

The Lawfulness of Gender Reassignment Surgery in UAE: Rights and Responsibilities

Ayman Nawwaf Sharif Alhawawsheh¹

Abstract

Countries in the Middle East and North Africa lack any legislative framework to allow legal gender recognition (LGR) for their transgender populations. This legislative vacuum has forced transgender people who wish to receive LGR to undergo a lengthy, costly, and complicated judicial review process. This research explores the legal landscape surrounding gender reassignment surgery within the United Arab Emirates (UAE) and investigates the rights and responsibilities of individuals seeking such procedures. The study came to clarify the legal aspect of the sex change operation and to distinguish it from others that are like it, such as the sex correction operation, and to indicate whether there is any criminal liability on the patient or the doctor for this act by legislation. The findings from this study aim to inform legal practitioners, policymakers, and advocacy groups, fostering a more inclusive legal environment that respects the diverse gender identities of individuals within the UAE.

Keywords: Lawfulness, Gender identity disorders, -Reassignment Surgery, Transsexualism.

Introduction

The new Medical Liability Law was recently enacted in the UAE, legalizing sex correction operations. The Medical Liability Law allows for sex correction operations, not sex change operations, as many thought was the case after a recent lawsuit was filed in Abu Dhabi Court. Under the new UAE law, sex correction is “the medical intervention to correct the sex of a person who suffers sexual obscurity, as it is unclear whether the person is male or female, and whose physical features do not match the physiological, biological and genetic characteristics, sex correction is considered to be in line with Sharia law, according to the fatwa issued by the General Authority for Islamic Affairs (Elmusa L., 2016).

Same-sex sexual activity is prohibited under the Criminal Codes of the UAE, which criminalizes ‘unnatural sex with another person’, and criminalizes acts of ‘sodomy’. Same-sex sexual activity may also be penalized under Sharia

¹ The author is an Associate Professor in Criminal Law at the College of Law, American University in the Emirates. UAE. He can be reached at ayman.alhwawsheh@ae.ae

law In addition to potentially being captured by laws that criminalize same-sex activity, trans people may also face (Liability), which criminalizes a ‘male disguising as a female’ with a maximum penalty of one-year imprisonment and a fine. The provisions have their origins in Islamic law, with the Constitution designating Islam as the state religion, and Sharia as the principal source of law. The New Law also requires all medical malpractice claims to be referred to a new medical liability committee (‘Medical Liability Committee’) before they are reviewed by the judicial authorities in the UAE. Further, the law also affords protection and relief to doctors in criminal proceedings by prohibiting their arrest, imprisonment, and investigation before the concerned authorities until the Medical Liability Committee issues a final report. The New Law also introduces stringent penalties against medical practitioners who commit grave medical errors and other key changes, which will be discussed in this article (Allouz et al., 2016).

The term transsexual was introduced by Cauldwell (1949) and popularized by Harry Benjamin (1966) The term transgender was coined by John Oliven (1965) and popularized by various transgender people who pioneered the concept and practice of transgenderism. It is sometimes said that Virginia Prince (1976) popularized the term, but history shows that many transgender people advocated the use of this term much more than Prince (Evan, 2014).

The “Sex-Reassignment Processes and Surgery” and behavioral therapy in recent years have been suggested for people suffering from gender identity disorders (GID). Generally, inclination and desire for sex reassignment may be related to a person’s suffering from hermaphrodite, GID, and other physical defects (Kozee, et al., 2012). In the current research, The Lawfulness of Gender Reassignment Surgery was examined. Some transgender people who desire medical assistance to transition from one sex to another identify as "transsexual" (Forsyth, 2014). Trans women and others assigned male at birth may undergo one or more feminizing procedures which result in anatomy that is typically gendered female. These include genital surgeries such as penectomy (removal of the penis), orchiectomy (removal of the testes), vaginoplasty (construction of a vagina), as well as breast augmentation, tracheal shave (reduction of Adam's apple), facial feminization surgery, and voice feminization surgery among others. Trans men and other assigned females at birth seeking surgery may undergo one or more masculinizing procedures, which include chest reconstruction, breast reduction, hysterectomy (removal of the uterus), and oophorectomy (removal of the ovaries). A penis can be constructed through

metoidioplasty or phalloplasty, and a scrotum through scrotoplasty (Polly & Nicole, 2011).

As knowledge of non-binary genders expands in the medical community, more surgeons are willing to tailor operations to individual needs. Bigenital operations allow individuals to construct a penis or vagina and retain their original organs. Gender nullification is the removal of all external genitalia except the urethral opening, typically pursued by people assigned male at birth. This means that there is a difference between sex change and gender reassignment. Now let's see whether there is medical criminal liability in both cases.

The difference between sex change, sex correction, and homosexuality

a. Transgender and sexual orientation

Sex reassignment surgery refers to procedures that help people transition to their self-identified gender. Today, many people prefer to use the terms gender affirmation or confirmation surgery. People may have surgery so that their physical body matches their gender identity. People who choose gender affirmation surgery do so because they experience gender dysphoria. Gender dysphoria is the distress that occurs when your sex assigned at birth does not match your gender identity. The term transgender describes someone whose gender identity is different than the sex assigned at birth. Gender nonbinary describes someone whose gender identity does not fit within traditional female or male categories. People in either of these categories may opt for gender-affirmation medical treatment or surgery. We all remember the decision the Trump administration decided that transgender personnel cannot serve in the U.S. military except in their assigned birth sex, a decision that was revoked by President Biden. Under the Trump administration, these examples demonstrate how transgender rights trigger discussions about the nature of sex (Vucci, 2021).

It should be noted that sexual orientation and transgender are not interrelated. It is incorrect to assume that someone who undertakes gender reassignment is lesbian or gay or that his or her sexual orientation will change after gender reassignment. However, historically the campaigns advocating equality for both transgender and lesbian, gay, and bisexual communities have often been associated with each other. As a result, the University's staff and student support networks have established diversity networks that include both Sexual Orientation and Transgender groups. (Cambridge, 2022) Due to the sensitivity and importance of this topic, Most legislation stipulates defining the terms sex change and sex Reassignment As the Emirati legislator in Federal Decree-Law No. (4) of 2016 on Medical Liability (Liability), Sex Change: Change of gender of a person

whose gender identity is clear (whether male or female), and whose sexual physical features match his/her physiological, biological, and genetic characteristics, and there is no suspicion of his sexual identity, male or female. This definition also means a deviation in a Sex Reassignment Surgery (SRS) in contravention of the gender established by medical analyses. Sex Reassignment: A medical intervention performed for the correction of the gender of a person whose gender identity is obscure and suspicious (whether he/she is a male or female), like the person who has sexual physical features inconsistent with his/her physiological, biological and genetic characteristics, and that person's facial features indicate that he is a male, while he is a female, and vice versa. many studies have shown a very low percentage of regret in the TGNB population after GAS. They consider that this reflects the improvements in the selection criteria for surgery. However, further studies should be conducted to assess types of regret as well as their association with different types of surgical procedures (Bustos, 2021).

b. The difference between sex and gender

Sex is assigned at birth, refers to one's biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy. Gender refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for boys and men or girls and women. These influence the ways that people act, interact, and feel about themselves. While aspects of biological sex are similar across different cultures, aspects of gender may differ. Various conditions that lead to atypical development of physical sex characteristics are collectively referred to as intersex conditions (Liability).

The position of comparative legislation

Legal Framework in the UAE

The law stipulates 1 indecent assault of both sexes, which will be punished with imprisonment or a fine of no less than Dh10,000, regardless of the victim's sex. If the use of force or threat is employed in the course of the crime, the penalty will be a jail term of between five and 20 years. Consensual extramarital sex between adults will be punishable with a jail term of at least six months. Lesbian, gay, bisexual, and transgender (LGBT) people in the United Arab Emirates face legal challenges not experienced by non-LGBT residents. Homosexuality is illegal in the United Arab Emirates (UAE) and under the federal criminal provisions, consensual same-sex sexual activity is punishable by imprisonment; extra-marital sexual activity between persons of different sexes is also illegal. In both cases,

prosecution will only be brought if a husband or male guardian of one of the participants makes a criminal complaint. The penalty is a minimum of six months imprisonment; no maximum penalty is prescribed, and the court has full discretion to impose any sentence by the country's constitution. In other legislation (Liability) that the surgical procedures "by which a transgender person's physical appearance and function of their existing sexual characteristics are altered to resemble that of their identified gender" is permitted if it is "part of a treatment for gender dysphoria in transgender people, as advised by a medical commission to be set up for this purpose.

The law began by stipulating the difference between Sex Change and Sex Reassignment

Change of gender of a person whose gender identity is clear (whether male or female), and whose sexual physical features match his/her physiological, biological, and genetic characteristics, and there is no suspicion of his sexual identity, male or female. This definition also means a deviation in a Sex Reassignment Surgery (SRS) in contravention of the gender established by medical analyses. Sex Reassignment is a medical intervention performed for the correction of the gender of a person whose gender identity is obscure and suspicious (whether he/she is a male or female), like the person who has sexual physical features inconsistent with his/her physiological, biological and genetic characteristics, and that person's facial features indicate that he is a male, while he is a female, and vice versa. The law permits doctors to conduct sex reassignment surgery where there are signs of gender and sex disparity, though 'unwarranted' surgery can be punished with three to ten years' imprisonment. The legislator specified conditions of Sex Reassignment surgeries in Article 7. Sex Reassignment surgeries may be performed according to the following controls:

1. The person's gender identity is obscure and there is suspicion about him/ her being male or female.
2. The person has sexual and physical features inconsistent with his/her physiological, biological, and genetic characteristics.

Provisions of paragraphs 1 and 2 above shall be ascertained by medical reports and consent of a specialized medical committee formed by the Health Authority to define the patient's gender identity and approve the Sex Reassignment surgery. The said committee shall refer the case to a psychologist for the necessary psychological preparation. We note that the criterion relied upon by the federal legislator is the results of the tests. Suppose the medical tests prove that a person's sexual affiliation is clear in terms of masculinity or femininity, and his physical features are sexual It matches his physiological, biological, and

genetic characteristics, and there is no suspicion that his sexual affiliation is male or female, it is not permissible to undergo a sexual reassignment surgery under penalty of criminal liability.

Whereas if medical tests prove that a person's sexual affiliation is ambiguous such that there is suspicion that He may be male or female as if he has physical sexual characteristics that are contrary to physiological and biological characteristics genetic, in this case, it is permissible to perform sex reassignment surgery as a medical procedure intended for treatment. We note from the previous two definitions that the federal legislator has adopted a purely material standard, which is the sexual characteristic that was determined by the medical tests and exceeded the psychological standard on which it relied.

Most of the legislation permits sex reassignment operations, and by psychological criterion here we mean diagnosing a condition. The person suffers from gender identity disorder) despite the complete compatibility between the gender characteristics that have disappeared It includes medical tests and their physiological, biological, and genetic characteristics. Briefly, in UAE Law there is a difference between the terms 'sex change' and 'sex correction surgery', as sex change surgery remains illegal in the UAE.

Cultural and Religious Perspectives

In Islam It is not possible for anyone, no matter who he is, to change the creation of Allah, may He be exalted, from male to female or vice versa. Whoever Allah, may He be exalted, has created as a male can never become a female who menstruates and gives birth! Yes, the doctors may tamper with him to satisfy his perversion so that he will think that he has become a woman, but he will never be truly female and will live in a state of anxiety and worry, which may lead him to commit suicide. On the other hand, What a person may feel in his mind and heart, that he is of a gender other than what he appears to be to us does not give him an excuse to change his gender. Rather it comes under the heading of following the "Shaytaan" in changing the creation of Allah – outwardly but not truly – and those feelings do not make it permissible for him to undergo surgery or take medicines and hormones to change his outward appearance. Rather he must be content with the decree of Allah, may He be exalted, and treat his case based on faith and obedience to Allah. It is not permissible for him to make himself appear outwardly to be of a gender other than his real gender with which Allah created him, otherwise, he will be committing a major sin; if this person is female then she will be masculinized and if he is male then he will be effeminate.

In the UAE, Islamic Sharia plays a key role in these cases. The judges tend to rely on Sharia, which distinguishes between "sex change", referring to

gender-affirming surgeries for transgender people whose gender differs from the sex they were assigned at birth, and what they term “sex reassignment” or “sex correction”, by which they mean surgeries conducted on intersex individuals, who are born with characteristics that vary from what is considered typical for female or male bodies. Only the latter is permitted according to this interpretation of Sharia given that Islam is the UAE’s official religion (Sultan, 1996).

Today’s immense scientific progress has made advanced surgical operations possible, including transsexual surgery. This surgery has spread considerably in some countries but is very recent in the United Arab Emirates (UAE), where the first lawsuit for transsexuals was brought in 2016. The position of Fiqh is contrasted with UAE law. (Hamama, 2019) The new Medical Liability Law does not mean that gender reassignment surgery is now legal in the UAE but there is a difference between the terms ‘sex change’ and ‘sex correction surgery’, as sex change surgery remains illegal in the UAE,” Islamic Fiqh Academy has determined that non-intersex individuals may not receive it. In such a situation, any attempt to change the body is a crime, and the perpetrator deserves to be punished (Hamama, 2019).

UAE Judiciary Position

In the only case that occurred inside the UAE, “Ali” and “Salem” filed cases to have their legal documents changed from female to male, but in March a judge rejected their bid. They underwent reassignment surgery last year, but their passport and ID documents still identify them as women. “We are not women. We never were,” Ali told *The National*. Both were in their 30s, and they had been diagnosed with gender dysphoria – a condition in which a person does not identify with their birth sex. A change in UAE law two years ago paved the way for gender reassignment surgery to be permitted. Officials have always said the intention was to allow corrective surgery for those born with medical problems such as two reproductive organs. This contrasts with elective surgery for people who feel they are of the opposite sex. But Ali, Salem, and their lawyer, Ali Al Mansouri, believe the law’s wording is on their side, or ambiguous at best (Nowais, 2019). As we discussed before, the 2016 Medical Liability Law states: “Sex correction operations may be made according to the following controls: the person’s gender is obscure, and it is not certain whether he is male or female; or the person has sexual and physical features inconsistent with his/her physiological, biological and genetic characteristics.” Ali and Salem believe the second section extends to them and they say the law empowered them to make their decision. “We only did the operation after the law came out,” Ali said. But they now live in legal limbo.

They were living in the UAE with women's documents and dressing as men is breaking the law. They wear abayas and Shayla's by day and kanduras or casual clothes by night. They do their best to hide their masculine features and voices. "Every day is a struggle and while I feel liberated after surgery, the court's decision is like a death sentence," Ali said (Nowais, 2019). This judicial ruling was consistent with the laws, public morals, and Islamic law applied under the Constitution. (Fahim, 2020).

Comparative judiciary position

According to a report published on September 3, 2019, "the Lebanese judiciary has a long history of reviewing cases of transgender individuals, who, after undergoing gender-affirming surgeries, wished to obtain legal gender recognition from the state. Changing one's name and gender markers is governed by the Lebanese Civil Registry Code of 1951. In 1987, Beirut's Civil District Court reviewed a motion moved by a transgender woman who requested to receive legal gender recognition from the state. She was a divorcee with two children and had undergone two surgeries to affirm her gender, and submitted medical reports to the courts that argued for the necessity of those surgeries as she was suffering from gender dysphoria. The court was not convinced by the medical reports and brought in forensic medical authorities to examine the plaintiff, stating concerns that a man with two children could not become a woman Following the examination (Fakih, 2016). The court concluded that "the plaintiff's physical appearance is now of a woman and the change in their papers is considered a necessity to prevent any damage to the plaintiff or the social fabric of their community Despite receiving LGR in this case, the court was careful not to mention the full reasoning behind why it granted the change, relying only on the physical examination of the plaintiff as the reason to grant them LGR. Despite the positive outcome for the plaintiff, this case did not clarify whether gender dysphoria can be considered a reason to be granted LGR in Lebanon (Noralla, 2022). As the number of transgender children has grown, so has their access to gender-affirming care, much of it provided at scores of clinics at major hospitals (Terhune, 2022).

The U.S. sex reassignment surgery market size was estimated at USD 2.1 billion in 2022 and is anticipated to grow at a compound annual growth rate (CAGR) of 11.25% from 2023 to 2030. The rising prevalence of gender dysphoria and the increasing number of individuals in the U.S. opting for gender affirmation surgeries are expected to boost market growth over the forecast period. As per the study conducted by Cedars Sinai in June 2020, approximately 78% of transgender males in the U.S. reported signs of gender dysphoria by the age of 7 years. In

addition, the mean age to experience gender dysphoria in transgender males was around 6.2 years, comparatively less than that in transgender females (Report, 2022).

Under United States federal law, and in some states, surgery is not required to change legal sex, but a health professional must certify that their patient has undergone "necessary" medical or psychological treatment for transition. In completing this paperwork, the health professional should be aware that there is no particular clinical treatment (such as hormones or surgery) that is "necessary" for all trans people, and that legal documents reflecting a sex congruent with one's gender identity contribute to a patient's health, by supporting employment, safe travel, and other necessities of daily living, as well as facilitating access to medical care. In some jurisdictions, there is a surgical requirement to change legal sex. The health provider may have leeway, depending on the law, as no surgery is "necessary" for all trans people. Some trans people are unable to change their birth certificate in their home state or country but may still change their gender markers on their U.S. passport, Social Security card, and driver's license (Karasic, 2016).

Gender Identity Issues in the United Kingdom

The Gender Recognition Act 2004 allows transgender people to apply to the Gender Recognition Panel to obtain legal recognition of their acquired gender. If a GRC is granted, the applicant is then considered in the eyes of the law to have become their acquired gender and they can obtain a new birth certificate. A GRC cannot however be granted if the person is married because it is still not possible to have a marriage between two people of the same gender. The 2004 Act therefore provides a mechanism for the person to get an interim GRC which allows them to get divorced, and the full GRC then follows automatically on divorce being granted.

Rees v. the United Kingdom

In this case, a female-to-male transsexual complained that United Kingdom law did not confer on him a legal status corresponding to his actual condition. The European Court of Human Rights held that there had been no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights. It noted that the changes demanded by the applicant would have involved fundamentally modifying the system for keeping the register of births, which would have had important administrative consequences and imposed new duties on the rest of the population. Furthermore, the Court attached importance to the fact that the United Kingdom had borne the

costs of the applicant's medical treatment. However, the Court was conscious "of the seriousness of the problems affecting transsexuals and of their distress" and recommended, "keeping the need for appropriate measures under review, having regard, particularly to scientific and societal developments" (§ 47 of the judgment). The Court also held that there had been no violation of Article 12 (right to marry and found a family) of the Convention in the present case, noting in particular that the traditional concept of marriage was based on union between persons of opposite biological sex and that States had the power to regulate the right to marry (Rights, 2020).

Conclusion

The results demonstrate that Sex-Reassignment is prohibited, and it is not authorized. And A transsexual differs from a transvestite and a hermaphrodite. The former merely has a desire for, and is gratified by, dressing up in women's clothes. He has no urge to physically change his sex. The latter is a person whose gender identity is not clear. He has traits of both sexes and his problem is one of bringing his body by surgical alteration into harmony with his true sex, i.e., the one that predominates in his anatomy. The transsexual, on the other hand, is a person whose biological sexual development is normal, but who strongly believes that he or she is a member of the opposite sex. In the UAE, Islamic Sharia plays a key role in these cases. The judges tend to rely on Sharia, which distinguishes between "sex change", referring to gender-affirming surgeries for transgender people whose gender differs from the sex they were assigned at birth, and what they term "sex reassignment" or "sex correction", by which they mean surgeries conducted on intersex individuals, who are born with characteristics that vary from what is considered typical for female or male bodies. Only the latter is permitted according to this interpretation of Sharia (Hanbal, 1992-1994).

Recommendations

- Legislation must reject sexual conversion that depends on the patient's psychology and treat the transgender person as if he were a psychological patient in need of treatment, and states must provide him with psychological treatment.
- The patient who attempts to change sex must be criminalized with the same penalty imposed on the doctor who performs sex change surgery.
- Promoting and inciting sex change must be criminalized because it poses a threat to public morals in the country.
- The legislator must stipulate that newborns be subjected to medical examination and hormonal analysis to detect cases of sexual disorders at

an early age and begin the appropriate treatment journey so that they do not suffer from correction at a late age and enter psychological disorders.

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