



Criminal Implications Of Transgender Processes

Dr. Khalid sabri hasani Alsalam University College/ Law Department

Abstract:

The process of gender transition entails many legal problems, especially with regard to the criminal and procedural aspects, as changing the gender leads to the vibration of the civil rules of the transgender and also affects the criminal rules if it comes to some crimes such as rape, adultery, indecent act and indecent assault crimes, as well as some procedural rules such as female search As well as the crimes pending on the victim's complaint.

Therefore, the enactment of deterrent legislation must be at the forefront of priorities against those wishing to undergo the process of sexual transformation without a medical reason or justification.

Keywords: Sexual Transitions, rape, adultery, obscene act, female inspection

Introduction:

The process of transsexuality may seem to represent an attack on the right to the integrity of the body, but in fact it is a physical fact that the concerned person has undergone surgery.

It is inevitable that he will face them, so that he can determine the right sex for him.

The transformation of sex entails some legal problems within the framework of civil rules, since the human type in terms of masculinity and femininity is an important element of civil status, and its infringement has many effects, which entails changing all the data of the transgender person after he has undergone the transformation, to suit the new transformation, and this person may be married, and this transformation will affect the family rights that were associated with him before the transformation.

The transformation has many effects at the criminal level, especially in those crimes for which the perpetrator or victim must have a certain character, such as adultery and rape, as well as some problems in procedural matters such as the search of the transgender person, and whether the transgender person has a certain character.

A role in the cases that require the victim's complaint to be investigated?

Finally, the shift raises other legal issues, such as the extent to which the transgender person is obliged to serve in the military, his admission to a social body whose members accept only a certain gender, such as women's associations, his admission to a military college, and his status vis-à-vis educational and social bodies.

Through this research, we will address the problems and implications of sex transformation processes, only criminally and not in other respects, through two demands as follows:

The first requirement: the problems of gender transformation processes in crimes of assault on supply.

The second requirement: the problems of gender transformation processes in some procedural matters.

The first requirement

Problems of Transsexuality in Crimes of Assault on Display

Some laws have provided that vice shall not be punished in all its forms, excluding specific images that are distinguished from others by the infringement of harm in them to others, since the sexual position of a female with her consent is not punishable as long as she has reached the age of criminal majority, unless she is married, if the act is also considered a misdemeanor of adultery; In public, otherwise it is considered a scandalous act that affects public morals, and if it occurs without consent, it is counted as a felony of indecent assault,(1), The offence of harassment is also punishable by law.(2), In Iraq, no special law has been issued for the process of transsexuality, but the matter was legally limited to the instructions issued by the Iraqi Ministry of Health in Law No. 4 of 2002, but this law was not implemented for unknown reasons, although it is considered the first in this field at the level of the region.(3).

Here, the question arises as to the position of the transgender person when committing these crimes, does he have the status of the opposite sex until certain crimes are committed whose material element requires a certain gender, as in the case of rape? Or the crime of adultery of a husband or wife? Or is it just an indecent assault? In other words, can an artificial female as a result of this sexual transition be the subject of the crimes of rape or adultery on the assumption of her marriage? If a female without therapeutic necessity becomes a male, is it conceivable that she will be an perpetrator of the crime of rape of a female or adultery?

There are many aspects of assault on the offer in the criminal law, and through this requirement we will show some of the problems about the processes of

transsexuality, and we will clarify, for example, the crimes of adultery and rape of females.

Therefore, this requirement will be addressed through three branches as follows:

Section I: Problems of the crime of rape in the Criminal Code.

Section II: Problems of the crime of adultery in the criminal law.

Section III: Problems of the crimes of indecent assault and scandalous act.

Section I

Problems of the crime of rape in the criminal law.

Rape is the affection of a female without her consent and this offence only makes a man's contact with a woman in full sexual contact without her proper consent to do so, which is the natural intrusion of the offender to his male organ in the place prepared for this in the female body."(4), "(), the penetration of the submale into the vulva is not considered rape, but rather indecent assault, and also acts of debauchery between one female and another are not considered to be

Sexual intercourse in the sense of what is legally known, not carried out by the crime of rape, but is considered as Indecent assault (5).

From the foregoing, it is clear that, in order to achieve the elements of the crime of rape, the offender must be male and the victim a female, and the transgender person is not without his situation in the crime of rape being the perpetrator by being the convert to masculinity, or the victim by being a feminine.(6).

The first case: the transgender person is the perpetrator of the crime of rape, that was the transformation into masculinity.

The second case: the transgender person is the victim in the crime of rape, that was the transformation to femininity.

In these two cases: if the transgender person is treated in the apparent situation, the crime of rape is committed against him in the first case, and against the offender in the second case, and if he is treated as his original sex, the crime of rape does not arise in both cases, and the matter stops at the point of indecent assault.

Section II

Problems of the crime of adultery in the criminal law

Adultery, according to the definition of some jurists, is the establishment of an illegal sexual relationship by a married person with the consent of the other partner and the establishment of the marriage by virtue of a judgment or act.

The law has suspended the initiation of criminal proceedings for this crime on a complaint (7), The husband (i.e., husband or wife) or his request to file it, the Public Prosecution cannot move the case from on its own (8).

This offence is committed only by a married person, and if the marriage contract of one of the parties to the sexual relationship is not established at the time of the commission of sexual intercourse, the crime of adultery is legally extinguished, if the perpetrator is married and his partner is unmarried, the perpetrator is asked about the crime of adultery of the husband, and the adulterer is asked as an accomplice to this crime, if the perpetrator is a married woman and her partner is unmarried, the woman is asked about the crime of adultery of the wife, and the adulterer is asked as an accomplice to this crime, if both of them are married there is a moral plurality Between the crime of adultery of the husband and the crime of adultery of the wife. The penalty for the crime of adultery of the wife was applied to the adulterous wife and her partner, the adulterous husband, as the same as the heaviest punishment.(9).

In the crime of adultery, the law distinguishes between husband and wife in several ways:

First, for the husband, the offence is committed only if adultery is committed by him in the marital home, unlike the wife, the crime is committed if it occurs anywhere from her.

Second: The husband punishes adultery with imprisonment for a period not exceeding six months, while the wife is punished by imprisonment for a maximum period of two years.

Thirdly, the husband may pardon the wife after the final judgment on her, and as a matter of first instance it is permissible to waive before the final judgment, while the wife has no right except for the waiver prior to the final judgment.(10), As for the impact of transsexuality on the crime of adultery, the imposition here is that one of the spouses performs the transformation process with the establishment of the marital relationship, considering that adultery is not achieved unless one of the accomplices of the crime of adultery is married.

The crime of adultery may occur from the transgender person or from his husband, and if it occurs from the transgender, can his wife file a complaint to initiate criminal proceedings against him; and if it is committed by the other spouse, can the transgender person initiate criminal proceedings?

However, here the marriage must be established and the judge must make sure of this before filing a claim for adultery, that the complainant has the status of a husband, and that the marital relationship exists at the time of filing his complaint.(11), It is what is achieved in the transgender, because although its appearance is the opposite of its sex, it still has the status of a husband, and the marriage exists.(12).

Section III

The problems of my crime of indecent assault and scandalous act

The problems related to the crimes of indecent assault and obscene act vary and we will show this as follows:

First: - The crime of indecent assault:

Indecent assault is a serious breach of modesty that falls on the body of the victim or the victim, or prejudices his nakedness, and is done in any way, whether material or moral, whether in the hands of the offender or using another means that would prejudice the wounds of the victim, such as dressing or deliberate contact (13).

Unlike rape, indecent assault falls on both the male and the female, since the law does not require a specific characteristic of the offender, so the perpetrator is not required to be of one sex without another, so it is correct to fall from the female on another female or on a man.(14), , which is different from the crime of rape, in which the victim must be female, and therefore the processes of gender transformation have no effect on the commission of the crime, so that the crime of indecent assault arises for the transgender person, whether he is a perpetrator or a victim.

Second: - The crime of the scandalous act:

Scandalous act: is a behavior that violates the modesty of others,(15), The indecent act that offends the victim's modesty of the eye and ear is only the reason why the Iraqi legislator has made the scandalous act a crime is to protect the general sense of modesty, that is, to preserve the public's sense of the public from being seen as an act contrary to public morals, which morality and public modesty require to cover up when it is committed.(16) An indecent act involves two forms: the first: the crime of the public scandalous act and the other the crime in non-publicity.

First Image: The Crime of Public Scandalous Act:

This crime is one of the deliberate crimes that must be committed by the existence of criminal intent on the part of the offender, and its elements are realized,

whether the offender is male or female, and its material element is based on the element of publicity (17) .

Thus, transgender processes have no effect on their conduct, and the offender is punished with the prescribed punishment regardless of whether he is transgender or otherwise, so there is no regard for the type of offender or victim in them.

The second picture: the crime of the scandalous act that violates the modesty of women and Luffy is not public:

The reasons that led the Iraqi legislator to consider this act a crime is to provide protection for the feeling of the female and to preserve her own modesty from shame and scratching, and not to hide the general sense of modesty, so the legislator requires the initiation of criminal proceedings by the victim or her own agent.(18). The scope of this offence in terms of acts is in all cases limited to what affects the modesty of the female, without reaching the point of indecent assault in its obscenity. etc.(19).

It is clear from this that the victim in this crime is female, which raises a problem with regard to transgender processes, and in this case two cases can be distinguished:

The first case: If the offender is transgender:

There is no trace of sex transformation in this case, and the crime remains, because the law requires femininity in the victim only by saying: "Whoever commits with a woman" This has already been achieved, and the perpetrator is not required to be male or female, and therefore the transformation of sex has no effect on the commission of the crime, if he is treated as a male according to appearance, the crime exists, and if he is treated as a female in consideration of his or her original sex, the crime also exists.

Second case: If the victim is transgender:

This hypothesis means that the transgender person was male and became female, considering that this crime does not exist and its pillars are not fulfilled unless the victim is a female, is the transgender person here considered male or female?, In light of this, the law arranges whether or not the crime arises.

Here, a distinction must be made between the transgender status and its original gender.

In the case of recognition of the apparent status of the transgender person, the offence arises because the law requires femininity in the victim, and in the case of recognition of his or her apparent status, he is ostensibly female.

In the event that the apparent status is not recognized and treated by its original sex, the offence does not arise because of the imbalance of a prerequisite required by law in the victim, namely that he is a woman.

Second requirement

Problems of Gender Transitions in Some Procedural Matters

There are problems raised by the transformation of sex in relation to some procedural issues, including the provisions of the search of the female, and the cases for which a complaint from the victim is required to be moved. There is also a problem with regard to the impact of transgender on the cases for which a complaint from the victim is required to be triggered.

The subject matter of this requirement will be examined through two sections, the first of which is devoted to the impact of gender transliterations on the provisions of female search, while the second section is devoted to the examination of the cases that need to be moved by the complaint of the adversity, as follows: =

Section I: The impact of transgender processes on female search provisions.

Section II: Claims that are necessary to be initiated by the victim's complaint.

Section I

Impact of Gender Transitions on Female Inspection Provisions

Searching means searching for criminal evidence in a person's body or circumstances, and this procedure is considered a serious measure that affects the freedom of man and the immunity of his body, so all constitutions of the world have provided for granting the accused guarantees in this regard.(20)

The legislator has singled out the search of a female if she is accused of certain conditions that must be taken into account when searching, since it must be carried out by a female delegated by the competent court, the purpose of which is to safeguard public morals, protect moral values and preserve the woman's presentation, even if she is accused.(21).

This cause restricts the scope of its application, since it is forbidden for the judicial officer to expose the accused to parts of her body that are considered to be naked in the search of the accused, since these parts are the ones to which his exposure is a violation of morality and a violation of the offer, but if the investigator or the searcher is exposed to an organ in the body of the accused that is not considered to be naked in it, the search is correct.(22). Any search that violates the rule of "female search by female identification" is considered null and void, even though the accused has expressly consented to it.(23), If the investigator is a female, there

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is no need to assign another female to search, but she can perform the search task.(24).

The impact of transgender processes in this case imposes some assumptions.

First, a transgender person who appears to be a female searches the accused, and she argues that the search is invalid on the basis that the searcher is in fact a male.

Second: A transgender person should be searched by a male male by a man. He argues that the search is invalid on the grounds that he is in fact a female.

Third: that a transgender male phenomenon, searches the accused. It argues that the inspection is invalid.

Fourth: The search of a transgender person who appears to be female, by a man, is carried out and the search is invalid.

With regard to the first and second assumptions, it is imperative here to take into account the appearance of the person and to say that the search is valid as long as the good faith is available to the judicial officer who has assigned that visible female to carry out the search, or who has searched this male who appears as a man.

The law takes into account the phenomena of things, not their interior, the investigator takes the appearance of the person and is not able to determine the type of person, especially in our present time where things have been mixed up on the investigator and on us, In some cases, it is no longer easy to distinguish between male and female, and to say otherwise opens the door to circumvention and collusion by the accused, to argue that the search procedure is invalid because it was carried out by a man and not a woman.(25).

With regard to the third and fourth imposition, i.e., where the accused is searched by an ostensibly male or a transgender woman appearing to be a female is searched by a man, the search is invalidated, without being corrected by the proof that femininity is the sexual truth of that male in the third imposition,(26), Or that masculinity is the sexual reality of this female in the fourth imposition, because in this apparent situation the modesty of the female was violated first, as in the third imposition, and the general modesty second, as in the fourth imposition, especially since the search took place in front of the public, which the legislator wanted to avoid when he obligated her to inspect the female as a female.

Section II

Claims for which the victim's complaint is required to be moved

The Iraqi legislator specified in the Code of Procedure the cases in which the complaint may only be initiated by the victim or his legal agent, and these crimes are: =

The crimes whose movement depends on a complaint from the victim are:

- 1 - The crime of marital adultery or polygamy contrary to the Personal Status Law.
- 2- Destruction or destruction of funds.
- 3- The scandalous act with a woman in non-publicity.
4. Refrain from handing over the little one to the person who has the right to request it.
5. Failure to pay expenses issued by an enforceable judicial ruling.
- 6 - Crimes of insult, defamation, disclosure of secrets or false news.
7. Crimes of theft between assets, branches and spouses.(27).

With regard to the impact of transsexuality on the crime of adultery by one of the spouses, and the indecent act with a woman in non-public — and referred to what had already been described in the crimes of assault on the offer as one of those crimes.

As for the impact of transgender operations on the latter case, these operations have no effect on the crimes that occur between the branch and its origin, because that kinship - which is blood kinship - is not affected by these processes, and therefore the matter remains the same in terms of the controls for filing or waiving a complaint, or suspending the execution of the sentence imposed at any of its stages.

As for thefts between spouses — one of whom is transgender — if the legal logic is that the complaint filed has no effect or consideration for the invalidity of this marriage, it must be considered a theft between a couple because when the thief stole it was taken into account that he was stealing his husband's money with whom he had a valid and existing marital relationship, and that a large proportion of the probability - if not certain - would be pardoned because of their connection and that otherwise I would not have offered On theft, marriage, although it is a legal act, is invalid, but as a material fact it can have some effects despite its invalidity.(28).

The end

After we have completed our research "Criminal Implications of Transgender Processes", we list below the most important findings and recommendations we have reached as follows:

First: - Results:

1- The Iraqi legislator has been proactive in addressing the process of transsexuality from a medical and psychological point of view through Law No. 4 of 2002, which is one of the first laws in the Arab world.

2- The above-mentioned law came up with the name of gender correction, which in our opinion does not fit the purpose for which it came.

3- Sex correction processes entail many legal problems within the framework of civil rules, as the human type in terms of masculinity and femininity is an important element of civil status, it is permissible for this person to be married, and this transformation affects the family rights that were stable before this transformation.

4. The transformation raises many problems within the scope of criminal rules, especially with regard to certain crimes such as rape and adultery by one of the spouses.

5- The transformation entails many problems with regard to crimes of indecent assault and scandalous act.

6- The transformation affects many procedural issues such as the search of the female and the cases that are required to be moved by the complaint of the victim such as the crime of adultery, the obscene act, the refusal to extradite the child, the payment of expenses, the crimes of insult and slander and the crime of theft between assets and branches.

7. The existence of the crime does not erase the consent of the transgender person and does not negate the right to punishment in the face of it, since this punishment is the right of society and this consent does not prevent the act of harming the integrity of the body from criminal responsibility unless we are in the process of having to carry out the transformation process in the event that failure to carry it out exposes the life of the transgender person to the loss of life.

Second: - Recommendations:

1- We hope that the Iraqi legislator will build on Law No. 4 of 2002 and address the legal effects of correction or transgender processes.

2- We recommend that the label transsexuality instead of gender correction provided for in Law No. 4 of 2002 be more general and comprehensive for all cases.

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3 - The need to expedite the development of a legislative regulation to prohibit and prohibit the process of sex transformation and determine the responsibility of the medical team by establishing controls and restrictions that ensure its proper legal practice.

4 - To entrust the issuance of the necessary permits to conduct the sex correction process to an accredited medical committee formed from all specialties of medicine, which is the body entrusted with approving the conduct of the sexual transformation process or not.

5 - Spreading awareness through the media of the dangers of these operations on the life of the person to whom they are conducted, as it is possible that if they are carried out without a medical reason they may lead to the death of the transformer.

6 - Transfer pictures of the psychological and social problems of those who have undergone the process of sexual transformation where they have not achieved physical and psychological stability and may lead them to mental illnesses that eventually lead to suicide.

7 - Adhere to the method of Islam in all its legislation and not to be drawn into the blind tradition of Western countries with regard to the process of sexual transformation under the name of sexual freedom.

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Margins

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(2) Sameh El-Sayed Gad, Principles of the Penal Code, Dar Al-Wazzan for Printing and Publishing, 1987, p. 107.

(3) As stated in the first article of these instructions, "A specialized committee shall be formed in a government hospital exclusively in each health department and the departments of Saddam Medical City and Yarmouk Medical City. The following specializations:

First - Urinary tract surgery.

Secondly - obstetrics and gynecology.

Third - Psychiatry.

Fourth - cell heredity.

Fifth: A legal employee whose job is to guide and understand the applicant and his family about the legal effects of the change and to assist the committee in legal issues in this regard. And its fourth article states, "If it is proven, after psychological and clinical evaluation, that the case is the result of a gender identity disorder (TRANSEXUALISM), the patient is referred to the primary psychiatric medical committee and then to the Psychological Appeal Committee. with correction".

(4) Jamal Ibrahim Al-Haidari, previous reference, p. 529.

(5) Saed Al-baghal, Crimes against Morality, Jurisprudence and Judiciary, 2nd Edition, Dar Al-Fikr Al-Arabi, Cairo, without a year of publication, pp. 310-311.

(6) Hassan Hassan Mansour, Crimes of Assault on Morals, University Press, Cairo, 1985, pp. 20-21.

(7) Article 3 of the Code of Criminal Procedure No. 23 of 1971

(8) This crime, even if it affects society like all other crimes; Because it violates the duties of marriage, which is the foundation of the family and the system in which the group lives, but it affects in the first place the interest of the husband, his children and his family, so the law decided, in order to take care of this interest, that the husband's consent to file a lawsuit with it, in order to avoid what may lead to it Unleashing the freedom of the prosecution to request a trial for adultery, considering the husband and children, and the disturbance in the family system.

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