

"Position Of The International Law From The Phenomenon Of Transgender People"

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Abstract

This study tackled the position of the contemporary international law from the phenomenon that became of concern in most states, and it is the phenomenon of transgender people and the extent of availability of rights for them in verdicts of the International Laws. As well as the nature of the sexual transformation in International Law, and the rights of transgender people under the conventions, in three sections: the first topic dealt with the nature of transgender individuals, and the second topic focused on international legal trends in gender transformation, while the third topic was devoted to the rights of transgender people in international law. The judiciary in its approval of sex correction operations or not, as the prevailing trend authorized them with the presence of some contrary decisions. This study recommended that the international community should organise some conferences and seminars in order to clarify the concept of transgender people, as well as to clarify the religious opinion of the main religions in this category.

Introduction:

Although there is a small group of transgender individuals in society, this group suffers from marginalization, due to the sensitivity and change of their sexual status, so societies have tried to deny this social group, and after the great development in medical terms, which has provided a great opportunity for this group to determine their gender. The real one that is compatible with her psychological and physical conditions, so that the person becomes the gender closes to this state.

The international community, through its institutions and bodies, has tried to show this group, the persecution they may be exposed to, especially because of societies' ignorance

of the nature of this group and their view of them as abnormal, even through the birth defects that these individuals suffer from are the creation of the Almighty God. They are not at fault for it, and benefiting from scientific progress in order to determine the human sex is something that is Okay from a religious and social stand point and does not represent a violation of any religious or social rules. The international community has tried more than one way to protect the rights of this special group.

The researcher to be able to clarify the international legal nature of the phenomenon for the sexual transgender people, he did divide this study into three main topics, they are:

- **The first topic:** nature of the transgender individuals.
- **The second topic:** international legal trends in gender conversion.
- **The third topic:** transgender rights in international law.

Significance of the Study:

Significance of this study is represented in the following:

- **Firstly:** Tackling a marginalized group in the society, which is the transgender group, and that this group had not been addressed in previous study, especially with regard to the international role in protecting this group.
- **Secondly:** There is ignorance among members of society regarding the category of transgender people, the rights and duties of this category, and the societal view of this category, which is based on a lack of knowledge among individuals about the conditions of this category and the reasons for its emergence.
- **Thirdly:** Showing the legal problems affecting the transgender phenomenon at the international level and the international efforts made to solve and end them.

Problem of the Study:

The problem of this study conceals in the adequacy of international legal texts and specialized and general conferences and treaties in dealing with the phenomenon of transgender individuals, the extent of the international community's interest in the category of transgender people, the extent to which general human rights apply to this category

and its ability to provide the necessary protection for them, and the extent of its ability to integrate that category. Class in society and societies accept it. This study attempted to answer the following questions:

1. Are there international conferences, meetings, or events specifically for transgender people?
2. Are international efforts made to solve transgender problems at the global level?
3. What mechanisms did the United Nations use to solve transgender people problems?

Difficulties of Study:

Difficulties of this study are represented in each of the following:

Firstly: There is great ignorance in societies, especially Arab and Islamic societies, regarding the category of transgender people and the extent of its agreement with the religious and social dimension.

Secondly: The lack of legal sources that addressed this issue from this perspective, especially at the international level.

Thirdly: The positions of Arab countries differ from those of foreign countries due to the difference in sources of legalization between Arab countries and foreign countries.

Methodology and Scope of Study:

This study depends on the descriptive and analytical approach and the texts and outputs issued by international forums regarding transgender people.

The first topic:

Concept of gender reassignment and the position of Sharia and law on it:

The topic of human sexual identity is one of the topics that has gained wide population, especially in Western Societies, Legal scholars and legislators in Western countries have dealt with this topic in detail, unlike most Arab jurists and jurists, many of whom tried to stay away from this topic and not address it, and given that this study is basically.. it deals with transgender people, defining the concept of this category and what it means, the extent to which transgender people relate to their

gender identity, and what terms are synonymous with the term transgender.

The matter is not limited to explaining the concept of sexual transformation, but the legal and social position on the sexual transformation process must be determined and the extent of its conformity with Islamic law, which is the cornerstone of the life of Islamic societies from which society derives its customs and traditions, and everything is compared according to its provisions, and anything that contradicts or contradicts Islamic law is considered invalid, this matter is reflected in the application of local law to international agreements and treaties. The researcher will address this matter through the following two requirements:

- The first requirement: Concept of sexual transformation.
- The second requirement: Position of Islamic law from transgender process.

The first requirement

Concept of transgenderism

Linguistically speaking, sexual transformation means the turning of something away from its face. This word continues with the verb (about) and one of its meanings is removal and change, unlike water. As for the word sex⁽¹⁾, it means in the language every type of thing, people, and bird⁽²⁾, and sex is also known. However, it is the "natural properties" that distinguish both males and females, and the various properties that result from that, and therefore it can be said that the linguistic meaning the transformation of sex, which is to change it, and the change is from male to female or from female to male⁽³⁾.

It is understood that there is a set of interconnected characteristics that would determine the sex of a person and determine the entity of his sex so that a distinction is made between male and female, and accordingly, a person can

⁽¹⁾ Ibn Manzur, Lisan Al-Arab, Dar Sader, (3rd ed.), (Vol, 11), P. 188.

⁽²⁾ Al-Farahidi, Abu Abdul Rahman Al-Khalil Bin Ahmad Bin Amero Bin Tamim (170), Edited by Mahdi Al-Makhzoumi & Ibrahim Al-Samirai, Dar Wael Makhtabat Al-Hilal, Part 6, P. 55.

⁽³⁾ Al-Amin Ihsan (2019), Sexuality and Sexual Culture in Al-Ma'athor and Islamic Heritage, Dar Al-Hikmah, Lark Journal of Philosophy, Linguistic and Social Sciences, (P. 34), Issue 2019, Research in the Science of Religions.

determine his sex through a set of elements identified by specialists in determining human sex. These elements are distinguished from others by their stability and balance in terms of their external appearance⁽⁴⁾, and internal essence. The researcher will explain these elements through the following points:

First: the formal elements:

In fact, the external appearance of a person contributes to determining his sex, and the most prominent thing that distinguishes males from females is the reproductive system, while the male is distinguished from the female by the muscular growth of the body, the harshness of the voice, the distribution of hair, and the lack of breast development. The male reproductive system consists externally of the penis and testicles, and internally with a group of organs such as the epididymis, vas deferens, and a group of accessory glands, and the female system consists of the vulva, the labia majora and minora, and the human, and internally the vagina, uterus, and ovaries⁽⁵⁾.

The matter of determining a person's sex is not limited to his reproductive system, but the male is distinguished from the female in terms of muscular and bone structure, as the hip bones differs between men and women, as well as the bones of the skull as the bones in males are denser and rougher than those in females, and despite the fact that the shape and structural structure of the bones. The human body is one of the distinctive signs of the human race, but this standard is less important from a formal standpoint than the standard of the reproductive system and its significance⁽⁶⁾.

Second: biological elements:

What is meant by the biological standard is the composition or tissue of the cells, which number approximately fifty million cells, each of which carries specific chromosomes, and it differs between males and females, as male cells carry (xy) pigments and female cells carry (xx) pigments, so if there is a (y) pigment

⁽⁴⁾ Mahmoud, Mahmoud Asim (2004), Human Sex Change, A Study in Criminal Law & Islamic Sharia, Master's Thesis, University of Baghdad, Baghdad, & the following, P. 338.

⁽⁵⁾ Saleem Hussein (2002), sex encyclopedia Osama Publication House, Amman, P. 23.

⁽⁶⁾ Kamal, Ali (1994), Sex and the self in human life, (3rd edition), Arab Publishing and Distribution Corporation, Beirut, P. 79.

in the female's chromosomes then your laboratory examination of human cells shows the presence of the dye (y), which means that the human gender is male⁽⁷⁾.

Third: psychological elements:

It is noted that the psychological standard is an internal factor that leads to the generations of a feeling in a person through his inclinations, sensations, and emotions. The male who tends to behave like males, and the reason for this is due to the way the family deals with the child or deep psychological reasons, and the reason for this may be due to some distorted sexual experiences according to psychologists, which leads to establishing some wrong sexual beliefs in a person, and this matter may be treated psychologically, or the matter may become complex if this matter is accompanied by some physical symptoms⁽⁸⁾.

Based on the above, it can be said that determining sex is important in understanding the entire process of determining sexual transition, and it is not possible to reach the essence of sexual transition without knowing the mechanism of determining human sex. Therefore, sexual transition simply means changing sex, or correcting gender identity, and the person who does this is called Transgender matter, and a transsexual is a human being, whether male or female, who changes his sex so that it returns to its natural state⁽⁹⁾.

Despite the above, sexual transformation is not limited to people who are in a psychosomatic state and need for sexual stability. Rather, the matter goes beyond that to include normal people who are psychologically and physiologically stable, but who have a desire to change their sex due to disturbances in sexual identity. These people have a feeling it is necessary to change their gender for psychological reasons,

⁽⁷⁾ Al-Shargawi, Al-Shahabi Ibrahim (2002), *The fixation of sex and its effects, a comparative study in Islamic jurisprudence and positive law*, Dar Al-Kutub, Cairo, P. 103.

^(8) Saad Ahmad Mahmoud (1993), *Sex change between prohibition and permissibility, a comparative study*, Dar Al-Nahda Al-Arabia, Cairo, p. 303.

⁽⁹⁾ Abu Shadi, Anas Abdel Fattah (2016), *Sexual transformation between jurisprudence, medicine, and law*, Al-Diraya Magazine, (16P), Damascus, P. 508.

and some jurists refer to this category as psychologically effeminate⁽¹⁰⁾.

By tracing international law with regard to sexual transformation, no definition was found in the texts of international law that dealt with this accountability. However, there is a definition in the Yogyakarta Principles regarding the application of international human rights law, which included a definition of the expression "gender identity" as referring to what every person feels in His decision is based on an internal and individual experience of gender, regardless of the gender registered in the birth certificate, including the person's sense of his body, and this may include modifying the appearance or functions of the body by medical , surgical, or other means, and other means of expressing gender, such a clothing, manner of speech and behavior⁽¹¹⁾.

The Second Requirement

The Position of Islamic Sharia on Sexual Transformation:

In fact, Islamic Sharia has had a balanced position in questioning sexual transformation, as most Islamic Sharia jurists have argued that it is permissible to return sex to its natural course. If the human body is more likely to be feminine and most likely to be accompanied a female, it is permissible to transform the body into complete femininity, and this is for the sake of correcting sex and not converting it, permissible to correct sex, and the source of permitting this matter is within the framework of the permissibility of medication in Islamic jurisprudence in order to remove illnesses, and illnesses, and atrophy of male or female organs is considered among illnesses and illnesses that may be removed through modern medicine, and this does not conflict with the principles of Islamic law (Sharia)⁽¹²⁾.

⁽¹⁰⁾ Al –Sharaa, Rakan Hassan (2002), Sexual Transition and its Rulings, A Comparative Study, Master's Dissertation, Al-Al-Bayt University, Mafraq, P. 14.

⁽¹¹⁾ These principles were established in Yogyakarta, Java These principles include 29 principles for protecting people's sexual rights. These principles address the rights of transgender people in accordance with the international Charter on Human Rights.

⁽¹²⁾ Al-A'sqalani, Ibn Hajar, Fatah Al-Bari in explaining Sarh Al-Bukhari, Salafi Library, Riyadh, Diene Loco, P. 332, Ibn Hasmdi, Farhan (2018), Sex change ruling, an evaluation study in light of the objectives of Sharia, International

Sharia jurists have called a person who suffers from a defect in his reproductive organs 'hermaphrodite. They have divided the hermaphrodite into three categories: the problematic hermaphrodite, which rotates between masculinity and femininity in a way that is difficult to determine its sex, as well as the clearly masculine hermaphrodite, and the clearly feminine hermaphrodite. Islamic legislation has confirmed that the obvious hermaphrodite is permissible. She treats herself, whether she is male or female, and she performs the appropriate surgery in order to determine her sex. Islamic Sharia also allows a hermaphrodite, after treatment and sex determination, to marry the opposite sex, and she is entitled to all the rights that Sharia has approved for her sex, such as maintenance, obedience, inheritance, etc⁽¹³⁾.

Although male or female hermaphrodites are easy to deal with in Islamic Law in terms of permitting sex correction of the apparent condition, as for problematic hermaphrodites, the matter was extremely difficult in the past, as Sharia was trying to study the external phenomena of the human body, and accordingly, it is possible to help the hermaphrodite in treating itself, whether it is male or female, female, but with scientific progress it has become possible to use radiographs, anatomy, and glandular examinations, as through these examinations, it is possible to know the tendencies of hermaphrodites and which suit is closest to them, whether masculine or feminine⁽¹⁴⁾.

As for sexual conversion for the sake of sexual conversion, where a man would change his sex to a female or vice versa, the established opinion that it is not permissible to perform a medical procedure for the purpose of conversion for a medical reason, whether the purpose of it is to highlight the sexual organs, or to transplant reproductive organs in order to change the sex, and Islamic Sharia jurists did not approve of it.

Journal of Jurisprudential and Fundamental Studies (Vol. 2), (No. 2) The World Islamic University, Malaysia, P. 52.

⁽¹³⁾ Al-Ardebili, Yousef Bin Ibrahim (2006). Edited by Khalaf Mufaddi Al-Mutlaq and Hussein Abdullah Al-Ali, Vol. 2, Dar Al-Diya, Kuwait, P. 269.

⁽¹⁴⁾ Ahmad, Huweida Magbool Al-Sadiq (2022). Sex Change, A Comparative Legal Jurisprudential Study, Al-Qalzam Journal for Security and Strategic Studies, No. 8, Turkey P. 154.

Conversion for psychological motives, but conversion procedures must be for explicit physical motives⁽¹⁵⁾.

Second Topic

International Legal Trends in Gender Reassignment

In fact, the process of sexual transformation was one of the unclear matters at the world and international level, but with the passing of time and the rights and freedoms expansion, especially the Western of them that call for the absolute freedom, and most of national legislations had been made on the international level of permitting sex correction, but more than that, many states had permitted transgender formation according to human wish himself; for it granted individuals the right in that to choose their own sex all by themselves, and they have freedom in changing it as they like.

But on the Arab level, the law of the Arab countries were more influenced by the Islamic trend that forbids the process of changing sex without a medical reason, and this trend is the prevailing trend in most countries of the World, which do not allow sex to be changed from male to female or vice versa if there are medical reasons related to the human organs and glands. For psychological reasons in some legal systems, and so that the researcher can address international trends at the global and regional levels in sex conversion with the following two requirements:

First Requirement: Legal trends in countries of the World in sex conversion.

Second Requirement: Arab Legal trends in gender conversion.

First Requirement

The legal trends of countries around the world regarding sex conversion

There have been many legal trends at the global level in sexual conversion operations, as many countries in the world have tended to allow sexual conversion without restrictions or conditions. Argentina has issued a law that allows sex change and the transsexual can obtain identification documents for his new gender, and this law did not require any prior approval for this, whether judicial, medical, or administrative. Colombia,

⁽¹⁵⁾ Shreim, Mahmoud A'sem Isam Mahmoud (2004). Human Sex Change, A Study in Criminal Law and Islamic Sharia, Master Degree Dissertation, University of Baghdad, P. 78.

Denmark, Ireland, and Malta also followed suit in Argentina. For example, a law was passed in Ireland recognizing what is known as sexual identity, through which any person can choose his gender and sexual orientation as well⁽¹⁶⁾.

In South Asia, people with multiple gender identity or trans people are called the "immigration community". Most societies in South Asia rejected and ignored this category and there was no legal recognition of the existence of a third gender. Members of this category were treated differently from straight people, and this was the beginning. From Nepal, where the category of transgender was recognized, Nepal was based on the principles of Yogyakarta, where transgender people were included in the electoral lists and were allowed to change their gender. India and Thailand have followed this approach, which has become a destination for people wishing to undergo sexual reassignment surgery from most Asian countries⁽¹⁷⁾.

Some legal systems also permitted sexual conversion with controls in Asia, such as Iran, as it permitted sexual conversion for medical reasons. The legal system in Iran also attempted to integrate transgender people, and the Shiite authorities approval of sexual conversion had a major impact on the integration of transgender Iranians into their society. The Iranian regime also permitted sexual reassignment surgery for psychological reasons⁽¹⁸⁾.

The second requirement

Arab legal trends in gender reassignment

In fact, most Arab countries have not established any laws that explicitly address sexual conversion, but the Arab countries in general have been influenced by Islamic Law and have taken a position close to its position, despite the absence of legal texts that permit gender conversion, but the matter was left to judicial jurisprudence that dealt with each case separately. It examines each case according to its requirements, most

⁽¹⁶⁾ Human Rights Watch and Calletak report, 2016, P. 5.

⁽¹⁷⁾ Aengas Carroll, (2016), State- Sponsored Homophobia A World Survey of Sexual Orientation Laws: Criminalization, Protection and Recognition, 4th, P.98.

⁽¹⁸⁾ Human Rights Watch HTC Report, 2016, P. 7.

important of which are the reasons that prompted a person to change or correct his sex⁽¹⁹⁾.

By tracking the positions of the Arab countries, it can be said that the Arab countries, have taken somewhat different positions on sex conversion, and as the researcher previously mentioned, the Arab countries have not explicitly stipulated sex conversion, but it is implicit in those legislations that the permissibility of sex conversion is permissible, with the aim of correcting sex, and that is by not there are no legal texts that warn of this matter, and it is understood through this legislative approach that Sharia has left this matter to the judiciary in order to decide on it⁽²⁰⁾.

And from the Arab States that attempted organizing the issue of sexual conversion aiming at correcting sex, the United Arab Emirates, for it was from the leading states in this field, for a decree was issued by Federal Resolution No. 4 of 2016 concerning the medical responsibility as tackled correcting and changing sex and differentiated between them both, and has imposed penalties on those who perform sex change operations without meeting a set of legal conditions, as well as setting some conditions for that.

But in Iraq a decision was issued from the Minister of Health concerning correction instructions of human sex, and this decision had contained a set of procedures that should be performed by the person who wishes to correct his own sex, and has also been stipulated that a specialized committee be established to examine these results. If it becomes clear that the person requesting sex reassignments suffers from gender dysphoria, he will be presented to the psychiatric committee, and if he agrees to change his sex because of this, he can change his sex and correct it⁽²¹⁾.

⁽¹⁹⁾ Feigel, Mohammad (2018), Provisions on Sexual Conversion in Jurisprudences, Legislation, and Judicial Jurisprudence, Master Degree Dissertation,, Zian Ashour University of Djelfa, Algeria, P. 26.

(²⁰) Al-Sarayrah, Mansour Abdel-Salam (2011). Hermaphroditism and sex change surgery, a study in light of divine laws & Jordanian legislation, Journal of Law, (Vol. 35), (No. 4), University of Kuwait, P. 308.

(²¹) Al-Mani, Rimah Saleh, Mahjoub, Jaber Mahjoub, and Rashed, Tareq Juma' Al-Sayyed (2020). The problem of gender transformation in Qatar law and comparative law, Q Science, (Vol. 1), (No. 1), Hamad Bin Kalifa University Press, P. 5.

The Jordanian legislator took a negative position on this accountability, as there is nothing in Jordanian legislation that prohibits sex conversion, nor does it prohibit anything. Accordingly, the judicial direction in the Hashemite Kingdom of Jordan permits sex conversion in the event that a person undergoes a sex change, so that some court decisions did not give importance. It is significant for the psychological state of the transgender person or for the reasons for the sexual change; as the Jordanian judicial trend has taken it as a *fait accompli*, provided that this change is for the purpose of correcting the sex and not changing it without a medical reason or the existence of a danger to the person and his life, or the condition in which the person is, if he carries feminine characteristics. Or masculine, he can perform a correction procedure. If the gender is changed without any reason, the Jordanian Judiciary will not allow it⁽²²⁾.

(22) In the decision of the Jordanian Court of Cassation, it was stated that "he is the father of the little boy, Mohammad, and that on 16/3/2016 the plaintiff had a male child whom he named Mohammad, and that the child, since his birth, has all the female characteristics except for the reproductive system, where there is a defect in it as a result of the disease Congenital adrenal hyperplasia, which leads to him being considered a male, but that he is genetically female, and that the female genital organs are present, and that the reason is a genetic mismatch and the external appearance". Because of the disease referred to, and after examining and diagnosing the condition from the medical authorities at the University of Jordan Hospital and the Arab Medical Center, the specialist doctors recommended that an immediate surgical operation be performed on the child in order to transform him from a male to a female, as she has female characteristics. It was confirmed that the presence of female genital organs remaining in this state constitutes harm and danger to the child from medical and psychological aspects.

On October 16, 2018, an operation was performed on the child Mohammad, as a result of which the female genital organs appeared at the Arab Medical Center, and that the plaintiff visited the defendants to perform a change in the child's gender from male to female and to change the name from Mohammad to Zeina on his official documents, including the birth certificate issued on 30/3/2016 and the name change. The gender is in the Iraqi passport and birth certificate, but the defendant rejected the request because it required a decision from the competent court.

It is being decided that Article (32) of the Civil Status Law and its amendments No. 9 of 2001 stipulates that: A. The material and written errors contained in the Civil Status records shall be corrected by a decision issued by a committee composed of the secretary of the office and assistant, and the Civil Status records related to the family name, the name of the illegitimate child, and the name of the foundling shall be corrected by a decision of a committee formed by the Director General, headed by him, based on the original birth certificates or birth records, by a decision of a committee formed by the Director General, headed by him, C. Any of the data contained in the Civil Status records shall be changed by order of the director based on a judicial decision that becomes final. Lawsuits related to changing the data or place of birth shall not be heard after five years have passed since the holder of the record has reached the age of majority. D. Civil Status records data related to nationality, religion, or place of residence, or related to marriage, separation, annulment, or proof of parentage or denial, shall be changed based on a judicial decision that has acquired a final status or a document issued by a component official body. E. Lawsuits to change civil status registration information shall be filed before the competent courts by the registration holder or his guardian if the matter relates to the name, date or place of birth, nationality or residence, or by any interested person if the matter concerns death, or marriage or divorce or lineage and what branches from it. Article 35A of the same law stipulates that the Magistrate Court has jurisdiction to consider claims to cancel or correct the status records in the register of events, in the registry, and in the records of the Ministry of Health. It also has jurisdiction to consider lawsuits for cancelling or correcting status records in the register of events, in the registry, and in the records of the Ministry of Health. It also has jurisdiction over lawsuits for registering birth or death after the expiration of the period stipulated in Article (34) of the same law.

The Jordanian Court of Cassation decided that the benefit of the provisions of Article (32) of the Civil Status Law and its amendments No. 9 of 2001 is that they differentiate between cases of correcting material and clerical errors in the civil status records, which are within the jurisdiction of the office secretary and his assistant. And cases of correcting the civil status records that arise from material and clerical errors related to the family name and the newborn's name and not The Law and the founding's home shall fall under the Jurisdiction of a committee formed by the Director General and headed by him. These

cases are mentioned in Paragraphs A/B of Article 32, and they all stipulate the correction of material and written errors or the correction of entries and data contained therein. Correction obviously assumes that errors have occurred and the correction requires restoring the matter to its correct status. Paragraphs C/D/E relate to enhancing Data on civil status records. Paragraph C refers to changing any of the data in civil status records (absolutely without specifying the nature or content of these data, while paragraph (D) Ed) refers to changing data on specific issues (nationality, religion, place of residence, or related to marriage its invalidity and corruption, or divorce and divorcing, separation and annulment of marriage or by a competent official body, such as a person obtaining another nationality, changing his place of residence, or changing his religion, before a competent religious authority.

As for Paragraph (H), it refers to a change in the data in an absolute manner, which makes the lawsuit to change the family named fall under its provisions. Since everything stated in Paragraphs (H/D) of Article 32 of the law relates to changing the data, the change stipulates what was correctly stated in the registration starting when that registration was made. However, the plaintiff wishes to change this statement for one reason or another that varies from one case to another and is subject to the supervision of the court that is examining the case in light of the data presented therein; Cassation Rights No. 3912/2017 dated 31/12/2017 and Cassation Rights No. 3813/2020 Public Authority (The change is different from correction, as the Plaintiff's claim is a change and aims in its reality based on the facts mentioned by the plaintiff, which is a change in a statement contained in the civil status records, in which Article 32C of the Civil Status Law No. 9 of 2001 is applied, so that the change is made by order of the director based on a judicial decision that has acquired a final degree and is based on. This is because the jurisdiction to hear this lawsuit belongs to the competent court, which is the court of first instance, which has general jurisdiction to hear any lawsuit that does not fall within the jurisdiction of another court under any applicable law, in accordance with what is required by Article 30 of the Civil Procedure Code. See Supreme Administrative Decisions 94/2015 and Cassation of Rights 2429/2013 and 505/2013 and Supreme Administrative Decisions 202/2013 and 88/2013 and 360/2012 and 267/2012 and Cassation of Rights. 3138/2011, where the plaintiff demands changing the sex of the child from male to female and changing the name from Mohammad to Zeina. We hereby decide, in accordance with Article Nine of the

The Third Topic

Transgender rights in the international law

The international community has been ignoring the category of transgender people more seriously, especially since progress in the medical field has opened a wide field for anyone who wants to correct their gender, or even those who want to change their gender. International law has stipulated that a transgender person is a human being who enjoys all the social, political, and economic rights that he enjoys. It includes any other human being without distinction between him and

Civil Status Law and its amendments No. 9 of 2001, that (records, including data and images extracted from them, shall be relied upon as proof of their authenticity unless their opposite, invalidity, or falsification is proven by a final judicial ruling, and all official or civil authorities must rely on the data recorded in these records in civil status cases. (And since it is permissible to prove the opposite. The civil records, including the data they contain, are confirmed by a final court ruling, and it is proven from the data provided that the plaintiff's son, on the date of birth, March 16, 2016 was registered in the civil status records, stating that his gender is male and that his name is Mohammad, and it is proven from the medical reports issued by the University of Jordan Hospital that the child Mohammad, since his birth, has all the female characteristics. Except for the reproductive system, and that he is genetically a female child, and that the reason for the genetic match and the external G. Shape is a hormonal in balance due to congenital adrenal hyperplasia, and that he is undergoing hormonal treatment and intra muscular injections to correct the external deformity of the genital organs, and he needs operations, and that he and Battar were operated on 16/10/2018, and he was subsequently operated on at the Arab Medical Center. The appearance of the female genital organs is as stated in the letter of the District Medical Committee in the Capital Governorate Health Directorate No. LL 505/dated 29/7/2019, which includes that the registered plaintiff, Mohammad is genetically female with the presence of a uterus and the right ovary according to the X-ray images, but as a result of congenital hyperplasia of the adrenal glands, male symptoms appeared, and an intervention was performed. I need to adjust the changes, which is to follow up, knowing that the chromosome examination indicates that the trait is female". Rights Cassation No. 5888/2020, chapter 1/10/2021- Court of Cassation with its legal capacity- Qararak Center Publications, 2022.

others, and the international community has tried to preserve the rights of "transgender" or transgender people through research and study into those rights and their adequacy.

The United Nations Charter stipulates a wide range of rights for all individuals, regardless of their gender, and the two international covenants also stipulate the rights in general, without assigning any of these rights to a specific party, but those rights were in general and applied to all individuals, even transgender ones. However, the first international attempt to establish international legislation for transgender persons, is the Yogyakarta Principles, which came as an introduction in order for laws for transgender persons to be included at the national level through internal laws, as well as at the international level through international treaties and agreements, and these principles are considered confirmed. As was previously mentioned in the United Nations Charter, the international Covenants, and some related agreements and the researcher will work to clarify those rights stipulated in the principles of Yogyakarta, as well as the rights that were mentioned in the principles of the United Nations and the two international covenants, the researcher divided this study into two demands, as follows:

The first demand: The rights of transgender people in accordance with the principles of Yogyakarta.

The second demand: The rights of transgender people in accordance with United Nations Charters and international agreements.

The first requirement

Transgender persons' rights in accordance with Yogyakarta Principles:

The principles of the first request: Transgender rights in accordance with the principles of Yogyakarta were not the first attempt by the international community to address human gender rights of all kinds, but this attempt is considered the most prominent in this field, as a committee of experts was formed in November of the year 2006, consisting of sixteen experts in international law. And human rights, as this committee met in the city of the first demand: Transgender rights according to the principles of Yogyakarta in Indonesia,

and the aim of this meeting was to discuss the sexual situation in the world⁽²³⁾.

This global meeting resulted in the issuance of these principles, which dealt with a wide range of rights related to human rights standards that a person enjoys and related to his sexual orientation and gender identity. These principles singled out a wide range of rights for people with different sexual orientations. These principles dealt with the human rights to change his gender and called it the right to determine identity. Human sexuality, it also addressed some other sexual orientations, and established rights for people who suffer from gender identity disorder⁽²⁴⁾.

Those principles may include a set of rights that transgender people must enjoy, and among those rights is the right to comprehensive enjoyment of human rights. This principle is considered one of the general principles that it stipulates. Transgender people must enjoy all basic human rights stipulated in international agreement. Regardless of sexual orientation or transitions, everyone should enjoy human rights equally⁽²⁵⁾.

The principles also stipulate the right to equality and nondiscrimination between any person based on his sexual orientation, gender identity, or gender⁽²⁶⁾. These principles also stipulate the right to recognition of legal personality regardless of sexual orientations and identities, and to enjoy legal capacity in all fields, and that sexual identity is determined by everyone. A human being for himself in proportion to his personality and inclinations⁽²⁷⁾, as stipulated in right to life⁽²⁸⁾. The principles also stipulate the right to personal safety⁽²⁹⁾, the right to privacy, the right to freedom and fair trial, the right to human treatment, and other rights⁽³⁰⁾.

These principles represent a contribution that cannot be underestimated, as the United Nations has adopted these

⁽²³⁾ Yogyakarta Principles, Explanatory Notes on the Application of General Principles, P. 3.

⁽²⁴⁾ Claudley, Marion, and Others (2013), Sexual inclination, gender identity and displaced protection, forced migration bulletin, (P. 24) P. 5.

⁽²⁵⁾ See, first principle of Yogyakarta principles, P. 10.

⁽²⁶⁾ See the second principles of Yogyakarta's principles, P. 10.

⁽²⁷⁾ See, the third principle of Yogyakarta's principles, P. 10.

⁽²⁸⁾ See the fourth principles of Yogyakarta's principles, P. 11.

⁽²⁹⁾ See the second principles of Yogyakarta's principles, P. 12.

⁽³⁰⁾ See, the sixth principles until the twenty-ninth one, PP. 13-26.

principles in many of its affiliated agencies, and has recommended the adoption of these principles to member states. The United Nations has used these principles over the course of a full decade in order to improve the conditions of transgender people and facilitate their integration into their societies. Society accepts them as individuals who are no different from other individuals.

The Second requirement

Transgender rights in accordance with United Nations

Charters and international agreements:

In fact, by closely examining the Charter of the United Nations and the International Covenants, it can be noted that these international documents did not establish explicit and direct texts stipulating the freedom of a person to change his sex, or even to correct his sex, but those texts were absolute, and did not address the issue of sexual conversion directly, but as is the case in most national laws, leaving the matter freely without being restricted or prohibited means that the matter is permissible under international law and there is nothing preventing it ⁽³¹⁾.

The universal Declaration of Human Rights also stipulates in Article 2 that "Every Human being has the right to all the rights and freedoms referred to in these declarations ,without discrimination of any kind, especially discrimination based on race, color, sex, language, religion, or political or other opinion". Or national or social origin, wealth, birth, or any other States: "It is understood from this text that any person can enjoy all the rights contained in the Universal Declaration of Human Rights, regardless of his sex, whether he is male, female, or hermaphrodite, or whether he was male or female at birth or after. Sex reassignment or correction surgery⁽³²⁾.

The Universal Declaration of Human Rights is one of the most important international documents that regulate human rights in the world. This Universal Declaration has become a source of inspiration for many countries and legal systems, and is considered the main source of the rights

(31) Abdel-Ghani, Abdel-Hamid (1955), the International Charter on Human Rights, Egyptian Journal of International Law, (Vol. 11), Cairo, P. 9.

(32) Ishbil, Hector Gross (1998), International Journal of Social Sciences, Globality of Human Rights and Cultural Diversity, UNESCO, translated by Souad Al-Taweel, No. (158), P. 96.

guaranteed by the International Covenant of 1966, which included the political, social and economic rights of all human beings. The principles of the Universal Declaration of Human Rights came. The human being is clear and detailed in all its parts, and the category of transgender people is not excluded. Among the most prominent of those rights stipulated in the Universal Declaration of Human Rights is the elimination of discrimination on the basis of gender. Whatever the gender of the human being, whether male, female or otherwise, he is treated as a normal human being without discrimination between him and others⁽³³⁾.

The researcher believes that the international community, through human rights documents and principles, has not explicitly stipulated the rights of transgender people, but the texts that talk about the inadmissibility of discrimination on the basis of sex are present in most international principles and documents, and it can be relied upon through these texts that international law gives transgender people the same. The rights of a normal human being, regardless of his gender, sexual orientation, what he was or what he will become, but he acquires his rights simply because he is a human being.

Results and Recommendations

This study reached a group of results and recommendations as follows:

First: Results:

1. The prevailing opinion in Arab and Islamic Legislation regarding sex correction surgeries is that they are permissible, but the disagreement over sex correction surgeries is due to psychological factors, and most of them do not permit sex reassignment simply for the sake of sex reassignment and without medical reasons.
2. Jordanian judicial trends have varied in whether or not gender correction surgeries are approved. The prevailing trends is to approve them, although there are some decisions that contradict this.

⁽³³⁾ Alwan, Fouad (2019). Human Rights in International Law: Concept and Classification, Journal of Human Rights and Public Liberties, (Vol. 4), (No. 2), Abdelhamid Bin Badis University of Mostaghanim, Morocco, P. 13.

3. Most international legislation does not explicitly provide for transgender people, but it is possible to benefit from international texts stating that transgender people can enjoy all the rights stipulated in international declarations and conventions, regardless of the reasons for the transgender transition.

Second: Recommendations:

1. The researcher hopes that the international community will hold some conferences and seminars in order to clarify the concept of transgender people, as well as clarify the religious opinion of the major religions in this category.
2. The researcher hopes that the international community will conclude some collective international charters and agreements in order to clearly and clearly state the rights of transgender persons. These rights must be consistent with the domestic laws of countries did not contradict national legislation and religious beliefs.
3. The researcher hopes to deepen international studies to clarify the situation of transgender people, and to increase attention to this group, considering it a weak group in need of protection from civil society.

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