verse 31). And since there is some attendance between marriage veneration and permit of looking at lineal close family members, it is clear that such a marriage is religiously prohibited (Kharrāzi, Seyyed Mohsen. (2000, Fall). "Sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.139). Here words of article 1045 of civil law can be invoked to prove lawful prohibition of such a marriage.

6-1-3. Sex change and marrying other lineal close family members

According to above reasoning's, rules of looking permit is specified for people other than parents that lineal titles do not change, for example, sex change does not remove their brothers/ sister from brother hood. In these cases, as marrying them was religiously prohibited and looking at them was lawful prior to sex change, the same rules remain unchanged after sex change because of permanence of veneration norm. Also, rule of marriage veneration remains unchanged as regard others other than them, for example, as a person's brothers'/sisters' marrying their nephews/nieces is religiously prohibited prior to sex change, it will be religiously prohibited after sex change, too, because they will be still aunts/uncles despite sex change of their brothers/sisters. Also, marrying their wives' nieces is religiously prohibited for husbands with no consent of their wives and this rule remains unchanged if the wives' sisters change into brother, and vice versa, because their daughter are still nieces of the wives (Kharrāzi, Seyyed Mohsen. (2000, Fall). "Sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.131).

6-2. marrying the former causal close family members

In addition to lineal close family members, to whom marry is religiously prohibited, to marry same people is religiously prohibited permanently or temporarily due to marriage contract. Its instance can be observed in articles 1047- 1049 of civil law. So we will examine effects of sex change on the rule of

veneration of marrying this group of people in following sections.

6-2-1. Marriage of a new man to his son's wife (Halilah)

In the case a mother's sex is changed into a man, will she (new man) be like a father and become her daughter-in-law's a close family member or not? Some of jurisprudents consider privity with difficulty and, in order to prove veneration, they reasoned that pronoun "Abnā'akom" in honorable verse: Va Halā'el Abnā'akom (Your sons' wives) applies to the new man (Mousavi Khomeini, Rouh Allah. (1990). "Tahrir Al-Vasileh" Problem 4: Al-Ahvat Tajdid-e Nekah va Adam-e Zavaj Al- Mara'h Va ... , 3rd edition, vol.2, p.565, Esmāiliyan Publications, Qom). This view has been criticized since word "sons" is intended to mean sons who originated from their fathers' loins because the verse states: Those who are from your loins (Al-Lazina Men Aslābekom) so prohibition of marrying son's wife is limited only to the fathers. In addition, word loins applies only to fathers who are men because men's semen comes from loins, not women's (Kariminia, Mohammad Mehdi. (2000). "Sex change in the view of legal canon", Ma'refat Quarterly, no.36, p.30).d But others have dealt with this difficulty in detail and rejected it for some reasons: first, word loins is not specific to fathers because some commentators interpreted it as a part of body between 2 walls of back and sternum bones, which is not specific to fathers, rather it exists in mothers. Second, noun wife attributed to son in phrase "Your sons' wives" indicates that criterion of prohibition of marriage is that the woman be a person's son's wife and a man is not allowed to marry his daughter-in-law, thus, mentioned description of those from your loins is intended to remove this rule from adopted sons so that it is compatible with prohibition of marrying father's sons' wives. Third, Esteshāb of veneration dictates that to marry sons' wives is religiously prohibited because the whole analysis indicating prohibition of sons' wives is of brevity which includes verse " . Therefore, there is no reason deduced from Quran and Hadees for lawfulness of marrying sons' wives. Now, it is turn of Esteshāb. Its requirement is that after marriage contract is written, commonalty of " must not be effected, therefore, to marry sons' wives is religiously prohibited (Mo'men Qomi, Sheikh Mohammad (1994). " Kalamāte Sadideh Fi Massā'e'l Al-Jadideh", pp.120-121, Nashr-e Eslami Institution, Qom; Kharrāzi, Seyyed Mohsen. (2000, Fall). "Sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.110). In order to prove veneration in this assumption, some of other jurisprudent consider one of two following things sufficient: one is the

attendance between veneration of marrying sons' wives and looking permit, and other is Esteshāb of looking permit that was fixed between mothers and their sons' wives prior to sex change provided that the mother has changed her sex after her son had gotten married, in which case former state exists. But, after changing sex, there is no reason for the permit of looking at sons' wives and no way exists to prove looking permit unless there is some attendance between marriage veneration and looking permit and/or there is Esteshāb of looking permit in the case of having previous state, that is sex change is attempted after sons have gotten married (Ayatollah Mo'men, Mohammad. (1996). "A word about sex change". Canon Law of the Household of the Prophet of Islam, yr.2, no.7, p.76).

In religious discussion, in the view of author, attention needs to be paid to Quranic criterion of veneration, that is, a woman to whom a current man decides to marry be his son's wife. As mentioned earlier, father's/mother's sex change does not alter titles of parenthood, therefore, a son is the same previous son and his wife is an instance of "your sons' wives" and, thus, by expurgating the rule reason and absolutely discovering it, the rule of veneration of marriage between new man and his daughter-in-law must be issued. In addition, author believes that such marriage veneration is highly clearer legally since article 1047 of civil law states: marriage between following persons is permanently prohibited due to Mossāhera (being father-in-law): ...2) between a man and a woman who was previously his step mother and/or his one ancestors' wife and/or his son's wife and/or wife of one of his grandsons (Ahfād) although the relationship is a foster one.

According to this article, if a woman has been a son's wife previously thought for a moment, marriage veneration is in place permanently. Therefore, veneration of current man's marriage with his son's wife is undoubtful even if the son gets married after sex change and, next, divorce his wife, in other words, husband of this woman is considered current man's son before and after sex change.

6-2-2. New man's marrying former mother-in-law

If the sex of son's wife (daughter-in-law) is changed and she transforms into a man, is she allowed to marry her former mother-in-law? To issue a rule for prohibiting this person's marriage with former mother-in-law requires evidence and, initially, none of titles resulting in prohibition matches this marriage, but jurisprudents put forward 2 probabilities regarding above mentioned problem: first, such a marriage is sentenced to veneration. Reasoning of this view is that although the son has no wife presently and marriage contract has been nullified due to the subject frustration and lack of its

survivability, after attaining subject unity, former veneration can undergo Esteshāb (presumption of continuity) since the subject is commonly the realization of external being prior to sex change and alteration of qualities and titles caused by changes in physical organs does not impair subject unity and survival commonly. So as required by Esteshāb of veneration, a daughter-in-law who newly has changed into a man is not allowed to marry former mother-in-law (Motahari, Ahmad. (1982). "Mostanad-e Tahrir Al-Vasileh Al- Masaa'el Mostahdes", Problem 8, p.206, Khayyam Publications, Qom).

In contrast, others put forward another probability and believe that there is a problem with issuance of a rule to prohibit religiously the marriage between a new man and former mother-in-law as there is a problem with the rule of permitting these two persons' looking at each other (Mo'men Qomi, Sheikh Mohammad (1994). "Kalamāte Sadideh fi Massāe'l Al-Jadideh", p.122, Nashr-e Eslami Institution, Qom). Some of jurisprudents considered veneration probable with difficulty (Mousavi Khomeini, Rouh Allah. (1990). "Tahrir Al-Vasileh" 3rd edition, vol.2, p.628, Esmāiliyan Publications, Qom). The reason they give is that none of titles resulting in veneration applies to marry former mother-in-law and permit of each of them looking at the other depends on credibility of "their wives" (Nessāhonna) stated in the verse, which is negated in the case that son's wife changes her sex into a man and contradiction of sex is realized. Therefore, since there is no evidence of marriage veneration, the rule of lack of veneration can be issued by invoking to the whole of ;because mentioned verse indicates lawfulness of marriage of any women not being among the women mentioned in the verse; and current case, that is, mother-in-law has not been mentioned in the verse (Mousavi Khomeini, Rouh Allah. (1990). "Tahrir Al-Vasileh" 3rd edition, vol.2, p.122, Esmāiliyan Publications, Qom).

For the author, the second probability, that is, lack of such marriage veneration is more accurate, particularly that in legal perspective, veneration of such marriage is not inferred according to article 1047 of civil law which states: marriage between following persons is prohibited permanently due to Mossāhera (being father-in-law) ... 2) between a man and a woman who has been previously his stepmother, one of his ancestors' wife, his son's wife, and/or wife of one of his grandsons although this relationship is a forest one This topic is not among cases prohibited under mentioned law article and former veneration does not undergo Esteshāb. Because veneration of former marriage between these 2 people has been caused by unity of their sexes and their marriage is religiously prohibited because 2

persons with the same sex are not allowed to marry each other. But after changing sex, it is clear that the reason for veneration of former marriage is negated and, now, with misgivings about marriage veneration for a reason other than previous one, principle of giving liberty (Ebāhat) is executed, meaning of which is lack of certain and doubtful unity and nullification of alligated Esteshāb (presumption of continuity). So the rule for this assumption is distinct from previous one stating that veneration of marriage between a new man and his daughter-in-law in undoubtful. It may be claimed that relationship of a new man with former mother-in-law is similar to that of a mother changed into a man, here the issue is the same, this claim is an all-separating comparison and is not acceptable.

7. Keeping the period of a divorced woman after changing sex

Jurists define the period of a divorced woman as: a period of time during which a woman waits until it is clear that she is not pregnant ("It is a period during which a woman waits until it is clear that she is not pregnant", Shahid-e Sāni, Zein Al-din Ibn Ali. (1958), "Sharh Al-Iama't Al-Dameshiyah", Dār Al-Ketāb Al-Arabi, vol.6, p.57). Article 1150 of civil law defines the period of a divorced woman as: a period of time until expiration of which a woman whose marriage contract has been dissolute is not allowed to marry. The period of a divorced woman is of different Kinds: demise divorce, marriage termination sexual intercourse of doubtful nature, and waiving of reminder period of a temporary marriage (Emami, Assad Allah., and Safaie, Seyyed Hossein. (2001). "Family law", edition 8, vol.1, pp. 116, Tehran University Press). Iranian civil law has dedicated articles 1150- 57 to state rules of the period of a divorced woman (Eddah)(Hojjati, Ashrafi, Gholamreza. (1999). "Code of legal rules and regulations", 3rd edition, pp.348-9, Ganj-e Danesh Publications, Tehran).

As mentioned earlier, after changing sex, former marriage is terminated. Now, the question is that if a woman plans to marry after changing sex, is she allowed to marry immediately or does she need to keep divorce or marriage termination period of a divorced woman? If the husband of a woman had died before she changed her sex, is she obliged to keep demise period of a widow or not? The answer is of two different variants being dealt with now.

7-1. Necessity of keeping the period of a divorced woman

The first answer is that sex change is similar to demise and divorce and the woman is obliged to keep her period since the climax and aim of such a period is to observe husband's respect (Kariminia, Mohammad Mehdi. (2000). "Sex change in the view

of legal canon", Mārefat Quarterly, no.36, p.8; Mo'men, Mohammad. (2000). "Sex change, canon of the household of the prophet of Islam". Yr.2, no.7, p.103), in other words, since the aim of legislator for legislating rules of period of a widow woman is to observe her husband's respect and to keep the period of a widow, therefore, her neat marriage is dependent on lapse of the period of a widow. This reasoning may hold true for period of a widow, but it is certainly obviated in the case of divorce. Because philosophy of the period of a divorced woman is to prevent mixing generation, not to observe the husband's respect. Given the wife's sex change, in our discussion, probability of mixing generations is obviated (Kātousiyān, Nāsser (1998). "Family Law", 3rd edition, vol.1, p.301, Enteshār Corporation). In addition, belonging and necessity of rules concern concurrently and permanently around the axis of existence of subjects (Mo'men Qomi, Mohammad. (1996, Fall). "A word about sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.120), in other words, rules concern the axis of subject, not of philosophy and wisdom, and note that here the rule belongs to the woman and, at present, title and subject of woman do not exist, therefore, rule of keeping the period of a widow is obviated due to the subject dissolution.

7-2. Abortion of the period of a divorced woman due to sex change

Another answer is that if a woman's sex is changed during the period of a divorced woman, all rules specific to woman including the period of a divorced woman will be removed due to disappearance of rule subject, which here is womanness, and continuity of rules is impossible (Kharazi, Mohsen. (2000, Fall). "Sex change, Specialized Magazine of canon of the household of the prophet of Islam", yr.6, no.23, p.120). So existence of such a period is not imaginable (Mousavi Khomeini, Rouh Allah. (1990). "Tahrir Al-Vasileh", 3rd edition, vol.2, p.627, Esmāiliyan Publications, Qom) as other rules are removed with their subjects' frustration (Mo'men Qomi, Mohammad. (1996, Fall). "A word about sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.2, no.7, p.121). In other words, since subject realization is the most basic precondition of rule belonging and this rule is one of intellectual truisms, with disappearance of the rule of necessity of the period of a divorced woman, there is no difference among different kinds of the period of a divorced woman. According to what put forward by now, although demise period of a widow has been established to respect deceased and period of a divorced woman has been intended to ensure lack of pregnancy, their subjects is woman and whenever a

woman does not have external being, rules of the period of a divorced/widow woman are not realized.

8. Conditions of gifts and costs of engagement and marriage

One of legal outcomes of sex change is the necessity of examination of guarantee and compensation of costs one of marriage candidates has incurred in order to hold wedding ceremony. Moreover, marriage is one of contracts which are commonly based on generosity of parties and of their families toward each other and rarely a marriage contract is executed with no donator contract concluded prior to and after that. Therefore, it is necessary to examine what effects the sex change has on legal conditions of such gifts. In other word, it needs to be seen if the person sexually changed guarantees such costs and gifts or he/she is not responsible for them.

Letter of law and procedures remain silent absolutely about the costs to marriage. During amendment of civil law, article 1036 of civil law was omitted, it provided that, "a fiancé" sustaining a loss due to distribution of engagement agreement can claim damages from the other party who disrupted engagement with no justified reason. But for the costs of engagement time, some jurists believe that if a fiancé abuse his/her rights, the other can receive the money he/she spent from her/him (Kātousiyān, Nāsser (1998). "Family Law", vol.1, p.169, 3rd edition, Enteshār Corporation).

The view of rights abuse does not match the topic discussed although it has been adopted by legislators under 40th principle of constitution and other articles because sex change surgery is performed medically as treatment of sexual crisis and rights abuse does not apply commonly to treatments of diseases even though one party conceals his/her problem/disease from the other and/or changes his/her sex without her/his permission. As a result, rule of marriage costs guarantee cannot be issued with reference to the view of rights abuse.

What seemingly matches legal principles is that whenever a person suffers from a sexual problem at time of executing marriage contract, of wish he/she himself/herself is aware but he/she does not inform other party of that, based on pride rule, other party can claim damage and conventional costs of wedding ceremony from the who changed his/her sex unless the other party can prove if he/she disclosed his/her problem and informed the other party of that, the other party would still marry him/ her, in which case he/she does not guarantee compensation.

But if sexual problem leading to sex change is arisen after marriage, respective person can be hardly considered guarantor of marriage costs for other party

because guarantee evidence is withdrawn from this case. But for gifts of engagement time, what is known as a gift in society custom is interpreted as donation (Hebah) in civil law. According to article 803 of civil law, until the property remains at donee's (Motahab) asset, donator (Vāheb) can revert donation contract and return given property to his own possession. Moreover, according to article 1037 of civil law, gifts of engagement time are refundable in the case of disruption of engagement. This rule can be generalized to post- engagement and marriage times (Emami, Assad Allah., and Safaie, Seyyed Hossein. (2001). "Family law", 8th edition, vol.1, pp. 44, Tehran University Press). Consequently, if given property is available, donator can revert and return it to his own possession with reference can revert and return it to his own possession with reference to articles 803 and 1037 of civil law. Therefore, sex change does not result in dissolution of donee's right of possession of given property, but donator has the right to revert it and can return it to his own possession provided that given property has not changed and remains in donee's possession.

Another question is that if given property is changed or sold is the other party allowed to revert it? According to article 1037 of civil law, if given property is not remained and property is among those being kept habitually, donator is titled to receive the price of said property unless it is proved that the property has been lost without donee's fault. But according to article 803 of civil law, if given property is lost or sold and/or is in possession right of another person and/or is changed, donator has no right to revert donation contract. Thus, according to article 1073 of civil law, donee or the person sexually changed is the guarantor of gifts unless he/she proves the property has been lost without his/her fault; but according to article 803 of the same law, he/she is not the guarantor of lost or changed gifts; and it remains to see the rule of which of these 2 articles is more identical to discussion subject.

Seemingly, rule of article 803 is more suited to above discussion since rule of article 1037 relates to engagement time the gifts of which more provide for the time after marriage and said time is effective in giving gifts. As a result, if engagement is broken, not leading to marriage time, it is justified that donee be the guarantor of gifts being kept habitually because donator has embarked on giving gifts in the hope of marriage and conjugation. But this condition does not hold for gifts given during marriage time which do not provide for future and donee is allowed to have any possession on given property. So rule of article 803 of civil law is more suitable for this case and mentioned person can request other party to return gifts if given property has not been changed and is

remaining in donee's asset(Bariklu, Alireza (2004, Fall). "Legal effects of sex change". The Humanities Instructor Quarterly, series 8, no.3, pp. 120-123).

9. Fate of the wife's marriage portion

As known also as "Sedāq", "Nahla", "Fariza", and "Ajr" (Mohaghegh Dāmād, Seyyed Mostafa (2002). "Family law". 9th edition, p.223, Islamic Sciences Publication Center, Tehran), marring portion is a kind of property that a man is required to give it to his wife, marring portion is a kind of property that a man is required to give it to his wife, marring portion is a kind of property that a man is required to give it to his wife(Kātouziyan, Nāsser. (1998). "Family law". 3rd edition, vol.1, p.138, Enteshār Stock Company). for marriage contract. Essence of marriage portion is based on tradition (Sonat) and religion in Iranian law and its analog can't be found in Western law(Emami, Assad Allah; Safaie, Seyyed Hossein. (2001) "Family law", 8th edition, vol.1, p.166, Tehran University Press Articles 1078-1101 of Iranian civil law have dealt with issues related to marriage portion. Now, in the case that a wife changes her sex, is she titled to receive her marriage portion completely or partially and/or is the marriage portion obviated due to dissolution of former marriage and former husband is not required to pay it? Does this fact sex change was embarked on before sexual intercourse or after that have any effects on the amount of marriage portion the wife deserves to receive? And does a wife's sex change without her husband's consent have any effects on merit/lack of merit of marriage portion or not?

In order to study issue of sex change and its effects on marriage portion, discussion is addressed separately under 2 titles of marriage portion in permanent marriage and marriage portion in limited-period marriage according to the conditions of the subject.

9-1. In permanent marriage

Different views have been provided about conditions of marriage portion in the case that one of spouses embarks on changing his/ her sex during permanent marriage.

9-1-1. Marriage portion is aborted as soon as sex change takes place

It may be said that, as an outcome of marriage, the portion of marriage is aborted as soon as sex change takes place and this rule is the same for assumptions of having and/or not having sex. Therefore, it is not necessary for the husband to pay marriage portion to former wife, and if he paid some amount before, he is allowed to refund it. The reason of this word is that, as some of jurists (Foqahā) argued, the truth of marriage is to trade the woman's sexual enjoyment (Boz'e) and marriage portion (Shahid-e Sāni, Zein Al-din Ibn Ali. (1958),

"Sharh Al-Lama't Al-Dameshqiyah", Dār Al-Ketāb Al-Arabi, vol.4, p.327), that is, marriage portion is the worth (Saman) in return for the woman's dowry (Kābin) and sexual enjoyment, and such trade is terminated because of changing sex, therefore, the worth is restored and, in new condition, the husband is not obliged to pay marriage portion.

This view has been criticized since thinkers believe that the truth of marriage is that a man and woman become husband and wife being a spouse for each other so necessity and acceptance of this task is put in writing and strength and truth of marriage depend on these very necessity and acceptance (Mo'men Qomi, Mohammad. (1996, Fall). "A word about sex change". Quarterly of Canon Law of the Household of the Prophet of Islam, yr.2, no.7, p.113, Qom). But marriage portion is considered as a gift the husband gives to his wife, which does not interfere with nature and essence and essence of marriage contract. Thus, requirement of marriage portion payment, which was obliged earlier, does not change after one or both spouses change their sexes. To support this critique, provisions of article 1087 of civil law can be revoked, which states that if a marriage contract is executed with no marriage portion, it is not nullified, rather it is referred to exigible dower while not mentioned marriage portion results in nullification of marriage contract if it is considered an element of marriage(A verse of Holy Quran supports this word by stating that you do not sin if you divorce (for some reasons) your wives before having sex or determining marriage portion. (at this time) benefit them (by giving a suitable gift). One who is able, at his level of ability, and one who is in hardship, as he can afford, give a deserving (suitable for giver receiver) gift. And benefactors are required to do this. Surah Baqara, Verse. 236. In this verse, execution of marriage contract is asserted before marriage portion determination since assumption of divorce prior to marriage portion determination holds in the case that marriage has taken place). In addition, another reason of this word is that, based on article 1082 of civil law, the woman becomes possessor of marriage portion as soon as marriage contract is executed. As a result, the truth of marriage is not to trade something with marriage portion so that termination of marriage contract results in returning marriage portion to the first possessor and in husband's clearance from obligation to pay marriage portion.

Based on what put forward, it is clear that the truth of marriage portion is to devote some property to the wife in addition to the truth of conjugation, like some conditions being included while executing marriage contract and legislators accept such conditions. The requirement of this condition is the

wives' possession of marriage portion and, after nullification of marriage contract. In the case that continuity of possession of marriage portion is doubtful; the requirement of presumption of continuity (Esteshāb) rule is permanency of former possession with no difference between partial or whole portion of marriage. Therefore, with one or both spouses' changing sex, necessity of marriage portion payment, previously be obliged upon, remains unchanged.

Some authors, who consider sex change as causing nullification of marriage contract from the beginning, tell some details On the case where husbands change their sex and on the case where wives do and do not consider payment of marriage portion necessary at all in the event of lack of sexual intercourse for the first case and also for the second. Based on this belief, in the first case with nullification of marriage, it is discovered that marriage portion was not added to the wife's asset and there is no reason for her possession of it (Bariklu, Alireza (2008). "Legal effects of sex change". The Humanities Instructor Quarterly, yr.1, no.3, p.115.). In the second case, when a woman changes her sex, her real sex is discovered and it is proved that, in this assumption, female person has been a male actually and marriage contract has been executed between two person with the same sex and since conjugal bond between two homogenous persons is unlawful, marriage portion does not apply to it (Bariklu, Alireza (2008). "Legal effects of sex change". The Humanities Instructor Quarterly, yr.1, no.3, p.118). This jurist believed that in the event of husband's application to change his sex and realization of sexual intercourse, the wife deserves exigible dower, and in order to justify his view, the jurist stated that, based on the view of marriage nullification, specified dower has been never possessed by the wife, but because her husband had sexual intercourse with her, he is obliged to pay eligible dower according to evidence of value respect and article 1099 of civil law.

To evaluate this view, it can be said that marriage is terminated since real sex change and its dissolution has no retrogressive effects. As a result, the wife's right of marriage portion, which is created by marriage contract, does not disappear. Of course, UN cases where sex determination or correction takes place and former sex of one of spouses is clarified, marriage nullification is acceptable, as mentioned earlier.

On the other hand, some of experts believe that although the wife enjoys the right of claiming whole marriage portion superficially, it contradicts thinkers' manners because, based on thinkers' manner, a female person deserves to receive marriage portion

due to obedience while in assumption of sex change, marriage portion claimant is a male at the time of claiming. Wish reference to a narration, the Excellency Amir Al-Mo'menin Ali (Greetings to him) merged a wife into men although she had married her paternal cousin, had had sex with him, from which a child had been born, without requiring the husband to pay marriage portion. Although validity of that narration is problematic in some accounts, it is perfectly authentic in others and it has been referred to by some of jurists in determining a neutral person's share of inheritance (Even some of jurists like Seyyed Morteza, Sheikh Mofid, and Ibn Edris, who do not consider a single narration as a proof, have referred to this Hadees. Quoted from Mo'men Qomi, Sheikh Mohammad. (1994). " Kalemāt Al-Sadideh Fi Massa'el Al- Jadideh". P.109, Nashre Eslami Institution, Qom).

Given that narration and obvious manner of thinkers that only female sex deserves to receive marriage portion, it can be concluded that, in this assumption, former wife and current man does not have the right to receive marriage portion from the former husband. From this reasoning, it is inferred that not only womanhood and wifeness are preconditions of entitlement of receiving marriage portion, but also marriage portion entitlement is aborted due to disappearance of female sex while there is no reason for marriage portion abortion on this basis (Bariklu, Alireza (2008). "Legal effects of sex change". The Humanities School Quarterly, yr.1, no.3, p.115). Also, to author's mind, it is not unlikely that the narration be about a really bisexual person, whose male sex had been preferred to female sex by the Excellence and had been merged into men by Him. In other words, given that legislators refuse to accept a bisexual person despite he/she has faculty and distinction of both sexes physically, with potency of male sex, in fact, the marriage between that woman and her cousin had been an instance of marriage between two homogenous persons and rule of marriage portion payment is obviated due to nullification of marriage from the very beginning. Thus, this reasoning is difficult to accept and seems not to be compatible with legal such as rule of rights continuity and religious rule stating.

9-1-2. Sex change results in establishment of whole marriage portion

According to this view, in any case including whether the wife attempts to change sex or her husband does it and/or whether she had a sexual intercourse with her husband or not, she deserves to receive whole marriage portion.

In Iranian civil law, although rules for demise, apostasy, sex change, etc. have not been asserted,

given the article 1082 of civil law stating that as soon as marriage contract is executed, the wife becomes possessor of marriage portion, and given that legislator has considered only divorce as an exception, it can be inferred that cases like sex change, demise, and apostasy do not reduce marriage portion by half in the view of legislator. Therefore, in cases where the wife changes her sex prior to sexual intercourse, she is entitled to receive whole marriage portion, in which some of jurisprudents believe (For this problem, Imam Khomeini believed in payment of whole marriage portion, stating that whether whole or half of marriage portion needs to be paid in the case of not having sexual intercourse prior to sex change is problematic, but similar to it is that the husband must pay whole marriage portion. Mousavi Khomeini, Rouh Allah. (1990). "Tahrir Al-Vasileh". 3rd edition, vol.2, p.627, Esmāiliyan Publications, Qom).

It should be added given Quranic verses like: And pay (completely) the wives' marriage portion as a debt (or gift). (But) if they donate you something by consent, it is lawful and agreeable to use (Surreh Nessā, Verse.4), and given article 1082 of civil law, marriage portion is not aborted due to sex change because it is not a component of marriage post, rather it is as a gift being given to a wife by her husband, not interfering with essence and nature of marriage contract. But it is a credit task and secondary to essence and nature of marriage and the wife is possessor of whole portion of marriage, being allowed to manipulate it in any forms, and requirement of presumption of continuity (Esteshāb) rule is that even after marriage termination due to sex change, marriage portion needs to be the wife's asset.

9-1-3. In the case of having sexual intercourse whole of marriage portion is paid, if not, half of it is paid

Based on this view, sex change is attached to divorce and all valid reports provided on divorce regarding necessity of payment of whole marriage portion in the case of having sexual intercourse and of half of it in the case of not having sexual intercourse apply to the issue of sex change (Horr-e A'āmeli, Mohammad Ibn Hassan. "Vassā'el Al-Shia'h Ela Tahsil-e Massā'el Al-Sharia'h". Dār Al-Ehyā-e Beirut, chapter 54 of chapters on marriage portion, vol.15, p.65, Hadeeses 1, 4 and 5; Mo'men Qomi, Mohammad. (1996, Fall). "A word about sex change". Specialized Magazine of Canon Law of the Household of the Prophet of Islam, yr.6, no.23, p.110). The reason of this group is the existence of valid reports and Fawāl religious decrees of jurisprudents, considering necessity of whole marriage portion payment dependent on having sexual intercourse, whole marriage portion needs to

be paid, and otherwise, half of it needs to be paid. The said view can be criticized since those narrations are specific to divorce and can't be referred to in sex change discussion, in other words, there is no reason for attaching sex change to divorce and no distinctions exist between having and not having sexual intercourse. So having no sexual intercourse plays no roles in the amount of marriage portion and the wife is entitled to receive whole marriage portion (Kharazi, Seyyed Mohsen. (2000, Fall). "Sex change", Specialized Magazine of Canon of the Household of the Prophet of Islam", yr.6, no.23, p.110).

Legally, article 1092 of civil law provides that whenever a husband divorces his wife prior to having sexual intercourse, she is entitled to receive half of marriage portion and if he has already paid more than half of it, he has the right to refund excess amount over the half exactly or alike or in cash price. The concept against the article is that whenever a husband divorces his wife after having sexual intercourse, he is obliged to pay whole marriage portion. This article has been adopted from well-known Imamiah Foqahā (jurisprudents), according to which as soon as marriage contract is executed, marriage portion becomes a debt on the husband duty, payment of which wholly is necessary by the husband after having sexual intercourse. But the reality is that it is not capable of clarifying the rule of discussed topic and that to compare sex change with divorce is not correct. On the basis of article 1082 of civil law, as soon as marriage contract is executed, the wife becomes possessor of marriage portion and cases of reducing marriage portion by half have been stated in civil law as things specific to dismissing this rule that sex change is not among them.

Therefore, acting on the said article totality is not problematic and the man is obliged to pay whole of wife's marriage portion even if they had no sexual intercourse (Kharazi, Seyyed Mohsen. (2000, Fall). "Sex change", Specialized Magazine of Canon of the Household of the Prophet of Islam", yr.6, no.23, p.110).

9-1-4. To embark on changing sex without husband's permission results in abortion of whole marriage portion

According to this view, if a wife changes her sex without her husband's consent, the husband is not obliged to pay marriage portion. Proponents of this view reason that when a man marries and becomes committed to pay marriage portion, acceptance of such commitment is dependent upon his wife' living with him. But when the wife causes marriage to be dissolute due to her sex change without her husband's consent, in fact, she causes a material loss equivalent to marriage portion to him and is guarantor of

damage compensation under canon law rules and legal regulations. In addition, if a wife changes her sex without her husband's information and permission, she has no right to claim marriage portion because she cheated him by not informing him of her own condition. As a result, if the wife decides to claim marriage portion, the husband has the right to return based on the pride rule and, with reference to trading off, 2 parties' liability to each other is aborted. Thus, in the case that the wife had received marriage portion prior to sex change, she is obliged to return it; and if she had not received any marriage portion, the husband is not obliged to pay it (Mousavi Khomeini, Rouh Allah. (1990). "Tahrir Al-Vasileh". vol.2, "Book Marriage", Chapter on marriage portion, problem 15, p.269, Esmâiliyan Publications, Qom) and, of course, there is no difference between cases of having and not having sexual intercourse(Kharazi, Seyyed Mohsen. (2000, Fall). "Sex change", Specialized Magazine of Canon of the Household of the Prophet of Islam", yr.6, no.23, p.191).

The major problem obtaining husband's consent has duty- based veneration based on religious norms, for the issue of sex change, the wife wastes no property of her husband, for example, she did not occupy estate and/ or ruin a fruit garden, and rather she merely made some changes in her body legitimately. Now, if such changes prevent conjugation and the husband from reaching his goals, such prevention is not a guaranteeing factor due to her husband's not reaching his target goals and ends. Consequently, as in the case of wife's death where marriage portion is not aborted, it is not aborted in this assumption, too. In other words property is not a cause for conjugal continuity so that the wife wastes it because of making an obstacle, rather this obstacle (prevention) is an accidental means being made at the wife's or husband's will or both, for all cases, it is necessary to pay whole marriage portion because in such cases, subject of marriage contract has been disrupted, not the contract itself, so the husband is obliged to pay whole marriage portion(Hakim, Seyyed Mohsen. "Mostamsak Al-O'rvah", vol.14, p.308, Ayatollah Mara'shi Najafi Publications, Qom).

9-1-5. In the case of having sexual intercourse, whole marriage portion is paid, if not, nothing is paid

In this view, for not paying marriage portion supposing that sex change had taken place prior to sexual intercourse, it can be argued that, based on the view of termination of marriage contract, former wife/ current man is not entitled to receive marriage portion because, prior to sexual intercourse, like contract termination, the rule for this case is that no marriage portion is paid to the (former) wife due to

her defects and based on consensus of jurisprudents if marriage is terminated due to the wife's defects, prior to sexual intercourse, no marriage portion belongs to her (Ansâri, Sheikh Morteza. (1996). "Marriage", p.45, No publisher, Qom). In other words, if marriage termination prior to sexual intercourse, due to the wife's defects, results in not belonging of marriage portion to her, she is not entitled to receive it, as in discussed subject that the wife embarked on changing sex because of her sexual defects and problems. Since in the case of marriage termination, the husband is allowed not to exercise option, but for discussed subject, the wife attempted to sex change and caused marriage to be terminated forcibly. As a result, sexually changed wife has no rights to claim marriage portion from her husband. But if sex change takes place after having sexual intercourse, marriage portion needs to be paid to former wife given that medically, only persons with sexual problems can change their sexes with respective specialists' approval, and since living with female sex was difficult for the wife, she embarked on changing her sex; marriage portion needs to be paid to her. Of course, this reasoning is also problematic because although sex change operation is performed as a treatment medically and such a condition is considered a defect commonly, and studies show that such persons had sexual problems at the beginning of adolescence period, it is clear that any defects does not result in marriage termination and any defects does not result in marriage termination and acceptance of sex change as a defect causing marriage termination is against the rules. Consequently, in discussion of marriage termination, sex change conditions must not be compared to other religious and legal defects. Summing up said topics and views, it should be noted that for permanent marriage, if the husband changes his sex, there is no reason for abortion of marriage portion partially or wholly and former wife is entitled to receive whole marriage portion whether sexual intercourse took place or not. But if the wife changes her sex, given expressed views and scrutinizing reasons and problems of each one, it seems that if sex is changed after having sexual intercourse, whole marriage portion must be paid; but in the case of not having sexual intercourse, no marriage portion belongs to the wife.

9-2. in limited- period marriage

What has been stated so far was about conditions of marriage portion in permanent marriage, which differs in limited- period marriage discussion since, according to jurisprudents; such marriages are seemingly a part of trades as benefiting reports demand(Many report assert that temporary marriage is among trades, including following ones:

1) Mohammad Ibn Moslem asked Imam Mohammad Bāqer (Greetings to Him) about temporary marriage. Imam replied, "temporary marriage is not limited to 4 wives since they are not divorced, they inherit nothing, and they do not pass on anything. In fact, such a wife is hired (Mo'ezī Malāyeri, Sheikh Ismā'eel". Jāme Al-Ahadees-e Shiah, vol.21, p.23, Qom;

2) Obaidah Ibn Zarāreh related that his father had asked Imam Sādegh (greeting to Him), "Is temporarily marrying with four women lawful?" Imam replied, "Marry temporarily one thousand women because they are hired" (Ibid. p.24), for which marriage portion is in return for sexual enjoyment (Boz'e), thus, in the case of wife's disloyalty the husband can decrease her marriage portion. In any case, the question is that, if temporary wife attempts to change her sex during marriage period, is she entitled to receive marriage portion or not? Two answers were given for above question.

9-2-1. Marriage portion is decreased in proportion to remainder period of marriage

Since in temporary marriage, some part of marriage portion equal to violation period is returned, if the temporary wife embarks on changing sex, she is obliged to return some part of marriage portion equal to violation period, but if she does that with the husband's permission, she is not a guarantor because her husband himself permitted her and perhaps his permission could result in release from obligation and in neglecting the period, and this is the case when the husband attempts to sex change (Kharazi, Mohsen. (2000, Fall). "Sex change", Specialized Magazine of Canon of The Household of the Prophet of Islam", yr.6, no.23, p.125).

Reasoning of this view is that although temporary marriage is not an instance of lease, being different from that in some aspects, it is similar to lease in other aspects. Unlike permanent marriage, in temporary marriage, marriage portion is in return for sexual enjoyment, which is nothing more than the truth of such a marriage, and marriage portion is among marriage elements. For this reason, to mention marriage portion is one condition of accuracy of temporary marriage.

Following famous words of Imamiyeh jurisprudents, article 1095 of civil law provides that not to mention marriage portion results in nullification of temporary marriage. Some jurists, following Imamiyeh jurisprudents said that, in temporary marriage, if the wife does not obey after having sexual intercourse, the husband is allowed to decrease her marriage portion in proportion to remainder period of marriage.

Based on what stated, whenever a temporary wife changes her sex during the period of marriage,

her act violates the period since resulted in prevention of husband's enjoyment, and she is obliged to return the property, taken from her husband, in proportion to violation period; in the case of not receiving her compensation, husband should calculate remainder period and deduct it from whole marriage portion (Mohaghegh Dāmād, Seyyed Mostafa (2002). "Family law". 9th edition, p.320, Islamic Sciences Publication Center, Tehran).

9-2-2. Whole marriage portion is paid to the wife

Based on another view, in temporary marriage, if the wife changes her sex, whether before or after having sexual intercourse, the husband is obliged to pay whole marriage portion. Reasons of this view are similar to those stated for permanent marriage, indicating that husband is obliged to pay whole marriage portion. Article 1096 of civil law provides that wife's death during the period of marriage does not result in marriage portion abortion and, also, if the husband does not have sex with her until end of period, marriage portion is not reduced. Seemingly, in discussion of marriage portion establishment on husband's obligation, there is no difference between permanent and temporary marriages in these aspects. In addition, narrations indicating that temporary marriage is a kind of trade cannot be a basis for rules since such a marriage cannot be considered a real instance of lease so that all lease norms can be executed for it. Given the proofs we noted to prove the necessity of payment of whole marriage portion in the view of permanent marriage, therefore, like permanent marriage, in temporary marriage, the wife's sex change is considered as manipulation of the subject of marriage contract and is similar to demise and apostasy in terms of rules. So the temporary wife is entitled to receive whole marriage portion after changing her sex although remainder period of marriage is considerable.

By talking two abovementioned views together, it appears that the surface of temporary marriage is its being a trade, which is supported by strong evidence from narrations and jurisprudents' words, as a result, the first view, deducting some part of marriage portion in proportion to the wife's violation period from fulfilling her duties due to sex change, is more compatible with standards of law and of canon law (Mohaghegh Dāmād, Seyyed Mostafa (2002). "Family law". 9th edition, p.268, Islamic Sciences Publication Center, Tehran). But if the husband changes his sex, such evidence and reasons do not apply to the subject and can't result in deduction of marriage portion because violation is not attributable to the wife and, based on the act rule, the husband is obliged to pay whole marriage portion.

Discussions

1) In the event that a person is mistaken about his/ her sex and gets married according to that, then, his/ her true sex is discovered and reported by experts, discovery of former sex result in discovery of former marriage contract nullification. Even if some actions are taken in order for true sex to appear or to be strengthened, such actions should be considered correction or determination of sex, not sex change. based on this assumption, at the time of idiomatic sex change, it becomes clear that the parties' sexes were not different actually and marriage in nullified from the time of execution of marriage contract, therefore, marriage nullification of true sex change, contract of marriage is correct until the difference between two sexes continues; and contract is terminated at the moment of disappearance of the difference and parties' becoming homogenous, whether one spouse or both of them have attempted to change sex. Only in one assumption, conjugation continuity is probable, that is, when both spouses embark on changing their sexes simultaneously. But this probability is refused because the truth of marriage and conjugation, although it is a credit concept, is proportional and invariable; therefore it has no potency to continue and disappears absolutely after changing sex. So presumption of continuity (Esteshāb) is impossible. Legally, imposing husbands' and wives' obligation on new men and new women is a task for which they had no intention. Therefore, as rule of marriage contract subordination to parties' common intention on the type of contract and its subject as well as article 194 of civil law demand, marriage is terminated immediately after spouses changed their sexes.

2) In the event that performing sex change surgery be essential and required due to particular conditions, undoubtedly, there is no need to obtain spouse's consent and each spouse is allowed to change his/ her sex despite the other's disagreement. But in case not performing sex change surgery inflicts not much damage on the applicant and he/ she is not in hardship due to living with his/ her current sex, it is necessary to obtain spouse's consent in order to prevent causing loss to him/ her and to observe his/ her rights while taking an action without obtaining other party's consent is an instance of cruelty and a religiously prohibited act because it ruins spouses' rights. So changing sex without spouse's permission is not lawful and the only authorized way for a married person to change his/ her sex is to obtain his/ her spouse's consent.

3) Having changed his/ her sex, if a man/ woman transforms into his/ her first sex, former conjugation is not restored since restoration of conjugation needs a new cause. Also, presumption of conjugation continuity (Esteshāb) is not possible

because conjugation has disappeared at some time, rather presumption of nullify (Esteshāb-e Adami) can be executed and a rule can be issued to announce nullify of conjugation and of its restoration.

4) Following views of Imamiyeh jurisprudents, in Iranian law, if signs of one sex are dominant over the other's in a neutral person, rules for dominant sex result on him/ her and he/ she is obliged to follow them. Thus, in case specialists (of forensic medicine) recognize a neuter, whether problematic or non-problematic) belongs to specific sex, a rule is issued to attach him/ her to the sex intended by specialists so he/ she can benefit from all rights of dominant sex including right of marry a person with opposite sex.

5) Whenever a mother changes her sex and transforms into a man, her marriage with her daughters is not lawful because subject of veneration is marrying daughters who are still her daughter even after her sex change and transformation into a man, therefore, such a marriage is religiously prohibited. Also, if a father transforms into a woman by changing his sex, current woman (former father) is not allowed to marry her sons despite she is not regarded their mother since criterion is the rule of veneration of parent- child relationship, which is still remaining. After changing sex, lineal close family members, other than fathers and mothers, like brothers, sisters, aunts and uncles remain still as close family members and to marry them is not lawful because norm of veneration is still in place.

6) In marriage with former daughter-in-law is not lawful because sex change does not alter titles of parenthood or childhood and sons are still sons as before and their spouses are an instance of "Your sons; wives". But if the daughter-in-law changes her sex and transforms into a man, none of titles resulting in prohibition apply to his marriage with former mother-in-law and since no reason exists for marriage veneration, rule of lack of veneration of such a marriage is issued.

7) After discovering nullification or termination of former marriage due to the woman's sex change or correction, current man is not required to keep the period of a divorced woman in order for him to marry because belonging and necessity of rules concern concurrently and permanently with the existence of subjects and rule not exist presently. In this context, if a woman's sex is changed during the period of a widow or divorced woman, due to disappearance of rule subject, all rules specific to women, including period of a divorced woman, disappear and their continuity is impossible with subject dissolution.

8) If the sexual problem of sex change applicant exists at the time of executing marriage contract and he/ she does not inform other party of his/ her condition, based on pride rule, other party is allowed

to claim all damages and conventional costs of wedding ceremony from him/ her. But if the sexual problem leading to sex emerges after marriage, respective person cannot be considered the guarantor of other party's wedding costs.

9) For permanent marriage, if the husband attempts to change his sex, there is no reason for abortion of some of whole of marriage portion, whether or not sexual intercourse has taken place, and the wife is entitled to receive whole marriage portion. In the event that the wife changes her sex after having sexual intercourse, whole marriage portion must be paid, but in the event that married couple had no sexual intercourse, no marriage portion belongs to the wife. For temporary marriage, since it is a sort of trade, as soon as the wife changes her sex, amount of marriage portion is deducted in proportion to remainder period of time but in case the husband changes his sex, there is no proof to deduct marriage portion and, according to action rule, the husband is obliged to pay marriage portion.

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2/13/2014