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**The Legality of Sex Change Surgery and Construction of
Transsexual Identity in Contemporary Iran**

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Abstract

The Islamic government in Iran has legalized transsexual surgeries and introduced a legal process which leads to medical intervention in transsexual cases. This has allowed thousands of Iranian men and women to undergo sex change every year. This paper explores the social and legal discourses on sex change and transsexuality in Iran in order to examine if the legalization of sex change surgery has legitimized transsexual identity within law and society. The discourse on "gender identity disorder" in connection with sex change started in Iran in the 1960s, but has gained prominence among doctors, legal scholars and jurists in recent decades after the 1979 Islamic revolution.

This study describes how Islamic jurisprudence operates in order to generate legal rules through its internal and self-referential communication within the legal framework of *Shari'a*. Sex change surgery is allowed through juristic legal opinion in response to the existing social facts and norms, on the one hand, and structural cooperation with medical system, on the other. This has amounted to legally constructed "misrecognition" of transsexuals' identity in society. Using semi-structured interviews, this essay explores how Iranian transsexuals understand and define their gender identity, while embracing modern interpretation of Islamic rules in relation to gender and sexuality. The results of the research show that although transsexuality, as an *identity* in its own right, is not legally recognized in Iran, sex change surgery is nevertheless permitted by *fatwa*. However, transsexuals' narratives demonstrate strong agency of Iranian youth in reconstruction of gender identity through reconceptualization of Islamic laws.

Finally, the study throws light on the role of surgeons, who play a vital part in mediating the relationships of transsexuals with their families to jettison the heavy weight of stigma attached to the "trans status". Moreover, transsexuals being aware of pathologization of their gender identities use this as a strategy to overcome social pressure. That is to say, the interviews show an increasing level of self-knowledge among young transsexuals, while giving cause to question the forceful heteronormalization by the government through surgery.

Keywords: Law, Jurisprudence, Islam, Shari'a, Misrecognition, Transsexuality, Iran, Homophobia, Medicine, Transsexual Identity.

Abbreviations

FTM- Female to Male Transsexual

MTF- Male to Female Transsexual

TIP- Tehran Institute of Psychiatry

GID- Gender Identity Disorder

FMO- Forensic Medicine Organization

SWO- Social Welfare Organization

TS- Transsexual

Trans- Transsexual

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Chapter One: Introduction

“Trans is like a flame inside a person with which one is born, or a bullet of energy that inclines the body towards opposite sex”. (Farimah, MTF transsexual)

Farimah, a 28-year old Iranian woman transsexual, was considering undergoing sex change surgery to become a woman in January 2014 when she was interviewed as part of the fieldwork conducted for this research study. She explained that she had gone through a lot of pressure to kill the flame inside her. She was raped, battered and injected testosterones to be ‘fixed’ as a man. None of these extinguished the flame which was growing day by day. At that time, she was not sure if she could undergo surgery, because her father and brothers had threatened to kill her. However, in an email which I received from her in March 2014, she explained that she had undergone the surgery without the knowledge of her family and she was staying in a hotel to recover. Despite undergoing the surgery, she wrote that she will go home as a ‘man’, and continue going to work under her previous identity until she finds a solution.

The story of Farimah is one of the stories of Iranian transsexuals who have been misrecognized, misrepresented and misunderstood through the interplay of law (regulation), medicine (science) and cultural values (family and society). Nevertheless, they struggle to reclaim their bodies as well as their identities through challenging cultural values, redefining the law and gender roles. Such cases reveal the complexity of trans-gender and sexuality in today’s Iran.

Iran is known to be one of the second most popular sites for sex change surgery in the world after Thailand and the first country in the Middle East. There are two main different arguments on legality of sex change surgery in Iran. One view celebrates the fact that the government of Iran forces the people, especially homosexuals to fit into heterosexual categories of male or female. While, the other view emphasizes that legalization of sex change surgery is the state’s manipulation of gender and sexuality.

This paper does not claim that Iran is a haven for transsexuals, nor does it suggest that legal sex change surgery has recognized transsexuals’ status in society. It rather suggests that more attention

needs be paid to the current discourses (legal, social, medical and religious) on transsexuality in contemporary Iran in addition to transsexuals' experiences to understand the legality of sex change surgery and pathologization of transsexuality in the Iranian context.

Moruzzi and Sadeghi identify (2006: 25) three parallel discourses on sexuality in contemporary Iran at three levels; the state through application of *Shi'a* Islamic jurisprudence, the society and social practices and the individuals who are the younger generation of Iran born after the 1979 Islamic revolution. This study offers a discursive analysis of interviews with transsexuals in Iran to broaden the horizon of the discussion to the lived reality of these people in relation with law and society.

The first chapter of the paper contextualizes the study and presents the research questions followed by the literature review before outlining theoretical foundations of the research. The second chapter discusses the methodological considerations utilized in the research and the choice of methods based on qualitative approach. Chapter three seeks to explain from socio-legal and gender perspectives, how and why theoretical premises are applied in this research as it thoroughly elaborates on the legal and social construction of transsexual identity in Iranian context. Chapter four aims to provide a clear understanding of *Sharia* by focusing on the main structures of Islamic legal system; further it moves on to analyze the Iran's Islamic laws and legal discourses on sex change via application of socio-legal theories. Chapter five tries to examine how transsexuality is understood in Iran, mainly through analysis of the information from the interviews, on the basis of socio-legal and gender theoretical underpinnings of the study. Chapter six concludes the paper by summing up the findings and answers to the research questions.

1.1 Background

It has been widely portrayed by international literature and media that Iranian authorities legalize transsexuality and sex change surgery while at the same time imposing punishments on people who deviate from strict norms of sexuality and gender roles. Moreover, the issues of “legible transsexuality” and “legality of sex change surgery” in Iran have been debated as an alternative way to force non-heteronormative genders to fit into categories of male and female in order to prevent acts outside of gender binaries. However, such allegations have failed to take into consideration the socio-historical as well as the legal complexity of the issue in contemporary Iran

(see, e.g., the Guardian, 27 July. 2005, and 20 September. 2007, the BBC, 25 February. 2008, and the World Post, 6 April. 2012).

Sex change surgery in Iran dates back to the beginning of the twentieth century when surgery to change congenital intersex was reported in the Iranian press as early as 1930 (Najmabadi, 2008: 25). The notion of Gender Identity Disorder (GID) arrived in Iran's medical discourse from the West in the 1960s. Accordingly, the earliest non-intersex surgery was officially reported in the Iranian press in 1973 when two hospitals in the major cities of Tehran and Shiraz carried out sex change surgeries (Najmabadi, 2008: 26). In 1967 when Ayatollah Ruhollah Musavi Khomeini was in exile, he issued a *fatwa* sanctioning sex change. However, in 1976 Iran's Medical Association decided to undertake sex change surgery only for intersex cases (Najmabadi, 2008: *ibid*).

A few years after Ayatollah Khomeini took over the power from the Pahlavis in 1979, he re-emphasized legitimacy of sex change upon medical certification. The current legal process (see appendix 8.3) for obtaining a certificate for sex change involves thirteen sessions of psychiatric treatments for self-identified transsexuals which are carried out in Tehran Institute of Psychiatry (TIP), if they satisfy the experts, they are referred to Forensic Medicine Organization (FMO) which operates under the supervision of the ministry of justice. If FMO confirms diagnosis of GID, it is followed by permission for sex change surgery from administrative court of ministry of justice. Transsexuals who undergo surgeries may request the court for the change of name and gender (see appendix 8.3). If TIP's psychiatric sessions confirm homosexuality, the person will be considered mentally ill and referred to a different section for more psychotherapy treatments. According to recent reports from FMO, as many as 2600 persons request sex change surgery per year, and yet only one person a week is allowed to undergo the operation¹.

There are no definite statistics on the number of transsexuals in Iran. As of 2010, it has been reported that there are approximately 3000 persons 'diagnosed' as transsexuals in Iran (Javaheri, 2010: 369). While another study has documented that Iran's official statistics reports the number of transsexuals between 15000 and 20000 whereas unofficial statistics estimates the number of transsexuals to 150000 people (Bahreini, 2012: 15).

¹ July 28, 2013, Jamaran news website reported "Challenges of Sex Change Surgery in Iran" accessed on 14th April 2014: http://jamaran.ir/fa/NewsContent-id_29161.aspx

1.2 Conceptual clarification on gender and sexuality

It is beyond the limits of this paper to delve into the genealogical analysis of gender and sexuality, yet it is essential to elaborate how I have understood and employed the two concepts in my study. Before I elaborate on the implication of these concepts, I shall refer to a quote from Ann Fausto-Sterling (2000: 235): “No single academic or clinical dispute provides us with true or best way to understand human sexuality”.

Sexuality is not confined to sex and biology, yet it cannot be excluded from biology as it is implied in Fausto-Sterling’s argument. She upholds (2000: 22) that body material is an essential part of human sexuality, and in agreement with Judith Butler she maintains that the body which is already embedded with notions of gender and sexuality is not a blank surface waiting to be inscribed with social meanings, rather it produces and is produced by social meanings (Fausto-Sterling, *ibid*).

Judith Butler emphasizes (1990: 92) the complex implication of sexuality and gender and argues that there is no determinism between gender and sexuality. Moreover, sexuality does not follow from gender. That is to say a person’s gender does not define their sexuality. However sexuality emerges from the constraints. She writes (2004: 15): “Sexuality is not to be found inside the constraints but extinguished by constraints and at the same time mobilized and provoked by constraints. Sexuality establishes us outside ourselves, because sexuality as a cultural meaning is carried through operation of norms and undoing the norms”.

According to Fausto-Sterling (2000: 244) gender is the result of interactions with others through which people learn to do gender, and people do gender differently depending on their location, class, ethnicity and race.

Through historical review of the relationship between gender and sexuality within the realm of social sciences, Diane Richardson draws our attention to theorization of gender and sexuality since the late 19th century. Richardson writes (2007: 459) that gender and sexuality were considered “natural phenomena” in the late nineteenth century. However, in the second half of the twentieth century different debates and discussion developed on how gender and sexuality were conceptualized and considerably changed over the past decades

Richardson identifies (2007: 459) five historically distinct epistemological understandings of gender and sexuality in different periods of time from the naturalist dualism approach to postmodern intersection of gender and sexuality within specific sociocultural and historical context. During the 1990s with the emergence of queer theory, scholars theorized gender and sexuality as two separate concepts (Richardson, 2007: 463). Gayle Rubin's work is important in this regard.

Using the concept of sex/gender system, Gayle Rubin reiterates (1999: 169) in her paper '*Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*' by recalling her earlier article '*The Traffic in Women*' that in the Western industrial societies sex is known as gender identity and sexual desires, which is itself socially constructed. Rubin argues that sexual system is developed within the context of gender relations which means women have more difficulties and limitations to have sexual freedoms than men. Therefore, the sexual system is affected by gender which relates it to sexuality. However, according to Rubin, gender and sex are different. She continues (1999: 170) her argument by proposing separate social existence of gender and sexuality.

Richardson suggests (2007: 470) it is through gendered discourse that sexuality becomes meaningful. For Richardson, the social contexts as well as the level of analysis (institutional, cultural, and individual) shape the link between gender and sexuality.

In this study I adhere to Richardson (2007: 465) that the relationship between gender and sexuality needs to be analyzed historically considering social specificities of different contexts to give space to the non-Western understanding of gender and sexuality, and avoid Western essentialist accounts of these concepts. Richardson argues (2007: 470) gender and sexuality are formed within intersectional discourses of class, race and ethnicity that are themselves already embedded in different places, cultures, religions and forms of governmentality.

Iranian society has faced various social and political changes since the 1979 Islamic revolution which has created a generation who experience sexuality, and do gender differently from their predecessors. Despite the Islamic state's restriction on sexuality, young people, especially women have challenged "disciplinary power" through adoption of initiative strategies (Farahani, 2007: 28).

To understand sexuality in contemporary Iran it is necessary to apprehend historical, social and political changes. The Iranian generation of the post-revolution as Fatemeh Sadeghi holds (2008: 251) does not obey the Islamic ideologies imposed by the government especially with regards to sexuality. Sadeghi employs Foucault's understanding of sexuality to argue that sexuality in today Iran is the construction of discursive practices, and experiences of the younger generation within power relations in different areas of life (Sadeghi, 2008: *ibid*). According to Foucault (1978: 90-91): "... power in modern societies has not governed sexuality through law, but technology of sex...".Therefore, he suggests: "...the historical and material examination conceiving sex without the law and power without the king".

1.3 Transliteration

Translation of some technical terms is sought necessary to clarify the ways by which these terms are culturally understood and linguistically used in Iranian society. Rather than going through the historical genealogy of the terms, I have tried to explain the terms based on my study and the fieldwork, so that the reader who is not familiar with Persian language can better capture the meanings.

Jins is commonly used in Persian to mean *sex* and to differentiate categories of female and male. According to Najmabadi (2013a: 213) the term *jins* also refers to *genus*, but different from classical meaning which implies opposite kinds. *Jins* is used in the Arabic language for kind, sort, product, and quality which is being also used in Persian. *Jinsi* is an adjective which is used to refer to *sexual*. For example, *rafter-e-jinsi* is sexual behaviors in English, or *jarayim-e-jinsi* which refers to sexual crimes.

Jinsiyat is professionally used by feminist activists and academic scholars for *gender*, but is also used to indicate desire, attraction and relations which can be closely related to English term *Sexuality* (Najmabadi, 2013: 214). However, in the context of this study the term *jinsiyat* was widely used by participants to point to biological sexes (man and woman).

Hamjinsbaaz is a compound word with prefix *ham* (same) and suffix *baz* (player) added to the word *jins*, which is translated into English as *same-sex player*, and used for *homosexual*.

Hamjinsgaraa is another word with a different suffix *garaa* (desire) that can be translated to English as *same-sex desire* used mainly for *homosocial*.

Tarajinsi is a relatively new term that has been insinuated into contemporary Iranian linguistic culture to denote *transsexual*. The prefix *tara* is an equivalent word for trans in English, and when it comes before the adjective *jinsi* (sexual), it means *transsexual*. *Tarajinsi* is basically understood among participants of this study as a person who is willing to undergo sex change surgery.

Tarajiniyati, again is a very newly circulated term in Iranian society which is usually confused with *tarajinsi*, and is used in Persian to mean *transgender*. Prefix *tara* before the word *jinsiyat* added with (*i*) is a term which conveys the meaning related to more than biological sexes, but desires, pleasures and attractions of both male and female. *Tarajinsiyati* is defined as a broader term among transsexuals in Iran who consider *tarajinsi* as one type of being *tarajinsiyati*.

Digarbash composed of two words *Digar* (different) and *bash* (to be) that is literally translated into English as being different. *Digarbash* also denotes queerness.

Dujinsi literally means a person with two sexes which has been interchangeably used to refer to bisexual, transsexual, transgender and intersex person (Najmabadi, 2014: 143). However, the interviews with the surgeons in Tehran indicated that nowadays the word *dujinsi* in Persian is used to represent hermaphrodite person.

Taghir-e-Jinsiyat literally means *sex/gender* change that is to convey *sex/gender reassignment* in English. *Amaal-e-taghir-e-jinsiyat* refers to *sex change surgery* or *sex/gender reassignment surgery*.

Ikhtilal-e-hoviyat-e-jinsi is the English translation of gender identity disorder. *Ikhtilal* means *disorder* and *hoviyat-e-jinsi* is the translation of *sexual identity*, however it is used in this term to refer to the English *gender identity* as femaleness or maleness.

Ruh regardless of its theological and philosophical meaning is used in Persian to imply immaterial part of humankind against the body that is material. That is to say it means the *soul* in English. Participants used this term to express their situation of incongruence between the *body (jism)* and the *soul (ruh)*.

Ravan as Najmabadi investigates (2014: 189) is a Persian word for *psyche*, which is usually used to express one's feelings, thoughts, behaviors, and reactions. Similarly, *Ravan* was addressed by participants of this study to indicate their moods, feelings, desires and way of thinking.

Zihn is a Persian word for *mind*. This term was used by transsexual participants in this research to explain their reason, wisdom, and brain as opposed to their body to express disharmony between the *body (jism)* and the *mind (zihn)*.

1.4 Aim of the Study and Research Questions

The aim of this study is two folded. First it will examine social and legal discourses on sex change surgery as well as transsexuality to understand if the legality of sex change surgery has legitimized transsexuality within law and society. To this end, it will explore the extent to which the legal opinions of Islamic jurists along with the views of medics shape the life of transsexuals in Iran. Second, it seeks to examine how transsexuals redefine religious laws and re-construct transsexual identity through their experiences between legal norms on the one hand and social and cultural norms on the other. Based on the aims of the study, two sets of research questions may be formulated:

1) How do religious values generate the image of transsexuality within the legal system and how does this internally generated image and definition of transsexuality interact with social and cultural norms that create the lived reality of transsexual people in Iran?

2) What are the social perceptions of transsexuality within the context of Iran and how transsexuality in contemporary Iran is understood through re-definition of religious values and laws which regulate gender identity?

1.5 Literature Review

This section addresses the work of different feminist, queer and transgender theorists in order to examine how transsexuality is approached, analyzed and understood within Western transgender studies. Further it tries to reflect upon current literature authored by Iranian scholars on the issue of transsexuality in Iran.

The term transsexual was first used and became popularized by Dr. Harry Benjamin in the 1950s after conducting sex change surgery on George/Christine Jorgensen. Benjamin opposed psychiatric treatments for transsexuality and introduced it as a state of wanting to be the other sex (Hausman, 1995: 122). The word transgender was generated in the 1980s and used for the first time by Virginia Prince to refer to people whose identities fell between transsexual and transvestite. However, Leslie Feinberg gave the term another meaning in 1992 which called for political solidarity between different groups of gender marginalized people to demand justice (Stryker, 2006: 4).

During the 1970s and 1980s Western feminists simply believed transsexuality involves those who were unhappy with the strict gender roles and accused transsexuals of being “gender conservatives” who had “false consciousness” about their assigned genders (Elliot, 2010: 56). Janice Raymond’s controversial book *The Transsexual Empire: The Making of the She Male* in 1979 raised a lot of criticism by transgender and queer theorists including Judith Halberstam, Kate Bornestien and Stephen Whittle. Raymond claims (1994: 14) transsexuality is created, reinforced and perpetuated by men. Therefore, transsexuals are the victims of patriarchal medical technologies.

Scholars of transgender studies have opposed medicalization of transsexuality. (Elliot, 2010: 2). For instance, Judith Halberstam rejects (1998: 146) medicalization of transsexuality by adhering to gender fluidity. She believes (ibid: 147) that contrary to the idea of backing and forth between sexual roles and sexual practices, it is the desire that acts as a very important element of human sexuality that changes gender identity accordingly. Halberstam argues (1998: 162) against the monolithic model of gender variance and maintains the production of sexual and gender nonconformities take place within multiple locations, discourses and different contexts.

Kate Bornstein promotes (1995: 72) the notion of “gender outlaw” about transsexuals who she believes challenge the gender system and demand acceptance outside of male and female categories. She questions (1995: 62) bipolar gendered culture that results in medicalization of transsexual conditions as well as therapeutic requirements before the surgery. For Bornstein these are cultural lies towards which transsexuals have been silence in order to validate their existence (ibid: 63).

Jay Prosser conceptualizes (1998: 5) transsexuality as “correlational transitioning of body, psychic and social”. He maintains transsexual body is created through transsexual narratives that are prioritized over medical texts. In other words, for Prosser transsexuality is not only constructed through medical technologies, but also constructs transsexual narratives (Prosser, 1998: 9). He continues: (1998: 69) “transsexuals’ feeling of being trapped in a wrong body is a material force for transition of transsexuals whose false outer skin locks inside authentic inner body”.

Viviane K. Namaste studies transsexuality within the domain of medicine and psychiatry that identifies transsexuals as victims of sexist and capitalist ideology (Namaste, 2000: 34). Moreover, Bernice L. Hausman follows a similar path as Raymond when she argues (1995: 9) the demand for sex change is the most important symptom of transsexuality that is based on development of medical technologies by which transsexuals engineer their subjectivity. Hausman questions (1995: 143) the authenticity of autobiographies and transsexuals’ narratives by arguing transsexual is created through confirming to established ‘transsexual personal history’ which entitles them to receive medical treatments (Hausman, 1995: 142).

Contrary to Hausman’s disparaging argument about transsexuals’ experiences, Susan Stryker emphasizes (Stryker and Whittle, 2006: 12) on the knowledge transsexual and transgender people produce about their own experiences. She encapsulates it as “desubjugated knowledge” that is the methodological ground for transgender studies. Stryker uses Michel Foucault to explain that transgender studies employ technical tools to bring out the knowledge about ‘gendered subjectivity’ and ‘sexed embodiments’ that are buried in various historical contexts. This kind of knowledge must not be deemed inferior, because it is created through speaking and representing the experiences. Hence, this knowledge is revived by the work of experts for critical analysis (ibid, 2006: 13).

Stephen Whittle maintains (Whittle, in Stryker & Whittle, 2006: 200) that transgender people challenge the assumption that gender is fixed through biology and social constructions. Whittle criticizes (2006: 196) Raymond and the use of her arguments by feminists to condemn transsexuals. However, he argues feminist critical analyses have greatly contributed to revealing the domination of masculine power among psychologists who are the gatekeepers to transsexuals’ medical treatments (hormones and surgeries).

Comprehensive review of the Western scholarship on transsexuality has formed the main part of the literature review in this study. Hence, it would be misleading to analyze the issue of transsexuality in Iran by employing only Western theories without critical reflection. It is nevertheless essential to pay special attention to the work of Iranian scholars in this field. Afsaneh Najmabadi's recent work *Professing Selves: Transsexuality and Same-Sex Desire in Contemporary Iran* (2014) is a valuable historical study of transsexuality in Iran and a vital cartography of daily life patterns and stories of Iranian transsexuals in which she illustrates that legal legibility of transsexuality has improved lives among parents, families and neighbors in society which was not previously possible. Najmabadi claims (2014: 242) lack of vocabulary and limitation of language to distinguish between homosexual and transsexual inclines parents and families to force their children to be the type of gender according to their biological sexes. In her book Najmabadi explores (ibid: 283) that different performances (make up, cooking, doing laundry, clothes, driving, doing heavy work) create a sense of being man or woman not the genitalia. Therefore, she perceives the notion of transsexual as a form of "self-assignment" as she posits, is based on conducts and behaviors including sexual rather than distinction between sex and gender (Najmabadi, ibid: 298). She also describes (ibid: 270) the role of law in a positive and constructive light to the extent that it benefits homosexuals. Further, she argues (Najmabadi, ibid) social pressure for marriage moves more people towards transitioning. It should be noted that Najmabadi's arguments are challenged on the basis of fieldwork conducted in Iran that legal misrecognition of transsexuality creates space for a discourse which in itself leads to misrecognition of other gender identities. Moreover, it is not through merely performances that one's gender is constructed; rather it is the effect of gender norms and disobeying the norms (Butler, 1993: 22).

The existing literature (c.f. Najmabadi, 2008 & 2014; Shakerifar, 2011; Javaheri, 2010; Bahreini, 2008) shows the debate on transsexuality in Iran revolves around the issue of medical and psychiatric treatment of GID for assigning the individual a desired gender. During the past few years several documentaries are produced about transsexuals lives in Iran, to name but a few are; '*Inside Out*' (2005) directed by Zohreh Shayesteh, '*The Birthday*' (2006) directed by Negin Kianfar and Daisy Mohr, and '*Be Like Others*' (2007) directed by Tanaz Eshghian. In these documentaries Iranian transsexuals are inaccurately depicted, on the one hand, as oppressed

individuals and mostly as homosexuals being forced to go under sex change surgery, and, on the other hand, as some exotic objects of investigation for the media (Shakerifar, 2011: 333).

In representing the phenomenon of transsexuality in Iran, Elhum Shakerifar follows Bernice Hausman's theory of medical basis and pathologization of transsexualism maintaining that most transsexuals in Iran believe that their subjective experience of sexuality (as existing in their minds) is different from that of their bodily representations. Therefore, the demand of surgery is the first symptom of transsexualism. This argument is employed to distinguish their status from homosexuals and transvestites who claim no medical treatments (Shakerifar, 2011: 329). Freshteh Javaheri defines (2010: 367) transsexuality in Iran as a culturally and historically specific practice that requires involvement of transgender people with medical and judicial institutions in order obtain hormonal and surgical treatments to enact and embody 'self'. Najmabadi claims Iran's medico-legal certification for sex change is based on the idea of curable disease and occasionally perceived as an option for hetero-normalizing people who might have same sex desires (Najmabadi, 2011: 534).

Raha Bahreini (2008: 15) adheres to the work of Janice Raymond, for she problematizes patriarchal pathologization of transsexuality by Iranian government and argues that the new system of "the police force" comprised of psychiatrists, psychologists, and surgeons along with civilian and governmental actors force binary gender roles through psychotherapy, hormone treatments, and technology of the knife to maintain heteronormativity among population. However, Bahreini's argument is rejected throughout this paper examining the strong presence of agency and awareness among transsexuals undergoing the whole process of transition.

In this study, I follow Stryker's (1998: 147) description of transgender as a: "phenomenon which disrupts and denaturalizes psychosocial understanding of gender that is rooted in physical material of body". Stryker suggests: (ibid: 148) "transgender does not merely refer to one specific identity or a way of being, rather it is an umbrella term for a broader variety of bodily effects that disrupts heteronormativity". She places transsexuality under this umbrella which makes the interrelations of the two terms possible. For Stryker transgender activism and theory treat transsexuality as a concept rather than a category and treats sexual orientation and gender identities in much the same way as race or class. This means a transsexual woman can be a lesbian who is sexually oriented towards women just like a man of color who is also a gay (Stryker, 2008: 148).

1.6 Theoretical Framework

This research is carried out from a socio-legal perspective applying two parallel theoretical approaches in order to capture the complexity of transsexuality in today Iran. With reference to Niklas Luhmann's theory, I shall argue that law enjoys a limited degree of system autonomy and can generate images of the society internally. This means that Islamic jurisprudence understands transsexual-gender identity in its own limited terms which could be different from how ordinary people or the medical professions understand and describe it. However, law's conceptualization of "trans-gender-sexuality" influences society through institutional interactions. Therefore, social norms play a vital role in realizing the impact of law on society and vice versa. I shall also explore the function of juristic legal opinions as separate from the law of the state and the impact of them on people's lives by addressing Eugen Ehrlich's concept of "living law". Sex change surgery is permitted through *fatwa*, yet neither sex change surgery nor transsexuality is sanctioned by state law.

The state's misrecognition of "trans-gender-sexuality" to some extent distorts people's social experiences. Moreover, legal misrecognition produces norms and procedures through the working of different institutions which amount to the construction of gender. Plurality of legal opinions on transsexuality has created different discourses on sex change surgery which provides various and at the same time limited understandings of gender and sexuality within traditional Islamic jurisprudence.

The second theoretical foundation is inspired by the work of Judith Butler about gender being constituted through time and instituted in surface of body through what she calls "stylized repetition of acts" (Butler ,1990:141). Butler's notion of "gender performativity" explains the effect of regulations and social constraints and it is through the repetition of the norms that genders as well as the subject are constructed. Performative as a type of speech act is independent of materiality, another words, it is a way of doing through social and political forces with no claims of being true or false (Stryker, 2006: 10, 11).

Discursive analysis of the lived reality and experiences of transsexuals in Iran unfold the cultural meanings by which sex and gender are produced rather than being assigned to a passive recipient body. Transsexual body has gained meaning within legal and medical discourse by others. What

has happened in Iran is that transsexual individuals have re-constructed their gender identities to claim autonomy for their bodies. However this occurs again within the discourse of power which misrepresents and misrecognizes their transgender identity.

The above mentioned theoretical perspectives are related together by the concept of 'misrecognition' borrowed from Nancy Fraser. She describes (2001: 24) misrecognition as "...the process of being negatively recognized and subjected to social subordination." Fraser states (2000:114): "misrecognition is the result of institutionalization of parity impeding values in a formal and informal form". Borrowing Fraser's concept, the TIP regulates interactions according to religious and cultural values that misrecognize transsexuals as entities suffering from GID. With reference to Fraser, medical and legal "parity impeding" values subordinate transsexuals' status in society that leads to socio-legal misrecognition of transsexuals in Iran. Therefore, in order to redress misrecognition and become full members of society Iranian transsexuals try to, as Fraser postulates, "deinstitutionalize parity impeding" norms through re-definition of law and re-conceptualization of gender. Moreover, their claims for recognition are based on status rather than identity politics. Thus, according to Fraser the status recognition tackles the problem of gender injustice which is rooted in cultural values. Furthermore, it deconstructs traditional understanding of identity politics in a way to remedy gender misrecognition (Fraser, in Fraser and Honneth, 2003: 13)

Chapter Two: Methodology and methods

2.1 Feminist methodology

In the process of knowledge production feminist scholars and researchers have tried to make connection between idea, experience and reality (Ramazanoglu and Holland, 2002: 15). Feminist methodologies are developed to move beyond the methods and techniques of collecting information in order to produce knowledge through ethical and political perspectives. Feminist epistemology is concerned about the relation between knowledge and power. In other words, it seeks to understand if the dominant culture is able to know the subaltern² culture and how subordinated or the “others” are represented in production of knowledge within the work of feminist researchers.

Authoritative knowledge, according to Dorothy Smith is based on the people’s everyday life which she describes as “work knowledge”. She argues (2005: 160) that researchers and ethnographers do not reinterpret the work knowledge they obtain, but value them. Donna Haraway reminds researchers how to tell the truth rather than proving how objective the truth is by introducing the concept of “situated knowledge”. She offers feminist researchers to hold on to the notion of partial visions instead of struggling to prove their knowledge to patriarchal knowledge (Ramazanoglu and Holland, 2002: 63, 85).

This paper sheds insights on the experience of Iranian transsexuals. Being influenced by the work of Dorothy Smith, it tries to understand the experience of transsexuals in everyday life by embracing Smith’s concept of “actuality” (Smith, 2005: 50). For Smith, people’s experience, especially marginalized, is a fundamental source for examining ruling relations and particular social organization (Smith, 2005: 123). Therefore, critical analysis of Western misrepresentation has been adopted during the course of studying transsexuals’ experience in Iran, for indigenous people are seen as problematic and also objectified as the troubled and oppressed “others” in Western studies (L.T Smith, 1999: 39).

² Subaltern is a postcolonial notion developed by Antonio Gramsci by which he firstly referred to a group of military subordinated by colonels and generals, but later he used it to address any social subordinated group or class. For example he identifies peasants, slaves, different minority races and women as subaltern social groups (Green, 2002: 2)

Being aware of the critiques by poststructuralist scholars (i.e. Judith Butler and Joan Scott, 1992) on the importance of experience in production of knowledge, I agree with Smith's argument that she states (2005: 126): "experience must be spoken or written to come to existence, it does not exist before its entry to language as authentic, therefore, is already discursively determined by the discourse in which it is spoken". Joan Scott claims: (Scott in Butler and Scott, 1992: 32) "experience exists in language and discourse, hence subject to structure beyond the speaker or writer's intention. Therefore, cannot be valued". Smith's response is to view experience as a dialogical process that emanates the discourse in a way that doesn't invalidate its source of data (Smith, 2005: 135).

The whole process of this research including theoretical as well as the empirical part brought moments of critical self-reflection, and allowed for complementing my perception on the reality of individual experiences in construction of gender and conceptualization of legal norms in today Iran (see chapter five).

2.2 Qualitative research

Initially, this research took shape against the backdrop of assumptions regarding transgender identity and the role of the law in creating the identity. Semi-structured interviews have been conducted as part of qualitative research methods along with textual and discourse analysis to answer the research questions.

Qualitative research is considered to be the best way to gather information in close interactions with people and the most effective method of obtaining a glimpse into their experiences. It allows the researcher learn about the experiences of people, relationship, places and power relations during the process of data collection (Creswell, 2013: 83). However, problems of implementing qualitative research have not been overlooked by scholars of social sciences. Alan Bryman challenges (2006: 99) the understanding of the researcher to fully provide what are the perspectives of those who are studied. Moreover, he maintains (ibid: 100) the application of theory prior to the fieldwork prejudices researcher's ability to investigate the reality.

2.2.1 Interviews

Thought to be a simple conversation, the interview is a valuable source of knowledge from individual's experience and a constitutive feature of everyday life (Gubrium and James, 2002: 3). In this research, interviews with transsexuals were conducted to understand how transsexuality as a gender identity is reconstructed through the process of self-recognition while being misrecognized by the law and society. Interviews with transsexuals and surgeons in this research is understood as the best possible way to contextualize the study and understand the knowledge and describe experience of transsexuals as well as the contribution of the medical profession as the main actors to social and legal reform. Furthermore, the state's involvement and responsibilities in the process of sex change surgery is examined through an interview with a psychologist who works as a consultant of transsexuals' affairs at Social Welfare Organization (SWO). The role of transsexual activism in development of social and legal status of transsexuals has also been examined through interviews with trans activists in Tehran. Conducting the interviews, this study has mapped out the social and legal process of transition among transsexuals (see chapter 5 & appendix 8.3).

2.2.2 Textual, discourse analysis

Documents also represent reality, albeit in a distorted and selective fashion, and can be used as a medium through which the researcher can find correspondence with the subject of study. However, they cannot be read separately from the social, historical and political contexts (May, 2001: 182). Materials for analysis in this study include: 1) The official writings of ayatollahs in Iran who have issued religious legal opinions (*fatwas*) on sex change surgery that highlight the religious definition of transsexuality. 2) The state's regulations on military service and the laws regarding the change of name and gender to elucidate limited legal apparatuses for recognition of transsexuals' status in Iran. 3) Discursive analysis of transsexuals' personal interviews as well as Mahtaa's website (the only transsexual web-based organization in Tehran as of 2014) was conducted to understand the social and individual perception of transsexual identity within different groups of people.

2.3 Research participants

The fieldwork was carried out in Tehran between December 2013 and January 2014. Sixteen semi-structured interviews were conducted with different groups including: 1) Seven FTM transsexuals, five of whom had already undergone sex change surgery, while two were booked for operation. 2) Five MTF transsexuals among two of whom had not yet undergone the surgery. 3) Two surgeons with long experience of transsexual surgeries. 4) One psychologist at Social Welfare Organization. 5) One interview with public relation officer and website manager of Mahtaa 'Center for Protection of Iranian Transsexuals'. Initial contacts were also made with Dr. Mina Jafarabadi, gynecologist surgeon and Mohammad Omrani, Mahtaa's public relation officer in Tehran as trustworthy gatekeepers of the research areas. On the basis of non-random sampling, the first group of participants (FTM) comprised of seven transsexuals were selected based on their availability, interests and accessibility for individual face to face interviews, then they were asked later if they could introduce others from the next group (MTF) who might be eligible and interested to participate in the research. It should be noted that reaching women transsexual was much more difficult and harder to meet. Interviews with transsexuals were conducted as a form of informal conversations in cafes or restaurants. Moreover, the participants allowed me to record the interviews which reflected their willingness to participate in the research.

Two surgeons; Dr. Mina Jafarabadi, gynecologist with six years of experience in transsexual surgeries, and Dr. Shahriar Kohanzad, urologist with fifteen years of experience were personally interviewed at their offices at two different hospitals of Imam Khomeini and Pars respectively. Both hospitals are located in the central part of Tehran distanced not very far from each but distinct in a way that Pars is a private hospital and Imam Khomeini is a government hospital which makes a huge difference in terms of the expenses for surgeries and treatments. Another site of information was through membership of Mahtaa's website. Being a member of Mahtaa was a privilege kindly granted to me to be able to read stories and views of transsexuals in Iran on various subjects. The interviews were confined to the city of Tehran due to limitations of this study. Individual profiles of transsexual participants in this research are described separately under the appendix. I should mention that I have translated parts of the interviews (from Persian to English) to use in the paper. Therefore, any error is mine, and not others.

2.4 Entering the field

When I started my journey to Tehran, I did not imagine having the privilege of being privy to personal life stories of Iranian transsexuals who open-heartedly shared with me their experiences and thoughts about their lives. I am deeply grateful for their trust and generosity.

My point of entry into the “field” was a meeting with Dr. Mina Jafarabadi a gynecologist and a well-known surgeon for transsexual surgeries in Tehran. I first met Dr. Jafarabadi at Imam Khomeini Hospital during her break time inside the surgery ward just behind the red line and a few steps away from the operating room. She was wearing a green gown with a white surgical mask dangling around her neck. I couldn’t avoid the feeling of anxiety and tension I acquired from her green uniform and the blue plastic covers over my shoes during the entire conversation. Not to mention that I was stressed thinking the whole time that she might run off to the operation room any time before I finish asking my questions. Having heard of her extensive experience, I asked Dr. Jafarabadi if she could share her experience and knowledge about her interactions with transsexuals.

After describing the types of surgeries she has been doing for female to male transsexuals; removing breasts (Mastectomy) and womb (Hysterectomy), she explained how she contributes to construction of individual’s gender identity through her medical profession and the kind of challenges she has faced as a doctor:

When I started to do the surgeries 6 years ago, I was criticized by my family and friends for intervening with God’s will. They tried to prevent me from doing such difficult and irreversible surgeries, and it gradually became a personal dilemma for me. As a doctor I was responsible to help those who have come to me, because I could see how difficult life becomes for them when they have a body which they so much dislike. I totally understand a person who wants to be the man of family and, yet cannot continue to live with the fact that he has a womb...I even offer them to freeze their ovules, so that they can have their own children in the future if they want to, but they are not even willing to talk about it...

As we moved on, she kindly accepted to advise me on how to carry out my fieldwork in Tehran, so I fixed another appointment with her, but this time in a different location, at Productive Health Research Center where she is also working as a researcher.

In my next meeting with Dr. Jafarabadi at her office where I felt more at ease, she went through her files and we decided to identify different cases which she thought were more accessible and will be of interest to my research. She phoned the people whom she knew and asked if they were willing to participate in the research project she was conducting with me. After explaining the purpose of the research, she asked their permission to give me their phone numbers, so that I could arrange a meeting. Surprisingly, everyone she contacted was willing to meet with me. Finally, I was able to book appointments with seven FTM transsexuals in Tehran.

2.5 Research ethics

The interviews concerned ethically sensitive issues involving personal experiences of a group of people who are marginalized in Iranian society and their sexual identity can expose them to violence and discrimination. Subsequently, special attention was paid to the ethical dimensions of the research process. To explore the life experiences of transsexuals and their relations with the public and private spheres, more importantly with gay, lesbian and bisexuals, the research had to adopt special measures in order to avoid creating any risk of further violence and discrimination to the interview persons.

I approached the research participants with the permission of their surgeon, and the consent of the hospitals involved, and through a trans-organisation which represented their community. It was of a great importance to obtain the permission before contacting every participant. During the interviews, which were conducted in Persian, I informed the participants of the purpose of this research and how they were represented while ensuring their anonymity, so that they could decide whether they wished to participate in the study. The cornerstone of the fieldwork was to protect confidentiality of the participants' information by having the interviews conducted in places where they felt more comfortable and secure. Furthermore, I assured them that they would receive a copy of the transcripts of our interviews. They were given the opportunity to withdraw from the interview or the research process at any time. This assisted to develop mutual trust during the interviews. More importantly, I kept the interviews and field notes in a safe place rather than saving them on my personal computer. As for the names of the participants, I was granted permission to mention the names they chose that are not their real names (see appendix 8.1 for interview guide). I can also add that the research participants were most willing to participate in

the research, proved to be supportive of my research work, and in fact they have since stayed in touch with me via email.

2.6 Limitation of the study

This research is limited in a number of ways which should be critically discussed and acknowledged. First, I should reiterate my position as a feminist researcher with a post-colonial standpoint that has affected the formation of the research problem and selection of the methodology for this study.

It must be acknowledged that his research involves small number of participants due to qualitative approach. This is not necessarily a shortcoming, but I would have carried out additional interviews with other different actors who are involved in this field of study.

Conducting interviews in Persian language caused problem in translating the key terms from English to Persian. For example, the word *gensiyat* in Persian was used by the participants differently to address both gender and sex in English. Thus, translation of the interviews required careful attention to represent the aim of the participants rather than my understandings thereof.

The shortcoming of previous socio-legal and ethnographic research on the issue of transsexuality in Iran has directed the research to rely on the Western socio-legal theories. Social scientists in Iran have rarely discussed matters of gender and sexuality in contemporary Iran whereas about half of the research on Iran which is produced by social scientists outside the country concerns gender and sexuality. These together limit the scope of the previous studies which could have otherwise enriched the theoretical discussions in this work.

Above all, there are insufficient statistical resources on the practice of sex change surgery in Iran, which limited the estimation of the frequency of the surgeries in different parts of Iran, and also the sex change ratio between men and women for more intersectional analysis of race, class, age, gender and ethnicity.

It is also important to note that due to limited resources and time framework the fieldwork for this research was conducted only in Tehran (capital city of Iran). It could have brought a different socio-religious angle to the study, if legal ethnographic research was carried out in another city of

Mashhad, which is the second largest city in the North East of Iran with a highly religious reputation, for its land bares the shrine of *Imam* Reza (very important for *shi'a* Muslims). Mashhad is the second city after Tehran where transsexuals travel from all over Iran for sex change surgeries, laser therapies and cosmetic operations.

Chapter Three: Theory

3.1 Social Systems Theory

To examine the principles and doctrines of the Islamic legal system I have employed the work of Niklas Luhmann on the relationship between law and society. Niklas Luhmann's theory of social systems provides a tool for understanding how law functions in relation to different areas of social life in Western context. Application of Luhmann's systems theory to my study has enabled me to explore the function of Islamic classical jurisprudence in making and interpreting legal rules through internal operations and communications within the Islamic legal system. I am, however, aware of the fact that Luhmann's system's theory was constructed against the backdrop of the Western legal traditions. Therefore, I am using Luhmann's concept of autopoietic system of law and his description of how an effective legal system functions in order to unfold how Islamic laws are produced and function in society.

According to Luhmann, system is an entity that delineates itself from its environment by distinguishing between the internal recursive communications of the law and its environment. Instead of focusing on human being he focuses on the function and internal communications of the systems (Rottleuthner, 1989: 780). The elements of social systems, for Luhmann are not persons or international social actions, but communications or what he postulates as "meaningful communication" that is comprised of information, utterance and comprehension (ibid, 1989: 781).

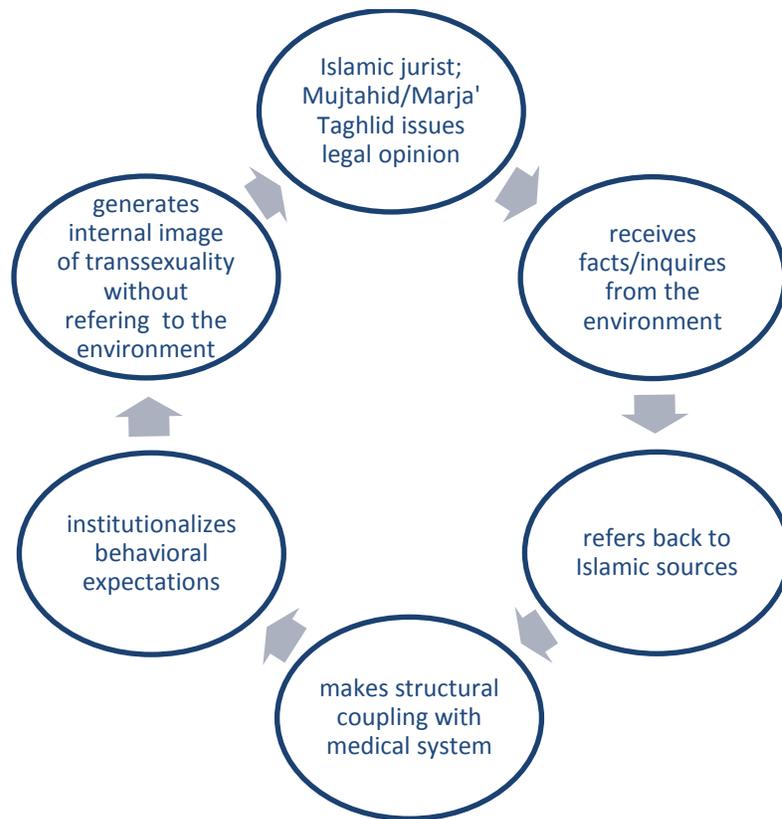
Luhmann's focus is on modern Western society that consists of functionally different systems such as law, religion, science, and arts which means the every system fulfils one specific function irreplaceable by any other system. This is when he moves towards "autopoetic system", a term which he borrowed from Chilean biologists Humberto Maturana and Francisco Varela. Autopoietic systems are described as the systems that produce themselves normatively by referring to their own internal operations. There is no possibility of intervening directly in their normative operations from the outside (Seidl, 2004: 3). These systems are, however, cognitively open which means that they are capable of selecting and bringing in cognitive information. Therefore, Luhmann's conception of social systems is self-reproducing, self-regulating systems which are operatively closed, but cognitively open. This suggests that there is no direct communication between the systems and the environment, although systems can observe each other's operations.

It means that communications constitute communications within the systems and elements of systems are self-referential too. Hence, an autopoietic system is operatively closed as it can neither derive operation from the environment nor can it pass operations to the environment (Rottleuthner, 1989: 783).

With regards to the legal system, Luhmann argues that it is a special system of society which is based on the binary code of lawful/unlawful, and consists of “institutionalization of normative expectations”, and these “institutionalized behavioral expectations” are what he defines as law (Rottleuthner, 1989: 784). Inger Johanne Sand states: (2011: 112) “legal communications results in making legal decisions or legal constructs in their own terms which do not solve specific problems in society directly but create legal norms that function as normative expectations”. The legal system perceives matters in the form of facts provided by the environment and norms that already exist in the system. The system can use facts to internally create law which responds only to that part of the environment that is referred to by its norms (Wallenberg Bondesson, 2011: 175). According to Luhmann, the relation between systems is formed as “structural coupling” (Seidl, 2004: 6). Structural coupling occurs inside the system, when one system irritates the other system by observing some parts of its activities and strategically interfering with its operations (Wallenberg Bondesson, 2011: 176).

Let us now move on to explain Islamic jurisprudence and its autopoietic function of normatively closed with reference to Luhmann’s theory. Islamic jurisprudence (*Fiqh*) as explained in chapter four, is the structure of *Shari’a*, which functions as a process through which Islamic jurists strive to understand divine sources of *Shari’a* in order to transform God’s command into law. Jurists produce and shape norms through communications within Islamic legal framework among themselves without receiving any external inputs due to irreversibility of sources and specialty of Islamic jurists. Therefore, the jurisprudential system is self-referential and reproduces itself by referring to the divine sources and existing interpretations of Islamic jurists. The Islamic doctrines of *Ijtihad* and *Taghlid* as examined in the next chapter illuminates autopoietic system of Islamic jurisprudence. *Shia’a* Muslims should emulate (*Taghlid*) a jurist’s justification for their inquiries. The source of emulation (*Marja-e-Taghlid*) provides legally binding opinions by referring to divine sources. Jurists constantly refer back to divine sources to respond to Muslims’ new

problems and challenges (see chapter four). What is determined by jurists is through internal logic within the legal system and not by referring to the environment (Banakar and Travers, 2013: 56).



Under certain sociopolitical conditions during the 1980s, Ayatollah Khomeini expressed his legal opinion upon the request of an individual transsexual for sex change surgery. The permission was based on the fact that he believed there is no implication of unlawfulness about sex change surgeries in Islamic divine sources. Moreover, transsexuals desired the supreme leader to institutionalize the normative expectations. Accordingly, He permitted the sex change surgery by involving the medics in the process. This is when the Islamic legal system couples with medical system while observing and regulating its work. Intervention of medical system and pathologizing transsexuality as GID leads to misrecognition of transsexuality, which also is misrecognized by legal system through its approval. The consequence of this process is inevitably the production of legal norms which regulates the medico-legal procedures of being certified as an eligible candidate for sex change surgery. However, as it will be explained later, legal opinions of Islamic jurists vary depending on which tradition of jurisprudence they follow. This means different interpretations of divine sources result in divergent legal opinions which construct a pluralistic legal system.

Complexity of Iranian legal system becomes clearer when addressing application of different laws. It should be noted that I have used Luhmann's systems theory only to shed lights on how Islamic jurisprudence functions to produce legal rules, while acknowledging his theory does not apply when discussing the state legal system.

3.2 Living law

For the purpose of this paper I have used Eugen Ehrlich's concept of "living law" to address on the one hand, people's practices and attitudes towards transsexuality, and on the other hand the legal opinions of Islamic jurists supportive of sex change and state law. This will lead the discussion to examine whether the courts apply Ayatollah Khomeini's legal opinion or the state law when ordering for legal transition of transsexual persons.

In the Iranian context the legal opinions or *fatwas*³ of Islamic jurists or *Maraj'e-Taghlid* separate from the state law are binding rules for *Shi'a* Muslims which are appointed on the basis of everyday life matters. Therefore, *fatwas* have legal and judicial effects, even though they are not sanctioned by the state. Thus, judges can refer to *fatwas* as a source of decision making (see chapter five). The parliament of Iran has neither sanctioned sex change surgery, nor recognized transsexuality. However, the state allows, supports and supervises the implementation of the *fatwa* on the practice of sex change. That is to say the certificate for sex change surgery is ultimately granted by the state's judiciary's administrative office. While majority of people particularly families of self-identified transsexuals show great discontent and resentment to transsexual gender identity and sex change surgeries. More importantly, Islamic jurists have expressed different legal opinions (*fatwas*) on sex change which amounts to plurality of *fatwas* and legal discourses that are themselves applied differently by various courts (see chapter 5.7). It suffices to say that many judicial courts in cities other than Tehran (capital) are reluctant to accept cases of transsexuals who request for change of names and genders (see appendix 8.3).

Eugen Ehrlich developed the concept of "living law" during his time in Czernowitz where he observed interactions among various cultures from different tribes with the legal system of Austro-

³ Mohammad Hashim Kamali defines *Fatwa* as a legal opinion of a qualified Islamic jurist in response to a Muslim question (2008: 174). However, Louis Halper maintains that contrary to *Sunnis* and due to the notion of *Imamat* and responsibility of *Shi'a* Islamic jurists during the time of occultation of the twelfth *Imam*, those who have reached the level of *Ijtihad* issue *fatwas* which are binding on the followers (2006-7: 1148).

Hungarian Empire (Banakar, 2008: 53). For Ehrlich the state is not the first and foremost source of law. Moreover, law is produced by non-state actors, too that can gain legal status if they are employed to preserve social control and order in society (Banakar, *ibid*: 55).

It can be argued that the laws dominating the life of transsexuals are made through their social practices and behaviors rather than state laws. An ordinary transsexual person called for recognition of transsexual status in society by asking Ayatollah Khomeini's legal opinion, because the written laws overlook transsexuals.

According to Ehrlich, socially based rules that are adopted by ordinary people to organize their lives are called 'living law' that is generated through social associations (Banakar, 2003: 213). Reading Ehrlich's explanation of social associations, Islamic jurists whose opinions are perceived as powerful as the law of state could be regarded as social associations besides the law of state. It is not wrong to describe the legal opinion of Ayatollah Khomeini on the legitimacy of sex change surgery as the particular non-state legal ordering source of living law.

Ehrlich also distinguishes between legal and non-legal norms of living law by proposing *opinio-necessitatis* which is the emotional reaction to different legal norms (Trevino, in Banakar & Travers, 2013: 40). People's repulsive reaction to transgression of norms is a "socially emotional" reaction to run away from the offender, because the actions of a deviant ruin the social associations (Trevino, in Banakar & Travers, 2013: 41). In the case of Iran, sex change is allowed, but the state's legal criminalization of homosexuality has contributed to create a homophobic society which at large rejects the notion of transsexuality by relating it to homosexual and mental sickness. In response to my question about the people's attitude towards transsexual person, Amirali, a postoperative FTM transsexual told me:

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

It might have not been the intention of Ehrlich, but I add moral values to the concept of living law in a sense that people makes their own way to regulate conducts and behaviors based on moral values and expectations emanated intersectionally from religious, social, cultural, political and historical background. For example, temporary marriage is legalized in Iran, but society particularly middle class shows great resentment to women who practice it, yet temporary marriage remains a social stigma despite its practice and legality in Iran (Haeri, 1989: 6).

It should be reemphasized that in the 1980s Ayatollah Khomeini was requested (on behalf of transsexual community) by Maryam Khatoon (MTF transsexual) to legitimize sex change surgery. Drawing on Ehrlich's concept of living law, transsexual persons differentiated their status from other gender identities namely homosexuals. Therefore, demanded recognition. The important point is that transsexual persons had already conceived sex change surgery is a religiously legal (*Shar'i*) practice that needed to be legitimized by the most authentic religious source in Iran who is *Marja-e Taghlid* (source of emulation for *Shi'a* Muslims) rather than the state. For this matter I refer to Ehrlich who believes (Ehrlich, 2002: 25) law is a social phenomenon:

“Every kind of legal science (jurisprudence) is a social science, but the legal science in the proper sense of the term is a part of the theoretical science of society, of sociology. The sociology of law is the theoretical science of law”.

3.3 Gender performativity

A further part of the theoretical premises of this study is based on the work of gender theorist Judith Butler. In this paper Butler helps me to understand gender and its historical discursive relation with sex. I employ Butler's notion of “gender performativity” as she describes “the effect of regulatory regime” to explore how genders are divided under certain social pressures and prohibitions which result in repetitions of norms and ultimately construction of gender.

Butler states: (1993:17) “performative is one domain in which power acts as discourse”. She does not claim that gender is a choice or a role or even a construction that one puts it on like a piece of clothes. She rather discusses that understanding gender performativity as a deliberative choice of subject is a miscomprehension (Butler, 1993: 21). She argues (1993: 22) that “...the repetition of norms which are created through social constraints, taboos, prohibitions and the threat of punishments constitute temporalized scene of gender construction and destabilization”. Therefore, the repetitions create the sense of masculinity and femininity while producing the subject. Thus, the subject comes to existence through what she calls “matrix of gender”. In other words, every subject is created within the norms and repetition of the norms.

The narratives of experiences from the interviews with transsexuals in Iran provided a rich source of information for describing how gender is reconstructed and represented within the process of

“stylized repetition of acts” borrowed from Butler (1990). For example Amirhossein preoperative (at the time of interview) FTM transsexual told me in a very pleasing way that he had released two music albums one with a female voice and another with a male voice. He also reiterated that his fiancé does not approve of releasing the female voice album. Amirhossein was also very content about having sexual relationship with women before sex change surgery. However, he emphasized that he only had sex with women when he had his hair cut short. I will discuss gender performativity in chapter five, but to mention briefly Amirhossein’s gendered subjectivity to become a man or a woman does not follow his sex, but compulsory norms and repetition of those norms.

Butler states: (1990: 6) “if gender is the cultural meanings of sexed body, then gender does not follow from sex, and this distinction suggests discontinuity between sexed bodies and cultural construction of gender”. She argues (ibid: 7) “gender is not merely cultural inscription of meanings on a pre-given sex”, rather she states: (ibid: 8) “gender is the discursive cultural means by which natural sex is produced and established as prior to culture, and as a neutral surface on which culture acts. Therefore, production of sex should also be understood as the effect of cultural construction”. Butler questions the theory of gender being a cultural construction, because she thinks if we presume gender is a construction, we believe that certain meanings are inscribed on different passive bodies which are only the recipients of cultural laws and values. Therefore, when culture constructs gender, then it seems as if gender is as something fixed and determined. However, it is essential to note that body is a medium and acts as an instrument which is related to some external cultural meanings, and gender as fixed or mutable is a function of discourse (Butler, 1990: 8, 10). Above all, she proposes (2004:10) in order to understand how gender works, one should go through history, yet to understand gender as a historical and performative category it is required to accept that gender and sex are continuously configuring the body and are both open to cultural inscriptions. Butler addresses Foucault (1990: 92) maintaining: “the body is not sexed prior to its establishment, but it obtains meaning within discourse and the framework of power relations.”

For Butler gender performativity is: “a matter of reiterating or repeating the norms by which one is constituted” (Butler, 1993: 21). These norms which are enacted forcefully constrain the gender subject, and it is through these repetition of norms that resistance, subversion, displacements are to be formed (Butler, 1993: 22). The pattern of self-recognition that individual transsexuals

commonly shared with me illustrates the fact that almost all the participants primarily self-identified themselves and passed as homosexual for several years before coming out as transsexual. Addressing Butler, this can be understood in a way that forced repetition of acts and norms induced those who were nonconformist to gender binaries to be identified as homosexuals by others and forced to repetition of acts that represented homosexuality, but then resistance occurs after some time because of social constraints, prohibition and taboos which results in self-identification as transsexual.

Butler suggests (2004: 19) when we speak about our sexuality or our gender we do not possess neither of these, because both are the “modes of being dispossessed” and also because these are the ways of being for others and not for us. Gender and sexuality reveal themselves to others through the body on which cultural meanings are inscribed by being involved in social processes. For Butler, to be a body means to be given over to the others. However, one can claim autonomy over the body that is scratched with social life and given away to the other world from the moment of birth (Butler, *ibid*: 20). This takes us to the point that Butler makes about compulsory act and embodiment of gender norms which reiterates the fact that gender is an assignment. In other words, when a baby is born we say “it is a girl”, this is not a choice but a forcible articulation of a norm (Butler, 1993: 22)

Butler provides a way of understanding gender that conceptualizes it as a constituted ‘social temporality’. She states: (1990: 140) “gender is an identity tenuously constituted in time, instituted in an exterior space through a stylized repetition of acts. The effect of gender is produced through the stylization of the body and, hence must be understood as the mundane way in which bodily gestures, movements, and styles of various kinds constitute the illusion of an abiding gendered self”.

3.4 (Mis) recognition

Different social groups have greatly struggled for recognition at intersection of class, race, gender and sexuality (Thompson, 2006: 2). Among other critical theorists, Nancy Fraser reflects on a new struggle for recognition in which she states “parity of participation” is the ultimate aim. In the following, I have used use Fraser’s argument that recognition is a matter of social status not specific group identity (Fraser 2000: 113), because I have gathered through the fieldwork that

Iranian transsexuals in their struggle for recognition have abandoned identity politics which I shall examine after explaining Fraser's theory of recognition. Fraser rejects the Hegelian identity model of recognition, for she believes equating politics of identity with politics of recognition amounts to "reification of group identity and displacement of redistribution" (Fraser, 2000: 110). Hegelian model says identity is constituted in relation to recognition by another subject. Therefore, recognition from others becomes crucial element of misrecognition or denial of recognition. Proponents of Hegelian identity model define misrecognition as being devalued by dominant culture. Therefore, the members of misrecognized group have to provide their own culture publicly in order to be respected by society (Fraser, 2000:109, 110). However, according to Fraser misrecognition means "institutionalized relations of social subordination". Therefore, struggles are required not to redress injustice, but overcome subordination by giving full participation to misrecognized persons in society (Fraser, 2000: 114). For Fraser, misrecognition should not be associated with distorted identity, because it puts the pressure on individuals to conform to group's culture and consequently the misrecognized group should construct an identity of their own. Therefore, she believes misrecognition is embedded in social cultural values. Finally she adds: (2000: 112) "the identity model lends itself too easily to repressive forms of communications, promoting conformism, intolerance, and patriarchy". Fraser reiterates (2000: 113, 114):

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

With reference to Fraser, this study shows that misrecognition of Iranian transsexuals is formed through religious and cultural practices which strictly regulate people's interactions especially in matters related to sexuality. Therefore, misrecognition results in denying status of some persons as full members of society and incapable of participating in social life. Furthermore, claims for recognition are not shaped in a form of group identity, but individual and collective challenges to overcome subordination. Legalization of sex change surgery has not precluded misrecognition of transsexuals' status in Iranian society after transition. Postoperative transsexuals remain misrecognized due to "wrongful institutionalized cultural values" which I borrow from Fraser to illuminate the misrecognition of transsexual persons as inferior members of society before and after transition. For example, the term "proper man" or "proper woman" came up in the interviews

indicating that the main reason for the lack of families' consent for sex change surgery is that they think their children will never become a "proper man" or a "proper woman" after the surgeries. When I asked what that meant, Amirhossein FTM (preoperative at the time of interview) told me:

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

Such "institutionalized cultural values", according to Fraser, destabilizes person's status in society as deficient or inferior and ultimately subject it to violations. Pegah's experience as a postoperative MTF elucidates another form of institutionalized social subordination when her suitor came to ask her hand for marriage. She said:

The first thing he asked me was if he can only have anal sex with me. I became furious and did not continue talking with him and rushed out of the room...

Every transsexual with whom I spoke resisted being publically identified as transsexual, being associated with other self-identified transsexuals or even seen in public with transsexuals. This helped them to avoid the threat of belonging to a different identity group in society, which according to them makes their situation worse than it already is among the neighborhood and family. This can be interpreted as one factor of transsexuals' becoming invisible or seek asylum in another country after completing sex change surgeries. This, however, does not stop transsexuals' individual and collective initiatives from claiming recognition in society. Hamed a postoperative and married FTM transsexual told me that he successfully managed to get his father's consent for sex change surgery by misrecognizing women's status in society, which means he used different wrongful cultural value for his benefits. He managed to put his father in a situation to choose between bad and worse scenarios:

When my father opposed my decision for sex change surgery, I asked him if he would prefer to have a lonely girl who is abandoned by society or a lonely man. Of course, my father responded "a lonely man" because a man can manage to look after himself under whatever condition; it is the lonely girl who cannot survive, if deserted...

It should be concluded that despite being misrecognized and denied full membership in society, transsexual activists have never discussed 'human rights' issues, but fought to be understood and accepted as ordinary members of society with specific needs. The interviews indicated that primary

concerns for transsexuals are medical treatments, financial support, employment and ability to enjoy social life. This moves us to the concept of distribution which Fraser includes in her theory of recognition. She states (2001: 32):

“I have treated redistribution and recognition as two mutually irreducible dimensions of and perspectives on justice, both of which can be brought under the common norm of participatory parity. Thus, I have so far avoided the turn to ethics and escaped philosophical schizophrenia”.

In order to achieve participatory parity, Fraser suggests (2001: 29) that it is necessary to firstly provide equal distribution of the material sources that guarantees people’s economic independency and secondly respect and ensure equal opportunity through “institutionalization of cultural values”. Misrecognition of Iranian transsexuals before and after transition along with unequal distribution of resources constitutes impediments to “parity participation” in social life. Therefore, misrecognized transsexuals seek to deinstitutionalize such patterns that prevent them from “parity participation”. Between the year 2006 and 2008, which was according to Najmabadi (2014: 221) the most productive period for trans activism in Iran, transsexual activists shaped their demands with reference to ‘needs’ and not ‘rights’ within religious framework. However, they firstly began to make themselves known and be acknowledged by the government in order to demand their needs. One of the most important claims of recognition by transsexuals was to reform the conscription law that regulated exemption for transsexuals based on moral deviancy. After several lobbies, the parliament agreed to replace transsexuality from moral disease into the category of glandular sickness (see chapter 4.2.2). Although such a reform continues to misrecognize status of transsexuals, it deinstitutionalizes subordination of transsexuals as deviants and precludes seclusion and unemployment in social life.

Chapter Four: Islamic legal system and the status of transsexuals in Iranian Islamic law

The first part of this chapter looks at the historical development of Islamic law and legal doctrines, further it explains the establishment of Islamic jurisprudence (*fiqh*) and the emergence of the Islamic jurists' legal opinions in interaction with customary practices. The second part of the chapter briefly introduces Iranian Islamic legal system before reflecting on Ayatollah Khomeini's *fatwa* about sex change, which will be followed by analyzing the current Islamic juristic discourses on transsexuality in Iran, and the legal status of transsexuals in Iranian law.

4.1 Islamic law and *Shari'a*

Shari'a is an Arabic word which literally means 'the way' that implies the way for guiding humankind to God's will. *Shari'a* has two aspects of divine and mundane. The sacred part of *Shari'a* contains the revelations from the God to Prophet Mohammad that is compiled under the name of *Quran*. The non-sacred part of *Shari'a* consists of the traditions (*Sunna*) which are the words, practices, and mannerism of the Prophet Mohammad that is documented by his followers in the form of *Hadith*. The jurists' consensus (*Ijma*) and the analogical reasoning (*Qiyas*) are also the other two non-sacred sources of *Shari'a*.

What has been incorrectly known as Islamic laws (*Quran, Sunna, Ijma, Qiyas/Aghl*) are in fact the sources from which the Islamic law is created and understood by the work of humankind. Therefore, I would use *Shari'a* addressing the Islamic sources instead of Islamic law as I believe Islamic law is not a set of divine rules preordained by God as Abdullahi Ahmed An-Naim stresses (1991: 12) that *Shari'a* is not divine by itself, rather it is created based on human interpretations of Islamic sources and interactions during the course of history. Islamic law varies with reference to its deferential contexts and should be studied addressing human practices not the divine will. Therefore, what is known to be Islamic law is produced and reproduced by members of different societies (Dupret, 2007: 80). With regards to Islamic law, it is not possible to have a certain model for all Muslim societies. Each part of the Muslim world has specific context in which its members orient themselves to something they call Islamic law (Dupret, *ibid*: 82). Accordingly, divergent legal doctrines prevail in different societies. The study of Islamic law should be focused on the

methods people locally apply to justify their actions and interactions within certain framework of rules. Lawrence Rosen proposes (1989: 2, 40) the “locality of Islamic law” which means law differs depending on local customs, conditions, and background of those who practice the rules that regulates peoples relationships.

The shape and development of Islamic law has taken place through history of Islamic civilization (Mir-Hosseini, 2000: 3). Umayyad and Abbasid Dynasties in the tenth century are said to be the formative periods of Islamic law. In this period the disputes over succession of the prophet divided *Sunni* from *Shi'a*. However, their legal scholars were inspired by similar materials and jurisprudence (Coulson, 1964: 104). Distinguishing factor between *Shi'a* and *Sunni* is the doctrine of *Imamat* which dominates *Shi'a* jurisprudence to the extent that it allows law making and has political authority (Coulson, *ibid*: 106) while *Caliphs* in Sunni school of thought exercise administrative power within the limits of law (Coulson, *ibid*: 107). Hence, consensus has no place in *Shi'a* jurisprudence, because the *Imam* as the special person has the right to rule and govern the Muslim community (Halper, 2006-2007: 1145).

4.1.1 Islamic Jurisprudence (*Fiqh*)

After the death of the prophet, private scholars attained authority due to their religious knowledge to provide guidance to people on matters that are remained unresolved during the time of Prophet Mohammad. Hence, the science of law '*Fiqh*' emerged (Mirhosseini, 2000: 4). After the formative period of Islamic laws, the history of Islamic legal development began with the classical legal theory. The roots of Islamic jurisprudence were recognized by classical theory as not the human thoughts, but divine revelation from which standards of conduct can be discerned (Coulson, 1964: 85).

Fiqh literally means understanding which denotes the understanding of Islamic sources. The goal of Islamic jurists is to understand the divine will, while applying their own reasoning in order to help Muslims to obey the God in their lives. Here we see the distinction between the *Shari'a* and *Fiqh* which is the jurisprudence of *Shari'a*. Coulson defines (1964:75) *Fiqh* as: “the process of intellectual activity which ascertains and discovers the terms of divine will and transforms it into a system of legally enforceable rights and duties”. Coulson (*ibid*) states: “*Shari'a* is a preordained system of God’s command, while jurisprudence is the science of understanding and ascertaining

the law”. This leads the argument to Luhmann’s theory of autopoietic system of law where the legal system refers to itself to produce laws to regulate people’s behaviors.

Muslims usually confuse the two concepts of *Shari’a* and *Fiqh*, while neither *Quran*, nor *Hadith* and *Sunna* constitute the law, but the science of *Fiqh*. It is the duty of Islamic jurists (*Mujtahids*) to endeavor for interpretation of the divine sources to excerpt legal rulings for Muslims. According to Coulson (1964: 76), the divine sources are the principles of jurisprudence that should be taken into account by a *Mujtahid* who is a person exercising *Ijtihad* (process of independent reasoning by jurists, which literally means diligence in English). During the course of the Islamic law’s development, different jurists invoked different interpretations of Islamic sources to resolve the problems they faced in different contexts that has led to the emergence of various schools of Islamic thoughts in different Muslim societies. Different *Sunni* schools of thought arose during the Abbasid period from which four survived; *Hanbali* which is officially recognized in Saudi Arabia. *Hanafi*, is well represented in Afghanistan and central Asia. *Shafi’i* was started in Egypt and reached Persia in the Middle Ages before the country became *Shi’a*, but today *Shafi’i* school is followed by Muslims in Indonesia and Malaysia and *Maliki*, which is the predominant school in North Africa (Schacht, 1982: 65-66).

In the course of the development of Islamic law, independent reasoning or *Ijtihad* took the place of early specialists in religious law of the Abbasid period whose personal opinions were based on basic principles of *Quran* and the practices of the Muslim community for the welfare of Muslims. Therefore, at that time anybody who was interested in religious law had the right to independent reasoning (Schacht, 1982: 70). This indicates that Islamic jurists of early times acted separately from the Islamic state. In other words, the jurist law was created and developed by specialists and the use of legal science, rather than the state. Moreover, the jurists’ books had the force of law (Schacht, *ibid*: 209)

4.1.2 Islamic Jurist legal opinion (*Fatwa*)

By the end of the ninth century Muslim jurists recognized the door of *Ijtihad* was closed believing there were no new matters for independent judgments among Muslims. Therefore, *Taghlid* replaced *Ijtihad* which limited activities of jurisprudence and confined them to analysis of already established rules (self-referential). However, the rule of *Ijtihad* was preserved in *Shi’a*

jurisprudence (Coulson, 1964: 80). *Taqlid* means emulation and *Marja'-e-Taghlid* is literally understood as the source of emulation in *shi'a* jurisprudence. In the *Shi'a* school of Islamic thought *Marja'-e- Taghlid* is a *Mujtahid* and a Grand Ayatollah who provides reasoning on everyday life matters by referring to divine sources and Islamic jurisprudence in response to Muslim inquires. Therefore, every *Shi'a* Muslim should choose and follow a *Marja'-e-Taghlid* for guidance in life. Moreover, the response of *Marja'-e-Taghlid* is a binding legal opinion in *Shi'a* jurisprudence which is called *Fatwa* (Halper, 2006-2007: 1148). Schacht addresses (1982: 71) that the doctrine of *Taghlid* emerged after closing the door of *Ijtihad* for Muslims to accept the rules of authorities. However, later *Sunni* scholars opposed *Taghlid* and advocated for the reopening of the door of *Ijtihad* claiming it is dangerous to blindly follow authority of a man except the prophet in the matters concerning religious law. Therefore, the activities of later scholars of *Sunni* jurisprudence were to solve new problems arising in Muslim lives. Such activities were carried out by *Mufti* (a person who issues *fatwa*) who use traditional sources to provide legal opinions or *Fatwas* (Schacht, *ibid*: 73).

According to Coulson (1964: 142) and Schacht (1982: 74-5) development of the Islamic law owes much to the work of the *Muftis* or “Juris consults” who gave their formal opinions (*Fatwas*) upon legal issues relating to matters of life. *Fatwa* is given on every field which demonstrates the types of urgent problems arising from the social practices in certain places and at certain times.

4.1.3 Customary practices (*Urf*)

Custom was not considered a source of law in classical Islamic theory. *Urf* is translated to custom in English. *Urf* literally means ‘to know’ that refers to people’s practices which are basically the customary practices (Coulson, 1964:143). Rosen (1989: 42) maintains that customs receive legal implementation in the sources of *Shari'a* other than *Quran*. He states (*ibid*: 44) culture and law are not separable, for legal officials namely *Qadis* make decisions by examining the social origins of matters brought to them.

Coulson (1964: 85) believes the great part of the *Shari'a* is originated from customary practices and the Islamic scholar’s reasoning. Islamic jurisprudence has allowed for approval of *Urf* (customs) if the cultural practices do not violate Islamic law. A local practice could remain in use,

if the purposes and consequences of a local custom do not violate the *Quran* and the *Sunna* (Hursh, 2009:1405).

In her book, *Marriage on Trial*, by examining family courts in Iran and Morocco, Ziba Mirhosseini (2000) explains the process by which Muslims translate their religious perceptions into practices. She elucidates how the practices and experiences of people through using *Shari'a* strive for social recognition. This can emphasize the fact that *Shari'a* is created within sociohistorical and cultural moments. The Islamic era during and after the prophet allowed for integration of non-Islamic customs that didn't contradict *Quran*. This continues to be the case in Muslim countries today.

According to Coulson (ibid: 148) "Islamic authoritative law was never formed by classical doctrine, but developed through practices. However, classical texts were always respected as religious ideals".

4.2 Islamic revolution and Iran's constitution

It is beyond the scope of this paper to go through the history of Iran's legal system other than elaborating on the fact that Iranian law and legal system is based on *Shari'a*. Iran has followed Twelve *Shi'a Imami* Islam as the official religion since the Safavid's period in 1501. In the mid nineteenth century Iran went through a process of modernization that fell under the Qajar Dynasty. As a result, the constitutional revolution (1906-1911) occurred as a form of modern government (Kusha, 2002:131). After going through a period of legal modernization during Pahlavi dynasty (Reza Shah [1925-1941] and Mohaammad Reza Shah [1941-1979]), which was inspired by French legal system, the 1979 Islamic revolution in Iran restructured the justice system on the basis of *Shari'a*.

The constitution of Iran's Islamic republic in the 1979 replaced the 1906 constitution which precisely acknowledges the prevalence of *Shari'a* in the course of law making. Principle 4 of Iran's constitution reads: "Every law including civil, criminal, financial, economic, administrative, cultural, political, etc. must comply with Islamic principles... and is the responsibility of the council of guardians to discern that". The current system of justice was formed during Ayatollah Ruhollah Musavi Khomeini. Ayatollah Khomeini believed it is only under the Islamic government that true justice can be administrated (Kusha, 2002: 156). Accordingly he advanced the doctrine

of *Wilayat-e- Faqih* that provided a different notion of Islam within which the law and governance of the country was structured. *Wilayat* is an Arabic word for custody and *Faqih* literally means jurist. This theory conveys the idea that jurists have custodianship over people in the absence of an infallible *Imam*. This has been reflected in principle 5 of the constitution of Iran which says: “During the absent of the Twelfth *Imam ‘Hazrate Waliy-e- Asr’*, ... the leadership and governance of the Islamic Republic of Iran falls upon the shoulders of a just, pious, aware of time, and courageous, master jurist...”. How is this jurist (who also must have reached the level of *Marja’yat*) elected? After the death of Ayatollah Khomeini, the Assembly of Experts chooses and observes the supreme leader of the country. According to principle 107 of Iran’s constitution the election of supreme leader is the duty of the members of the Assembly of Experts who are themselves elected by public vote for eight years.

4.2.1 Ayatollah Khomeini’s legal opinion (*fatwa*) about sex change surgery

The early years of Islamic revolution were intensely difficult times in terms of gender regulations. For instance, the compulsory head scarf (*Hijab*) for women immediately after Ayatollah Khomeini came to power heightened the moral public security. The arrest of homosexuals and transsexuals increased in the early 1980s (Najmabadi, 2014:165). After the arrest of her trans friend in 1982 Maryam Khatoon Mulk Ara, MTF transsexual called the parliament’s spokesperson to seek help for her condition. She was referred to some clerics who had to ask Ayatollah Khomeini for directive. Ayatollah Khomeini’s response, which was conveyed to Maryam Khatoon entailed that in the case of physiological disorders there was no problem for sex change. Maryam Khatoon was not satisfied and decided to go to Ayatollah Khomeini’s residence herself. This time she received satisfactory answer, because [*Imam*] Khomeini issued a *fatwa* at that time in Persian stating that there is no Islamic obstacle to sex change surgery, if the doctor approves it. After hearing the *Fatwa* she was immediately given a *Chador*⁴ to wear which was at that time the Islamic suitable public attire for women (Najmabadi, 2014:165).

The discursive analysis of the *fatwa* on sex change surgery presupposes that Ayatollah Khomeini discussed sex change in his book *Tahrir-al Wasila* for the first time in 1964 when he was exiled

⁴ *Chador* has another meaning in Persian which is tent, but as women’s dress code it refers to a long piece of cloth which covers women’s bodies from head to toe except the face.

in Turkey where sex change surgeries were already practiced. It was during the 1960s that the media in Iran shifted to cover news about sex change surgeries other than intersex cases more frequently from around the world (e.g. the case of Christine Jurgensen in the U.S). The first and most controversial case from Iran was about the story of a man who voluntarily decided to become a woman in Shiraz. The news raised a lot of debates whether an intersex or a person with “healthy body” is allowed to do sex change surgery. Eventually Iran’s medical council limited sex change surgeries to intersex cases (Najmabadi, 2014: 48). Academic literature along with popular psychology books for lay people started to write about sexual education and how unhappy marriages result in sexual deviances and vice versa (Najmabadi, 2014: 60). One should not deny the political position of Ayatollah Khomeini at the time of his public legal opinion about sex change surgery just after the revolution, while considering the fact that medical science had already certified sex change surgery.

There is no unanimity of opinion among *Shi’a* jurists on sex change surgery (see chapter 4.2.2), but no other Islamic scholar could oppose Ayatollah Khomeini’s opinion, because he was considered the most pious *Mujtahid* of the time and the *Imam*, which means the leader of a Muslim community after the prophet. Ayatollah Khomeini’s treatise *Tahrir al-Wasilah* is a compilation of *Fatwas* which he wrote in Arabic during his time in exile and published it in 1968 for the first time in Iraq and Lebanon and later translated into Persian.

Ayatollah Khomeini is the first *Shi’a* scholar who has expressed his opinion on sex change in volume two of his book *Tahrir al-Wasilah*, on page 624 and under the category of new occurrences which reads: “To change one’s sex from man to woman and woman to man through surgery is not hindered in Islam. Furthermore, sex change surgery for a hermaphrodite person is not prohibited”⁵. Implementation of Ayatollah Khomeini’s legal opinion within Iranian law and legal system has raised some confusion among the state’s legal apparatus.

⁵ Ruhollah Musavi Khomeini, *Tahrir al-Wasilah*, <http://tahrirolvasilah.blogfa.com/post/385> accessed in April 2014

4.2.2 Iranian Islamic laws and discourses on transsexuality

Iran's Islamic jurisprudential discourses on the issue of a sex change were initially begun by discussing matters relating to Hermaphrodites or Psychological Hermaphrodites. In 2000 Hujatal Islam Mohammad Mehdi Kariminia, who is currently known as the most trans-friendly clergy in Iran, claimed (2000: 76) sex change surgery is a medical provision to repair a person's sex who is inflicted with *Dujensi* (two sexes) or *Khunsa* (term used in Islamic jurisprudence to refer to intersex). He redirected his jurisprudential arguments towards transsexuals ten years later (2010) when he wrote his book on '*Sex Change from Law and Fiqh's Perspective*' in which he explains a transsexual has disparity between his/her body and soul. Therefore, surgery is a way to bring the body in line with the soul, because we cannot change the soul (Najmabadi, 2014: 181). The work of activists, medical professionals and the media gradually led to the growth of extensive debates among Islamic jurists as well as medical scientists on transsexuality. Between 2006 and 2008, the national media in Iran regularly covered the cases of sex change surgeries (Najmabadi, 2014: 2). During that period, public scientific debates developed in large cities; Tehran and Mashhad, to the extent that in 2007 two official seminars were held at Ferdowsi Hospital in Mashhad and Iranshahr Hospital in Tehran that helped to make transsexuality a public topic (Najmabadi, 2014: 207) while the parliament has persisted to be silent on the issue.

There are three predominant Islamic discourses on sex change surgery among jurists in Iran with reference to Islamic jurisprudence and sources of *shari'a*; 1) absolute prohibition 2) absolute legitimacy 3) conditioned legitimacy (see, i.e. Bojnourdi 2007, and Bariklu 2003).

Ayatollah Seyyed Yusef Madani Tabrizi is a highly respected clergy who studied *Fiqh* under supervision of Ayatollah Borujerdi (*Marja' Taghlid*). Madani Tabrizi is himself a *Marja'-e Taghlid*, and has published his treatise in 1980s (Mir-Hosseini, 1999: 26). In his treatise, Madani Tabrizi addresses sex change as unlawful and not permissible by *Shari'a*. He bases his argument on two facts; first is that human cannot alter the God's creation and second is disfiguration of vital organs of human body is not lawful and beyond the knowledge of humankind (ibid: 37). Ayatollah Madani Tabrizi's explanation about the matter of sex change concerning Muslims' lives refers back to the limited divine sources which do not understand gender variances other than

heteronormativity. Another reason provided by opponents of sex change surgery is that it contradicts with public interests in a sense that people are not allowed to behave in divergence with public regulations through private agreements (Bariklu, 2003: 71).

In another way, Ayatollah Seyyed Mohammad Musavi Bojnourdi argues (Bojnourdi, 2007: 22) sex change is not an interference with God's creation, if it is, then all of our everyday acts are unlawful, because we alter God's creation "...for making bread, we change wheat to flour and from that to bread. Should we say that is not lawful?" Ayatollah Bojnourdi proposes (2007: 23) that sex change surgery does not change humanity, but characters.

Ayatollah Bojnourdi states (2007: 22) there is no reason for the prohibition of sex change, because based on *Fiqhi* rule of *Heliyat*, everything is *Halal* (permissible) unless is forbidden in *Quran* or *Hadith*. For instance, homosexuality is explicitly forbidden in *Quran* (Sura Shoara, verses: 165-66, Sura Asra', verse: 32) therefore, it is not permitted for Muslims. Another *Fiqhi* reason for permissibility of sex change is held to be the rule of *Taslit* (control) which provides all human beings have control and power over their properties and bodies which allows them to conduct permissible acts on their bodies. Therefore, sex change is a permissible act (Bojnourdi, 2007: 23). Proponents of sex change also refer back to the divine sources to conclude decisions. However, their readings of divine sources and the usage of Islamic jurisprudence differ from that of opponents of sex change. This leads the argument to plurality of legal opinions among Islamic jurists, which has resulted in diverse application of the *fatwa* on sex change surgery in different parts of Iran (see chapter 5.7).

Those who support the idea of conditioned legitimacy of sex change surgery base their argument on article 215 of Iran's civil code that states every person's act should be subject to rational benefit. Accordingly, sex change applicants should suffer a sexual problem that is certified by a medical professional who allows sex change surgery for the best interest of the applicant (Bojnourdi, 2007: 26). Ayatollah Yusef Sane'i's legal opinion infers that sex change surgery is permitted upon diagnosis of a doctor indicating a person's discordance with their sex at birth (Sane'i, 2013: 174). This is when the Islamic jurisprudence couples with the medical system to regulate people's social behaviors. For Hujatal Islam Kariminia permission for sex change depends on two conditions. First it should be the issue of absolute necessity (*Zarurat*) for a Muslim, and second it must be real

(*Haghighi*). However, if a transsexual can live without committing sins (same-sex playing) they don't have to go for bodily changes (Najmabadi, 2014: 82).

It has been emphasized by several *Maraj'e Taghlid* that sex change is not permitted for a person who is a cross dresser or same-sex player. Islamic jurists rely on medics to make the distinction before surgery while they continue to educate society on the differences between transsexual, transvestite and homosexual by referring back to their internal understandings. Hujatal Islam Kariminia proclaims the society is not aware of the differences between a homosexual and a transsexual which are "separated by the Great Wall of China" (Najmabadi, 2014: 185).

Legislators of Iran have remained unspoken about sex change surgery and transsexuality except on the matters relating to the process of transition and the regulations for compulsory military service. The law of civic registration, article 20 in clause 14 explains: "a person who has changed his/her sex can legally change their name and gender on the birth certificate upon the order of court". The 2001 regulations for medical exemption of military conscription in section 5, clause 8 provided: "behavioral disorder (psychological imbalance), and bad temperaments are not acceptable according to military principles including moral and sexual deviations such as transsexualism that results in permanent exemption from military conscription". This was later modified in 2011 to the extent that a transsexual person can receive exemption from military conscription under glandular disorders (Najmabadi, 2014: 202). What is striking here is the use of the English term 'transsexualism' by one of the state's regulations linking the issue to medical science. This is the strategic interference of the legal system with medical system in response to the facts existing in the environment which also with reference to Luhmann reiterates the operatively closed and cognitively open characteristic of Islamic legal system.

Chapter Five: Understanding transsexuality from the experience of Iranian transsexuals

The interviews which were conducted for this study revealed that individuals go through a similar process until they come out as trans persons. I call this a process of self-recognition through which relatively similar patterns are followed by transsexuals. My aim in this chapter is not only to describe the process, but also to illustrate how transsexuality is understood and embodied as an identity through interactions between law and society.

The process starts with realizing differences. In short, almost all interviewees started recalling their childhood memories and explained how they realized their differences from other children, because they behaved and acted against gender norms (play with opposite sex toys, wear opposite sex clothes...). They all mentioned that during their teenage time, their feelings and desires developed towards same-sex which brought about confusions.

The interviews indicated that their tendencies for same-sex relationship and cross-dressing has led to (mis) recognition of their gender identities resulting in prevention from participation in social life, family gatherings, schools and other social networks. Thus, they have controlled their feelings, behaviors, and hidden their bodies to avoid violations. However, some had initially become engaged in same-sex practices for some time before they realized that was against their desires. The interviews specified that transsexuals mainly receive the information and knowledge about transsexual identity and sex change as early as eighteen years old through classmates, close friends, films/documentaries, journal articles and most of all from the internet.

Every transsexual person I interviewed declared that it took them a very long time before they could come out and identify themselves as transsexuals. After self-recognition, the process of coming out as a trans to the family and preparing for sex change surgery is the most challenging step, because of stigmatization. Therefore, transsexuals try to prove they are neither homosexuals nor prostitutes, and abide to social gender norms. It is at this point that they start to abhor their sexual parts, because of which they are assigned certain gender roles.

According to the participants, being self-identified as a transsexual takes a heavy burden off their shoulders, because it is liberating in a way that enables them to express their sexuality freely. For

some it has been more comfortable to enter into sexual relationship perceived by them as “healthy relation” after passing as a trans.

5.1 Key concepts in understanding transsexuality in Iran

5.1.1 Gender and Sex

In Persian language the use of the term *Jensiyat* as a translation of Anglo-American ‘gender’ designates the distinction between two sexes. However, the term is also used by feminists to refer to gender as distinct from sex in the way it is understood in the West. *Jensiyat* covers the meaning of both ‘sex’ and ‘gender’ which in the English language are two distinct terms. That is to say cultural differences and linguistic diversity shape the practical and theoretical understanding of gender. Therefore, the Anglo-Saxon idea of gender is not as the same as it is understood in Iranian culture (Braidotti, 2002: 288). It should be said the term *Jensiyat* was not mentioned by participants in their definition of transsexuality, and only two persons used *Jensiyat* to address biological sex. Hamed FTM (postoperative) explained:

I was a person who had some extra organs in my body that my soul rejected, and at the same time I missed some other necessary parts. With the surgery I made my *Jensiyat* compatible to my thoughts.

Taraneh a MTF (postoperative) who went through the sex operation ten years ago defined transsexuality as:

A status of being in which a person whose soul, thought, logic, reasoning, moods, and interests differ from his/her *Jensiyat*,

Hamed and Taraneh described *Jensiyat* as biological sex distinct from non-biological (soul, thought, interest, mood, etc...). This illustrates that although *Jensiyat* is a Persian translation of gender but it does not refer to gender as it is conceptualized in the West. According to interviews gender as a complex concept of self-consciousness and social identity is embedded in souls, thoughts, and minds as opposed to biological sex or *Jensiyat*. The word *Dujensi* which literally means a person with two sexes in Persian is still used to address transsexual person. However, participants used the word ‘*trans*’ or ‘*transsexual*’ in English.

5.1.2 Soul and mind

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

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

Saman clearly described his self-consciousness in relation to what social norms have imprinted on his body. For Saman, feelings, acts and behaviors can still be meaningful without having needed material significations. In other words, the biological sex guarantees nothing and does not determine performative acts and at the same time social pressure does not allow this. This illustrates that the body gains meaning within discourse of power and is not sexed prior to its existence (Butler, 1990: 91).

Mehregan FTM (postoperative) explained:

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

Mehregan challenges social inscriptions of gender norms on his body. He simply rejects the social and cultural norms that create his gendered subjectivity. What is more important for him is the self-perception of his body and gender identity. Wearing men clothes did not make him what he desired. Society recognizes him as a man if he appears in men's attire, but that does not change his perception of self. He claims ownership over his body which has been given away from his birth as Butler puts it. Gender and sexuality are the ways of being for others through the body (Butler, 2004: 20). For Mehregan, his mind defines his gender, and not the biological sex inscribed on his body with cultural values. It can also be inferred from Mehregan's explanation that a male transsexual's sexual desire for a woman before transition does not define his gender (Bornstein, 1995: 35)

5.2 Women and “real transsexuals”

The interviews demonstrated that female transsexuals experience social pressure more than male transsexuals due to socially embedded patriarchy. To put it another way, a man who wants to become a woman is regarded as a person who refutes socially constituted hegemonic masculinities.

Farimah MTF (preoperative at the time of interview) similarly noted:

... when my sister was born, my mother grieved as if she had lost a child, it is a custom in our city (Shahrekurd) when a girl is born the family keeps it a secret, but they celebrate the birth of a boy. You can picture me in that family as a man who wants to become a woman. They wanted me dead when I said I don't want to be a man...

Oppression of male femininity in Iran can be historically traced back to the mid twentieth century. Najmabadi (2013b: 8) describes the cases that were reported in journals about the shame, insult, injury and arrest of those who refused their manhood. Even men heterosexual actors who played female roles had awkward social positions. Later in the 1950s, the press widely associated criminality and public violence with male non-heteronormative persons (who worked as performers or dancers at nightclubs) claiming they take advantages of men customers (Najmabadi, *ibid*: 15).

Iranian society conceives of women transsexuals as sexual deviants. This is also the dominant perception among transsexual men. FTM transsexuals perceive MTF transsexuals as not only fake identities, but also prostitutes. Taraneh a MTF (postoperative) believed that transsexuals of her type have created a lot of problems for trans and non-trans people. She referred to them as “business women” by which she meant prostitutes who are disguised under transsexuals identity just to earn money. She said:

... Our kids (bach-e-ha) are immoral, they have problems themselves. They have represented a bad image about us in society. Trans is increasing in Iran like a Tsunami and most of them are these kids who wear a tight short, cross dress as women and go to streets to make money. Whereas, trans men are good people, because they only want to form a family, find a job and settle down ...

Misrecognition of law has created such space that transsexuals can resort to homophobia for reproduction of sexism and reinforcement of patriarchal culture (Msibi, 2011: 71).

Amirhossein FTM (preoperative) similarly disapproved of women transsexuals and brought the news that the police had arrested five of them on the day we had the interview.

The term real trans was used by participants addressing transsexual men who have truly embodied transsexual identity. Hamed FTM (postoperative) even felt sorry for women transsexuals and claimed that he is the real trans, because he said he was not playing around:

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

Medical professionals have frequently used the term 'genuine' or 'true' transsexual in relation to homosexual. Bernice L. Hausman addresses (1995:125) Harry Benjamin's definition of 'classical transsexual' noting that Benjamin classifies transsexuals into three types; 1- non-surgical transsexual who is attracted to surgery but does not demand sex change surgery 2- true (moderate intensity) transsexual who demands sex change surgery, 3- true (high intensity) transsexual known as 'classical true transsexual' who is a candidate of self-mutilation or suicide

It can be interpreted from the interviews that changing from a man to become a woman are viewed culturally illegitimate, firstly because of the rejection of man power and privilege, and secondly for problematizing Iranian hegemonic masculinities, which itself leads to misrecognition of women transsexuals even by their men counterparts.

5.3 Homophobic distinction

Interviews showed negative attitude towards homosexuality. Transsexuals regarded homosexuals as mentally sick patients. Moreover, they believed the permission for sex change surgery has been wrongly given to homosexuals by authorities. Ali Sahabi FTM (preoperative at the time of interview) pointed out:

...those who are not trans misuse the law by pretending to be trans. I know people who have identified themselves as trans, got the certificates and have lived without surgeries for eight years. They do not intend to do the surgeries any way...

Amirali FTM (postoperative) believed:

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

Such distinctions can be interpreted as the cause of homophobic society by relegating homosexuality to pathology and relating transsexuality to a new model of (male) heterosexuality (Halberstam, 1998: 157). It is interesting to note that during the process of self-recognition,

transsexuals first identify themselves as homosexuals, and they pass as homosexuals quite a long time before the pivotal moment of change occurs in their lives. Taraneh MTF (postoperative) stated that same-sex desire is the first sign of being a transsexual:

... I lived as a gay for several years until I realized I am a transsexual, because homosexuals do not wear makeup and a gay person doesn't like to look like a woman. I couldn't identify with their feelings and desires because I wanted to put facial make up and look like a beautiful woman, which distinguished me from them...

Legal misrecognition of other non-heteronormative genders has amounted to social misrepresentation of homosexuals as inferior members of society.

5.4 Sex change surgeries; hidden identities

The interviews showed that 'surgery' is seen as the one and only way for transsexuals to gain identity, inner peace and have comfortable life along with healthy relationship. Hanieh a MTF (preoperative at the time of interview) obtained the certificate for surgery 15 years ago, but has never been able to undergo the surgeries due to financial reasons. She was hopeful that one day she will do the surgeries as she spoke:

I will undergo sex change surgery even if one day is left of my life, because I want to die as a woman...

I argue that Iranian transsexuals who undergo sex change surgeries are not passive victims of patriarchy who are forced to normalize their bodies within heterosexual matrix, rather they make their subjectivity through the process of transsexual embodiment (Sullivan, 2006: 558)

Hanieh identifies herself as a trans woman who is in the process of becoming, and has lived her life without sex change surgeries or body modifications, but that does not make her deny self-transformation:

...I am not either a man or a woman; I have been trying to figure out what I am for years...I love my body, I see it as feminine except my genitalia. I always wear women underwear. I have no manly behaviors...

Despite all the challenges and struggle to make the surgeries possible, many transsexuals live their social lives hidden behind their identities prior to transition due to social and legal misrecognition. Covert surgeries without the knowledge of families appeared to be very common among

transsexuals. Amirali FTM (postoperative) explained why he did not inform his family about such a big decision:

...no one in my family knows I have removed my womb and breasts apart from my mother, because she paid for the expenses. As soon as my brothers and father find out, I will be dead. That is why I didn't tell them. They have already beaten me to death several times when I came out as a trans.

Despite its religio-legality, sex change remains a social stigma and transsexual is regarded as nonconformist gender identity that has broken the rules of gender. Mehregan FTM (postoperative) also did not tell his family about the surgeries (mastectomy and hysterectomy) except his sister who helped him through the process:

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

According to the interviews, transsexuals who decide to do the surgeries lose their families, job opportunities, future career and previous work experience. Nevertheless, none of them expressed regret about having done the surgeries.

Mehregan FTM (postoperative) comes from a religious city called Behbahan that is located in Khuzestan province in the South West of Iran. He has undergone sex change surgery when he was thirty three years old after completing his PhD degree in political science in Tehran. He told me that he had already missed great job opportunities due to his transition. He said:

...My CV is destroyed, all my publications before transition are gone. I have lost all my academic connections and networks. It feels like I never had any education or academic background. It is not possible to change the name of every article I have written before transition, or go to everybody and explain that I am the same person. I am so sad because of losing all of these, but I am happy with who I am now. I just wanted to get out of the difficult condition I was in. I will most probably end up going to a very remote city in Iran where nobody knows me and start a new life over again...

Social and legal misrecognition push transsexuals to the margin. Hence, it is not erroneous to say silence and invisibility endangers the lives of transsexuals and not the sex change surgeries. Based on the fieldwork, I oppose Raha Bahreini's argument that she claims (2008: 24) the government of Iran forces transsexuals against their wills to undergo surgical operations. Moreover, I argue that legal misrecognition of sex change surgery and non-recognition of transsexuality along with

social and cultural misrecognition violates rights of transsexuals. Kate Bornstein emphasizes: (1995: 60) “minorities are controlled and colonized through stereotypes and transgendered people are not excluded from stereotypes; psychotics or murderers which have silenced their voices”.

5.5 Surgeons’ conceptualizations of transsexuality

5.5.1 Wrong body

Dr. Mina Jafarabadi is a gynecologist surgeon who has been carrying out surgeries of mastectomy and hysterectomy for transsexual at two different hospitals in Tehran since 2008. She conducts three surgeries a week and she meets with transsexuals several times before and after the surgeries.

Dr. Jafarabadi conceptualizes transsexuality as:

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

The discourse of ‘wrong body’ permeates medicalization of transsexuality which holds that transsexual embodiment is a natural error. Thus, technology can reassign gender to accord it with the body (Hilberstam, 1998: 143)

Dr. Jafarabadi’s definition of transsexual personhood is pitched against the cultural discourse of misrepresentations:

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

Illegality of homosexuality in Iran has created a parallel discourse to define homosexuality through which one can distinguish transsexuality. It was prevalent in the interviews that transsexuality is defined in relation to understanding same-sex player (*ham jens baz*).

Dr. Jafarabadi was certain that transsexuals never have a good ‘normal’ life before and after surgeries. Medically speaking she argued:

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

Contrary to Jafarabadi's opinion, transsexuals believed sexual conducts are the very least on their list to lament. Furthermore, it is very degrading to lower the value of humankind to merely sexual desires, because there are more important matters in their lives than sex. The question can be raised whether functionality of the sexed body defines 'personhood' and the sense of 'being' in relation to others?

Hamed FTM (postoperative) who has been married for a year mentioned that sexual relation is neither limited to physical ability nor depended on sexual organs. It is a method that one should learn:

...I have never had problem with having sex with my wife and she is as happy as ever. Sex is a subjective matter which includes only 20% of action, and I already have that. Why do men with big penises are divorced by their wives! Because they don't know how to have sex, a big penis is not enough to make a woman happy...

Despite that, it was indicated by several participants that having a 'healthy relationship' was one of the inspiring forces for sex change surgery. Mehregan FTM (postoperative) explained a 'healthy relationship' means intimate relations of heterosexual couples, and for transsexuals it means to have a heterosexual partner:

...I didn't want to be with lesbians, I could, if I wanted, but I chose to do the surgery first and be with heterosexual woman. I sacrificed my future career to do the surgery, because it was the only way to have a 'healthy relationship' with a woman. I don't care about the sexual conducts; I will find a woman whom I will be able to satisfy.

5.5.2 Inner Conflict and Gender Dysphoric

Dr. Shahriar Kohanzad is an urologist specialized in transsexual surgeries since 1998. He believes it is very difficult to recognize what he calls "confirmed real identity" (*hoviyat vaghei taedshodeh*) because there are many conformities between homosexual and transsexual identities. This has created complexities especially in traditional societies where social stigmas are stronger. He explained:

It is difficult to distinguish between sexual deviances and sexual behaviors. I have had patients from the most religious and traditional parts of Qom (known as the most religious city in Iran). In fact, I do a lot of thinking before I put the knife. During the past few years, 90% of patients whom I have visited were undoubtedly homosexuals. It is very hard even for the person to recognize his/her identity...

I asked Dr. Kohanzad if he can explain transsexuality from his point of view. He answered

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

Dr. Kohanzad sees transsexuals as patients of psychological distress who need to be treated through psychotherapy. He clearly says transsexuals are confused about their gender identities. Therefore, they suffer from gender dysphoria. Pathological explanation of transsexuality upholds transsexual is a symptom rather than a disorder. Az Hakeem (2008:193) claims transsexuality cannot be explained biologically, because the mind of individuals experience different condition during formative years that needs more psychotherapy. Similar to Dr. Kohanzad, Hakeem (2008:195) believes patients presenting conflict with regards to their gender may call themselves transsexuals who deserve psychotherapy for treatment

The information from interviewing transsexuals, however, proves the opposite to the extent that the moment a person identifies her/himself as a trans, she or he is not in any type of inner conflict or confusion any longer. All the participants claimed that self-recognition of their gender identity as transsexual diminished their sense of confusion, guilt and even resistance to sexual relationships. Hanieh, MTF (preoperative at the time of interview) explained that she was hardly eighteen when she identified herself as a transsexual. She was determined that she was a transsexual after spending some time learning about transsexuality:

...ever since I have identified myself as a trans, I am more confident in expressing my desires and feeling without being afraid, I can openly say that I pluck my eyebrows, remove body hair and wear women's underwear, because I am a trans and I live this way.

Nonetheless, the process of self-recognition has been challenging for transsexuals. Farimah MTF (preoperative at the time of interview) and Saman FTM (postoperative) claimed that they first resisted coming out as transsexuals. Farimah felt sick after her classmate told her she is a trans. She suppressed her feelings and desires by forcing herself to walk like a boy, dress like a boy, keep her hair short, and grow beard, but she couldn't continue living that way and gave in after six months:

...Transsexuality is like a flame or a bullet of energy that inclines the body towards the opposite sex, there is something inside the person that grows stronger day by day and nobody is able to fight it.

To relinquish his manly mannerism before transition Saman FTM (postoperative) got engaged to a man at the age of eighteen:

... I combated my manly temperaments, I controlled my feelings and fought against my desires by getting engaged to my suitor when I was eighteen, but it was not possible for me to live like a woman. I suffered during my engagement with a lot of pain. I lost so much weight within nine months and since I have been suffering from deep depression. It was after that, that I was determined to go for sex change surgery.

5.6 Redefinition of law and social norms

5.6.1 Religious law

The research participants' religious and legal definitions of transsexuality deemed to be different from that of Islamic jurists' understandings. For Hamed FTM (postoperative) transsexuality is a state of being misplaced with a different soul. He mentioned the bodies are not wrong, but the souls. Following Noor Ali Elahi (Iranian prominent philosopher) Hamed affirmed:

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

Amirhossein FTM (preoperative at the time of interview) reiterated there is a verse in Quran that connotes "there are children whose souls are from different bodies, this is a divine command from God to test humankind". (Source was not provided).

What is mentioned by the participants is their explanation for religious legitimacy of sex change surgery and transsexuality. That is to say the purpose of religio-legality of sex change surgery is (re)defined by transsexuals as a result of limited understanding of traditional Islamic jurisprudence. Legal opinions of jurists about transsexuality and sex change surgery are different from public understanding, and transsexuals experience (see chapter Four).

It was raised by every transsexual that despite being *Shar'i* (religiously legal) people continue to stigmatize transsexuality, and also family discontent for sex change surgery remains a challenge. According to interviews despite the fact that they are being misrecognized in the society, the state's policies have also misrecognized their status through medicalization. However, this has helped to change the social attitudes towards transsexuals for which they showed gratitude to Islamic laws. Hamed FTM (postoperative) said:

... The best thing that Khomeini has ever done was to allow sex change surgery forty years ago, I am sure if it was today, they wouldn't have permitted it...

Taraneh MTF (postoperative) who introduced herself as one of the leading mentors among transsexuals believed:

... The issue of trans should be definitely dealt through an Islamic way, because the only thing Islam has no problem with, is the sex change surgery. People's custom and tradition is the problem of today's society. Families don't support their children to undergo surgeries, while Islam has permitted it.

5.6.2 Body does not matter

Interviews with transsexuals revealed that they do not consider transsexuality as a treatable disease, but a form of God creation that is not to be fixed. Ali Sahabi FTM (preoperative at the time of interview) was definitely sure that surgery would not make him a man, but can make his body closer to his mind. He said

...the psychotherapists I have visited so far tell me not to go for the surgery, because there is no difference between a boy and a girl these days since both have almost the same rights, but they don't understand the fact that it does make a lot difference for us mentally. I might not be able to sexually satisfy a woman after surgery but I am sure I will gain inner peace, which is the difference for me...

It was also apparent from the narratives that both family and society associate transsexual identity with sexual incompetency in a sense that a transsexual person can never be able to function as a "proper" man or a "proper" woman. Ali Sahabi FTM (preoperative at the time of interview) said:

...My parents are concerned about me undergoing surgery not because of the shame (*Aberu*), but the fact that I won't be a proper man.

Amirhossein FTM (preoperative) also mentioned:

My father always tells me that I could never become a proper man, and so does my uncle. He believes trans people must hang a necktie in front of them to show they have a sign of masculinity...

This brings us to what Butler illustrates (1990: 136): "Gendered body is performative, which means there is no ontological status apart from the various acts which constitutes its reality, and if that reality is fabricated as an interior essence, that interiority is an effect and function of social discourse".

5.6.3 Female masculinity

Interviews with transsexuals revealed that they have redefined the concepts of female and male subjectivity. For transsexuals the body materiality does not assign gender. Furthermore, genders are not culturally fixed, but subject to fluidity. Deinstitutionalization of heteronormative cultural values and establishment of female masculinity has taken shape through redefinition of masculinity by FTM transsexuals. They have marked out the boundaries between transsexual masculinity and femininity (explained earlier). Moreover, they make distinction between transsexual masculinity and heterosexual masculinity. However this does not mean that male transsexuals try to associate with dominant masculinity, but create an alternative masculinity within specific sociocultural and historical context (Halberstam, 1998:160).

Interviews showed that a non-transsexual man (heterosexual) is considered to be less masculine than a trans man, because a heterosexual man is said to be spoiled and always praised by his family from the moment he is born. It should be noted that female gender socialization in Iran is based on preserving the honor of the man. This regulates girls' social interactions to abide Islamic gender roles from the age of nine. FTM transsexuals who had experienced living as girls believed that boys are constantly infantilized in Iranian families. Amirhossein FTM (preoperative at the time of interview) said in a strained voice:

...I started to work when I was only sixteen years old. My father is one of the richest persons in the city, but he never gave me money. Sometimes I even had no money to visit a doctor. At the same time my cousins who are as old as me have been living like kings. They still don't work. They are almost thirty years old but they don't worry about paying bills. Their parents buy them cars and houses. The only thing they do is to get married and live on their parents' money. This is gross...

What is important is the re-definition of masculinity and challenging the cultural values that are inscribed on sexed bodies. For transsexual men, the appearance, strong physic and heavy weight do not define masculinity, but the capability of being financially independent.

It must be said that in Iranian culture masculinity implies being able to protect the honor of family. Hence, men transsexuals try to control women more severe than heterosexual men to prove their masculinities. Hence, Amirhossein (preoperative at the time of interview) and Hamed (postoperative) both FTMs regarded themselves more masculine than heterosexual men. Hamed said that he has proved his strengths by going under such difficult surgeries. He also claimed:

... We have responsibilities and honor (*ghyrat*) for our families and wives, we see ourselves as providers for the family.

On the other hand, another negative attitude towards heterosexual men was revealed to be the incapability of heterosexual men to treat women well. Saman FTM (postoperative) illustrated:

... “natural” men are even less masculine because they don’t know how to treat women, because they have no idea about women’s feelings, desires and demands. They cannot read women’s minds, but we do. Those who marry trans men live happily ever after, you should do it to see what I mean! (mentioned in a sarcastic way). I have been in a relationship with a married woman for seven years; she feels so happy with me and always complains about her husband who doesn’t understand her at all, but she cannot leave him because she has a child with him...

Amirali FTM (postoperative) also declared that he is manlier (*Mard tar*) than a “natural” man, because he is so strict with his girlfriend he said:

... We don’t play men, we play men with mustache (*marde-e- sibil dar*), that resembles the picture of a very prejudice man who easily kills to protect his honor.

5.7 Protective legal system

Interviews illustrated positive attitude towards the police, judges and also legal officers in the court rooms. The legal transition itself is considered a miracle that takes a transsexual person out of difficult conditions. The religious recognition of sex change surgery increases transsexuals’ confidence to challenge their families’ rejections. According to the interviews, the police have been protective, the judges have been reasonable and the legal staffs have shown sympathy towards transsexuals. Pegah MTF (postoperative) spoke about the time before her surgery when she called the police after her father had thrown her out of the house:

... The police asked my father to back off and let me in the house. The police told my father: “she hasn’t done anything illegal, you should treat her well”. My father was shocked...

Ali Jafari FTM (postoperative) appreciated the police understanding in Tehran when he got caught cross-dressed working as a taxi driver before sex change surgery. Amirhossein FTM (postoperative) had similar experience with the traffic police:

... Once I was driving with high speed in the highway; the police stopped me and asked for my ID and driving license. Of course I was in my boyish outfit and my documents did not match my appearance. The police shouted: “how could you sneak out your sister’s ID and drive with her car

around the city with such a high speed!!! I apologized to the police saying that I was a trans. The moment he heard that he apologized to me for being rude and kissed my forehead. He kindly asked me not to drive carelessly at night...

Ali Jafari FTM (postoperative) had to return to his small town of Miyaneh where he was born in the Eastern Azarbaijan province to file a request in the court for changing his name and gender. The judge who was appointed to decide on his case happened to be totally unknowledgeable about sex change surgery and the legal transition. Thus, he requested Ali to come back in the next day, so that he could have some time to study the *fatwas* on the matter in order to make a decision.

...In Miyaneh no one knew about sex change, even the judge was not familiar with the surgery and the fact that I can change my name after surgery. The judge was wondering how a woman can decide to change to a man! He wouldn't believe me. When I went back to the court the next day, he was so upset with me because he had been reading Ayatollah Khomeini's book from eight o'clock in the evening to three o'clock in the morning to understand the legality of the surgery and the name change. He finally prepared me a long verdict referencing Khomeini to prevent further problems with the registry office.

Ali Jafari's case emphasizes the judge used Ayatollah Khomeini's *fatwa* as a legal force. Hadn't he followed Ayatollah Khomeini's *Marjaiyat*, he wouldn't have permitted legal transition (see chapter 4.1.2). Attitudes of the judges and legal staffs in the courts were surprisingly admired by transsexuals. Pegah MTF (postoperative) was so overwhelmed with the fact that when she was asked to the court room in Tehran, the secretary did not call her male name and the judge asked her to close the door behind her to protect her privacy.

It can be argued that religious legal opinions (*fatwas*) of Islamic jurists have great respect and authority among legal administrative bodies, courts and the police despite the fact that no legislation enforces them on people. It is clear from Ali Jafari's case that legal implementation was accorded with his experiences and practices not the law of the state. I refer to the living law of transsexuals that is emanated and emerged from the *fatwa* of Ayatollah Khomeini and has been shaped and transformed through transsexuals' experiences and social practices. This is not to deny the fact that judges have divergent views on application of Ayatollah Khomeini's *fatwa*, which is why in some parts of Iran not only sex change surgeries are forbidden, but also the judges do not allow the change of name and gender.

Mohammad Omrani, trans activist reiterated his concern that:

There is no one unified methodology for application of Ayatollah Khomeini's *fatwa*. Judges in Tehran are much more open to sex change and surgeries are exercised without difficulties.

However, in cities like Ardebil, Ayatollah Khomeini's *fatwa* has no binding force. Therefore, people come here [Tehran] for transition.

5.8 Trans Activism and struggle for status recognition

The first transsexual NGO in Iran was founded and directed by Maryam Khatoun Molk Ara in 2008 under the name of "Association for Protection of Gender Identity Disorder Patients". Molk Ara is known as the first person who obtained permission from Imam Ayatollah Khomeini for sex change surgery. Since her death in 2011, the NGO has been inactive for unknown reasons. Molk Ara's organization provided medical and sometimes financial services to transsexuals and helped them through the process of changing their gender identity and obtaining new documents to that effect.

Currently there is no NGO in Iran for protection of the rights of transsexuals, but transsexuals have been active in cyber space distributing information about transsexuality, the process of transition, and share their personal experiences, knowledge and sometimes daily life histories. During my research, I discovered that there was a very popular web-based organization called Mahtaa (Center for Protection of Iranian Transsexuals) which has been working actively since 2011 as the place for transsexuals to receive counselling and the latest news and information about transsexuality. Mohammad Omrani, the manager of the website and public relation officer of the organization described how the idea of Mahtaa was initiated and formed several years ago:

Six years ago, subsequent to the death of my best friend (transsexual), my other friends and I decided to increase the public's understanding and knowledge about transsexuality, because we felt there was a huge lack of information in society about trans people at that time. First we started from Facebook in 2009, but our audiences were limited to those who had already surfed the internet before joining the Facebook page. Therefore, we set up a weblog in 2010 in which we published English to Persian translated articles and papers on different subjects about transsexuality. We started translating information from Wikipedia on Transgender, sex change surgeries, and other related issues. However, the weblog was not effective in conveying the message to viewers, because it was not as official as a website. Thus, we launched the website in 2011.

According to the interviews and reading Mahtaa's website, financial and medical demands are the main concerns of transsexuals since the law and legal system has somehow fulfilled their promises.

Saman FM (postoperative) declared that sex change surgery is allowed, but:

... What about after that! We need financial support, medical care, subsidies for hormone therapy, social services and special long-term medical cares after such huge surgeries...

Transsexuals did not mention their entitlement to full human rights, but insisted on demanding specific basic needs. Taraneh MTF (postoperative) told me in an informal conversation:

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

This strategy was prevalent in the work of Mahtaa (Center for Protection of Iranian Transsexuals) too. Mohammad Omrani, the manager of the website declared:

We could have expanded our activities and developed the organization earlier. For example we could have started our cooperation with the SWO last year, but we didn't, because we wanted to work steady and slowly not to be in the eyes of authorities. Our next step is to organize training workshops in mosques and cultural centers in different districts of Tehran. We need to be able to work within the limits to avoid pressure from the government.

This leads the argument to Fraser's concept of status model of recognition that is to say trans activism in Iran is shaped to remedy misrecognition that is contingent on recognition of transsexuals' status in society rather than identity politics.

5.9 The state and social control

Putting transsexuals in the category of "socially injured", the state instigates the fact that transsexuality is a socially constructed damage which makes transsexuals entitled to receive certain services they need to undergo the surgeries.

The Social Welfare Organization (SWO) known as Behzisti, has provided support for transsexuals from 2001 under the category of "socially injured" individuals. In the office of injury "*Asib*" the department of social affair provides services such as crisis intervention, a social identity disorder which reads: "Gender identity disorder is a status in which a person dislikes emergency line, and support for street children. The category of "gender identity disorder" strikes out among other social injuries that is planned to be managed by SWO as a social problem. SWO has provided a rather peculiar definition of transsexuality which verges on its definition of gender her/his biological sex and insists on belonging to that of the opposite sex. Accordingly, transsexuality is

a phrase to refer to people who are afflicted with GID, and constantly struggle to achieve sexual and physical appearance of their opposite sexes⁶”.

There is only one center, located to the eastern outskirts of Tehran sponsored by SWO, that provides help and supports for transsexuals. Mrs. Ghodosi, psychologist at the center; Navab Branch of Social Welfare Organization claimed that social and psychological supports are provided for trans people and specific education regarding GID is given to the family of transsexuals to help them better understand the life conditions of transsexuals. She emphasized that Iran lacks healthcare expertise in the area of transsexual surgeries. Transsexuals suffer physical conditions as the result of insufficient surgeries.

During self-representation narratives, transsexuals never addressed the psyche (*Ravan*) as being a part of conflict with the body, while a long-lasting process of psychiatry is thought necessary to fulfill the requirements for sex change surgeries. The psychiatric treatment process is to filter real applicants (transsexuals) from non-real applicants (homosexuals) for sex change surgery. This process of psychiatric treatment/examination at TIP to diagnose transsexual from homosexual reinforces not only misrepresentation of transsexual people, but also misrecognition of their status in society. The medical psychiatric commission at the Forensic Medicine Organization officially diagnoses the person with Gender Identity Disorder (*Ikhtelal Hoviyat Jensi*). However, the certificate for sex change surgery is issued by judiciary’s supervision department that is granted on the basis of the person’s failure to respond to psychiatric treatments.

As far as the aim of this paper is concerned, the concepts of governmentality and social control can be applied with regards to medico-legal regulations for sex change surgery.

According to Mathieu Deflem (2008: 232) who refers to Michel Foucault, the mechanisms of control are basically designed in the forms of surveillance and observation of individuals (panopticon) not only to normalize the so called deviant but also to produce the knowledge about self. The punishment of human body and soul is addressed by Foucault as a form of ‘discipline’, which is defined as a mechanism of control to produce docile bodies of humans (ibid: 233).

By allowing sex change surgery on the basis of medical approval, Ayatollah Khomeini constructed a system of surveillance to control individuals’ social lives in a way to permit voluntary examinations for every person who feels outside the heteronormative box including those who are

⁶Social Welfare Organization website: <http://www.behzistitehran.org.ir> visited on 4th March 2014

not deemed transsexuals. Accordingly, production of knowledge about natural body and healthy sexual relationship has been used to create “docile bodies”. Deflem addresses Foucault on panopticism that it creates a self-disciplined society in which individuals try to remain disciplined, and human science namely medicine and psychiatry develop such disciplinary society (Deflem, 2008: 233).

Educating the public about transsexuality became a concern for the state from the 1990s. Printed and electronic media, national TV and satellite broadcasted transsexuality as a religiously legal gender disorder, distinguished from homosexuality that needs to be treated differently (Najmabadi, 2014: 207). It was mentioned by several participants that if society had received enough knowledge about transsexuality, they would have been living a better life. It can be understood that the knowledge of society about criminalization of homosexuality might have induced religious scholars to emphasize its public education on its distinction from transsexuality.

The state’s control through legal and welfare institutions is created through poor provision of services to transsexual candidates for sex change surgeries. Behzisti or SWO offers selective help for expenses of sex change surgeries which according to the interviews is not worth going through several months of bureaucratic work for the very little money they receive as they have to pay twice as much of it to visit psychologists and doctors. Mehregan FTM (postoperative) even bore the pain of bureaucratic work, but SWO refused to support him for the surgeries:

...They told me I am not eligible to receive financial support because, I have a PhD degree. However, I did not have a job, yet they refused to help me.

Medicalization of transsexuality has surely been effective in helping to change the attitudes of families from abhorrence to humanitarian, but one cannot deny this has amounted to misrecognition and misrepresentations of transsexuals.

Iranian transsexuals do not challenge the pathologization of transsexuality, because it is considered the only way they can be recognized and accepted by society and family. Their main concerns are to be able to receive financial, social and emotional support before and after the operations. Interestingly enough none of interviewees mentioned provision and protection of their human rights as the state’s responsibility.

Chapter Six: Conclusion

In this study I have examine how transsexuality in general and sex change surgery in particular is addressed in Iran’s Islamic jurisprudence and legal system. Moreover, I have analyzed how society reacts to such a phenomenon and most of all how individual transsexuals live their lives through interaction of religious law and socio-cultural values, which has led the research to find out how transsexuals redefine the law and reconstruct transsexual identity to claim recognition of their status in society.

The general theoretical premises are based on socio-legal and gender studies of Niklas Luhmann and Judith Butler respectively while interrelating the two with the concept of misrecognition that is borrowed from Nancy Fraser, who has helped me to discuss remedies for misrecognition of transsexuality are contingent on recognition of their statuses intersectionally with gender, class, race, ethnicity and sexuality, rather than identity politics.

6.1 Concluding remarks

This study shows that sex change surgery is not conceptualized by Iranian transsexuals to serve the aim of the religious discourse that allows sex change to harmonize the soul with the body, nor is it understood as the last resort to live a full life with dignity. The fieldwork in Iran illustrates that there are movements within contemporary generation of Iranians believing that the body is not the marker of one’s gender, and gender is more fluid to be fixed on one’s body. This has challenged the gender binary distinction of male and female, and is undermining the boundaries and definitions of gender and sexuality in society.

The prevalent discourse of medicalization in Iran presupposes transsexuality as a treatable disorder. While rejecting GID, the research participants believed that the involvement of the medical professionals in the process of transition has supported their cause and strengthened their status in society, because the doctors intervene from a “neutral” position of science. In the current climate of the Islamic Republic of Iran, the medical doctors enjoy the privilege of being regarded (or arguably misunderstood) as contributing from a politically neutral standpoint- which lies beyond the religious and ideological debates to the development of society. Surgeons play an important role in discussing the option of sex change surgery with the family of a transsexual

people using medical arguments rather than religious justifications. It is through the medical views that many families permit their children to undergo sex change surgery. Moreover, medics have had an influence on the formation of some aspects of state law to the extent that the English term ‘transsexualism’ has entered into the state’s legal documents (see chapter 4.2.2).

I have argued that the not only Iranian laws and legal system have not recognized sex change surgery, but also misrecognized transsexuality due to limitation brought on by the self-referential operation of Islamic jurisprudence. Ayatollah Khomeini’s legal opinion asserts the legibility of sex change upon medical approval without explaining his understanding of transsexuality. On the one hand, he denies legal recognition of the transsexual, and on the other, makes transsexuality an inferior status in society through misrecognizing their demands for sex change. This happens because traditional Islamic jurisprudence does not provide any legal perception of transsexuality due to its limited language and understanding. Moreover, the sources of *Shari’a* to which Islamic jurists refer in order to create rules for Muslims do not address transgender identity. Reconceptualization of Ayatollah Khomeini’s legal opinion on sex change surgery is based on transsexuals’ understanding and experiences which are defined differently from that of the Islamic jurists’ interpretations.

Although legalized, sex change surgery is not obligatory unless transsexuals are ready to undergo the operations. Many factors including financial problems and emotional challenges by families delay the sex change surgery for years. However, I have argued that transsexuals are misrecognized by law and society before and after transition. Nonetheless, sex change surgery is deemed to be the one and only way for transsexuals to acclaim their gender identity.

As I have discussed throughout the paper that self-conceptualization and transsexual embodiments of individuals will not disappear or transformed into “normal” heterosexuality by misrecognizing them or dismissing their knowledge and self-consciousness about their sex, body and gender. In this regard I disagree with the monolithic model of transsexuality that is emerged from reading the law without contextualizing the practice of sex change surgery within a social, cultural and historical background. A further result of this research is that sex change surgery is more visible among younger generation of Iranians who have university education. The research participants of this study were all born after the Islamic revolution (between 1980 and 1990), which means there is a very large gap between the young generation and previous generations. That is to say

self-identified transsexuals with their global visions have enough knowledge to negotiate with Islamic laws and cultural values by adopting modern conceptualization of gender identities.

Based on the information from the fieldwork I have argued that legal misrecognition of transsexuals has created space for misrecognition of other gender minorities such as homosexuals and women transsexuals that opposes Afsaneh Najmabadi who argues (2014: 270) that law in terms of recognizing transsexuality in Iran can benefit other groups such as homosexuals as she puts it: “to salvage a threaten same-sex relationship”.

The experiences of transsexuals’ struggles for recognition are not based on identity politics, but recognition of status in society, for I have argued their demands are shaped to serve their basic needs as an equal member of society. Thus, human rights discourse is avoided due to its political implications in Iranian social and political context.

6.2 Further research

This research was conducted on a small scale. Nevertheless, it has paved the way for future research projects. That is to say significant work can be done to examine why the state has not legalized sex change surgery through the process of parliamentary legislation. Moreover, prevalent discourses on sex change and transsexuality among predominant jurists (*Mujtahid and Marja’ Taqlid*) could be studied to understand how the judges should react to plurality of legal opinions.

Future extensive legal ethnographic research could be carried out to examine why and how the police and judges as the most important authoritative figures within the legal system have positive attitudes towards transsexuals (see chapter five). Notwithstanding the silence, invisibility, migration and displacement after full transition is reported by transsexuals.

Further research could also examine the immigration of transsexuals despite their positive feedback about the state and legal system. Above all, considering gender inequality within Iran’s legal and judicial system, transsexuals’ legal claims and the judicial proceedings with regards to private and public matters including marriage, divorce, employment, and public dress code need extensive socio-legal research to understand how the lack of law relating to transsexuals’ affairs affects their social lives?

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Chapter Eight: Appendices

8.1 Interview guide

Representation

I am a master student at Lund University. I have decided to write my thesis on transsexuality in Iran. My interest on this topic developed against the backdrop of mainstream media representing Iranian transsexual individuals as victims of patriarchal system. I thought the only way to understand people’s lived reality and perceptions of transsexual identity is to come to Iran and speak with you. Here I am sitting with you to learn about your knowledge and experiences.

I would like to record our conversation only if you allow me. I am ethically committed to keep the recording safe and if you request I will send you a copy of transcription. Please feel free to interrupt me any time and you may not answer questions you are not comfortable with.

Topics and questions

Surgeons

- 1-How is transsexuality defined for you?
- 2-What is sex/gender reassignment, and what is exactly reassigned for transsexuals?
- 3-Do you diagnose transsexuality? How?
- 4- How do you think society perceives transsexual subjectivity?
- 5- What is GID?
- 6- How do you know if a person is transsexual or homosexual?
- 7- How does the government provide financial supports for the expenses of surgeries?

Transsexuals

- 1- What is your understanding from your condition?
- 2-Why have you decided to change your sex/gender?
- 3-Did you know about legal sex change surgery before you come out as a transsexual?
- 4-What made you come out and pass as a transsexual, and how do you feel afterwards?
- 5- What challenges do you face in life, and do you have any demands from the government?
- 6-How do you see your life after full transition (surgeries)?
- 7- How do you describe the attitude and actions of state and the legal system towards transsexuals?
- 8-Do you know other transsexual persons? Are you part of trans communities?

Trans activist

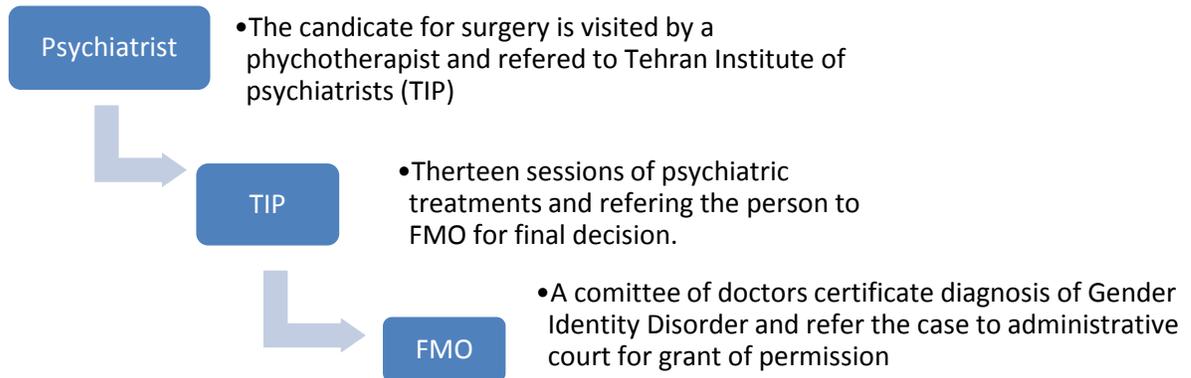
- 1- How long have you been working for Iranian transsexuals? Why?
- 2-What are the organization's social activities?
- 3- How transsexuals can participate in cyber activities? Has there been any solidarity among them?
- 4- What are the aims and objectives of organizations?
- 5- How does society in general and family in particular receive transsexuals?

Social Welfare Organization

- 1- What role does SWO play in supporting transsexuals?
- 2- Who can approach you? a self-identified transsexual person?
- 3- What happens if you identify a person as homosexual not transsexual?
- 4- What are the main social obstacles for this group of people?
- 5- What types of training workshops do you organize here?

8.2 legal and medical processes of transition

Before surgery



After surgery

