

THE LEGAL FRAMEWORK FOR THE CRIME OF SEX CHANGE IN JORDANIAN LAW: A COMPARATIVE STUDY

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Abstract:

This study aims to shed light on the crime of changing sex, as a new crime in Jordanian law, by clarifying what this crime is by explaining its concept and elements, as well as explaining the difference between sex change and similar terms. This study deals with the inductive, comparative and analytical approach, in addition to the descriptive approach, in order to clarify the nature of the sex change crime by comparing the position of some Arab laws on the issue of sex change.

The study reached many results, the most important of which are: that it did not stipulate a penal liability resulting from the act of the person who changes his sex, but rather he can be punished based on the provisions of the criminal contribution that he is an instigator to commit the crime of changing the sex, and that the Jordanian legislator, when mentioning the penalty imposed on the service provider, did not stipulate On the punishment of the moral service provider, as he only mentioned a penalty of deprivation of liberty, which is a punishment suitable for the natural service provider, and accordingly, the researcher recommends the creation of a legal text that includes a statement of the penal responsibility resulting from the act of the person who changes his sex, and also adding a financial penalty to the service provider represented by the fine .

Keywords: crime, sex change, sex correction, service provider.

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Introduction :

Since the beginning of man, his gender was defined, so he was either male or female, but man, within the course of his development, was not satisfied with these two categories only, and he began to classify himself among other categories, and from here psychologists invented a new term that is gender identify, which is meant by it A person's sense of who he is or the deep-rooted inner feeling of belonging to a gender, and they distinguished between sex and gender. The sex

It is the biological sex with which a person is born and which does not come out to be male or female, and in rare cases is hermaphrodite. As for gender, it is the social gender, and it means the sex with which a person feels belonging to him and the desire to live with him. He is classified as male or female in terms of biological sex, but his sexual identity is different from this classification, which is what they called Gender Identity Disorder, and accordingly they developed several classifications of

sexual identity that can be divided into two parts: First: compatibility with the type, which is the state of compatibility With human biological sex and gender Gender conforming

Secondly: non-conforming gender, which refers to the state of incompatibility between the biological sex of a person and the social type to which he feels belonging. they called people whose sexual expressions Expression Gender did not match their biological sex transgender Accordingly, the phenomenon of gender reassignment emerged as one of the phenomena produced by scientific progress in the field of medicine. It is a relatively recent phenomenon, as European parliament's began to pay attention to it in the late seventies and early eighties of the twentieth century. The Swedish parliament is the first European parliament to vote on a special law legislating the issue of gender reassignment in 1972, and then other European countries followed Sweden in this field, including Germany, Italy and the Netherlands. This phenomenon began to reach us in our conservative Islamic society. And since the subject of sex change is one of the modern topics, therefore, I wanted through this research to clarify the adequacy of the legal texts regulating the issue of the crime of sex change, as it is a new crime according to the Jordanian law, whereby a person, male or female, changes his gender to the other without the need for that. Without him suffering from a disease that violates one of the criteria used to determine sex, it is considered a crime according to the Jordanian Medical and Health Responsibility Law No. 25 of 2008, and this is the first legislative regulation for this issue.

1- What is the crime of sex change?

1-1 The concept of gender change

During our research on this subject, we found a set of definitions, trying to present some of them to reach the meaning:

It is a feeling that an individual feels of belonging to a gender opposite to his original sex, with a strong desire to change his sexual condition and live according to the compatible appearance of the idea in which he sees himself. This is a medical definition of the case that can be complemented by the definition of the European Court of Human Rights, which defines it by looking at people, as we usually mean by transsexuals people whose physiological appearance appears to be a certain gender and feelings of belonging to the opposite sex, and they always try to appear with a more consistent and less suspicious identity, and this is by undergoing medical treatments and surgical interventions. (Robert, 2009, p338)

And there are those who defined it as: "a person's feeling of hatred for the gender he was born with as a result of various factors, most of which go back to early periods, such as a person's life and upbringing, and the upbringing was improper, and these people have no confusion in determining their gender in terms of appearance or in terms of substance." (Al-Shanqeeti, 1994, p. 199)

Some scholars also define sex reassignment as a change in a person's physical characteristics through surgery or hormonal treatment (www.altibbi.com). And some defined it as the state of a person who desires to live and be accepted in society with a gender other than the one he was born with (Al-Shaya, 2020, p. 92)

The European Court of Human Rights defined it as: "Sexual change is represented in people's sense of belonging to the opposite sex in order to reach a more consistent identity after undergoing medical and surgical treatment to adapt to the physical and morphological characteristics of the gender they feel." (C.F Abdehafid, 2000, p203. As for the Jordanian Medical and Health Responsibility Law, gender change is defined in Article 2 thereof as changing the sex of a person whose sexual affiliation is clear, masculine or feminine, and whose sexual physical features match his physiological, biological and genetic characteristics, and there is no suspicion of his sexual affiliation, whether male or female. Correcting the gender in a way that contradicts the sexual characteristics that the medical examinations concluded. As for the UAE legislator in the Federal Medical Liability Law of 2016, in the first article, he defined gender change, and its definition was identical to the definition of the Jordanian legislator.

As for what is meant by sex reassignment surgery, it is the surgery in which a male is transformed into a female and vice versa.) Sex reassignment surgery has a specific meaning for males and females

1-:: Male sex reassignment surgery:

It is a surgery in which the male is changed into a female, through: "Penis and testicles are circumcised, and an artificial vulva (small) is created from the remains of the scrotum. the female. In this process, the external form is changed without the biological structure, as it remains unchanged, and therefore there is no ovary or uterus, and it cannot menstruate or become pregnant. (Ismail, 2021, p. 766)

2- Female sex reassignment surgery:

In this surgery, the female is changed into a male, through "the doctor removes the uterus and ovaries, closes the vagina, and places a prosthetic penis that can be erected by means of an electric current from a battery implanted in the thigh when needed. Doctors also remove the breasts and give this woman male hormones in large quantities that make the voice hoarse." "Close to a man's voice." In addition, the chin hair can grow close to the man's, and the muscles increase in strength due to the influence of male hormones and physical exercises. Through the previous operation, the female is changed into a male who can have intercourse with the battery implanted in the thigh, but he cannot have children because he cannot ejaculate semen and therefore Thus, this person has changed his gender from a formal point of view, but from a biological point of view, he carries female characteristics. (Al-Reesh, 2003, pg. 228). In practice, it is noted that more sex change operations are performed for males than for females, due to the serious risks involved in the process of changing the female sex to a male one.

1-2- General criteria for determining sex

The sex is a set of characteristics that distinguish the male sex from the female, in the task of sexual reproduction. At the level of the human being, these two sexes are represented by men and women, who, when they reach puberty, unite sexually to ensure their reproduction. The genetic sex is determined by the fusion of the sex cells of both the sperm and the female egg. There are several criteria used by doctors to determine the sex of a person in case of doubt, which are as follows:

First, the criteria for marks are the apparent and the hidden marks (Saleh, 2003, pg. 50). A person possesses external and internal signs that make up the reproductive system and the various organs of the human body, which have an effective effect in determining his belonging to a particular gender over another, and these signs:

1- The reproductive system, in the male the penis and the external reproductive system in the female the vagina, as well as the internal genital organs for both of them differ.

2- Bones Scientists have found a difference between the formation of male and female bones, and this difference is based on the bones of the pelvis, the bones of the skull, the humerus, the shoulder bone, the femur, and the sternum).

This criterion is one of the easiest criteria for determining a person's sexual identity in normal situations However, some believe that this criterion is not always correct, because there are people who are born with double genitalia or unclear inactive features.

Second: the genetic standard

Through the genetic standard, a man can be distinguished from a female, as the man carries the X chromosome, while the woman carries the XX chromosome.

This criterion promises the researcher the composition of the human body to show his gender, male or female, but he considers the real woman that gives the individual and reflects his biological nature from the moment of his formation in his mother's womb until his death, in a way that cannot be changed, and the examination is carried out by specialists in this field Laboratory medical, so specialists consider this criterion to be one of the most accurate criteria in determining a person's sexual identity

Third: the psychological standard

It means the inclinations and feelings that a person carries with a certain kind towards the other person, that is, the person's psychological inclinations to being a male who has sexual instincts towards the female, or vice versa. (Al-Sharqawi, 2002, 132). Some legal jurisprudence releases the criterion of tangible gender, as they describe it as that firm sense of belonging to a specific gender.

However, it does not prevent the emergence of abnormal cases from the original, and here we find the difference between the sexual orientation of a person and sexual desire that may contradict the tendencies in an abnormal way that is not suitable to be relied upon to determine the person's inclinations, as it is nothing more than a psychological imbalance of its owner and it is not reliable to recognize a heterosexual.

In the psychological field, some legal jurisprudence believes that sex change is treated by surgical operations or hormonal treatment, which a person resorts to, as he suffers from a mental illness that pushes him to change, unlike his outward appearance. (Saad, 1993, p. 90)

So a question arises, what are the criteria to be followed to correct the human race?

Some medical specialists see that reliance is on the biological criterion, as it is an accurate criterion and is not affected by external variables. (Bashar, 2003, p. 19)

On the other hand, other specialists believe that all these criteria must meet with each other, in order to consider the process of correcting sex as legitimate and intended as therapeutic and not constitute homosexuality.

(Al-Shasi, 2005, p. 184)

On the judicial level, we find that the Paris Court of Appeal refused to change the sex of the plaintiff who made the change, reasoning its decision that psychological hermaphroditism is not sufficient to change the sex. -j 557 a580.note.E.S.de la Msamierre.cass.11dec.1992.)

As for the position of the Jordanian judiciary, it was found that the Jordanian Court of Cassation had ruled: "And since it is proven through the evidence presented in this case that the plaintiff had been registered in the civil status records that his gender was male based on the notification of the birth family immediately after birth, and where it is not possible Confirmation starting with whether the newborn is male or female, since such things may become more and more clear after the passage of years, such as the growth of facial hair and mustache, roughness for males and softness for females, and the growth of breasts, as well as the emergence of sensations specific to each sex, and these do not appear until after puberty, and since the difference between male and female is the existence The two buttocks (male or vulva) and sometimes it is not possible to distinguish between the two buttocks, and as a result, he waits until puberty.

And since the gender of the newborn cannot be verified sometimes directly for the previous reasons, and therefore the registration in the records and records of civil status is beyond the will of the one who informed about the birth, which may occur in the event of registration through the registration of the newborn, and after the passage of years and puberty, those features change and it turns out that this A person has characteristics that show the characteristics of the opposite sex.

In the case presented to us, where the plaintiff provided evidence represented in the district medical reports , And what is included, and after the medical examination of the plaintiff, it was revealed that he has two breasts, that he has a normal vagina in appearance, and that the female features prevail over the masculine ones, and therefore she is a female. And since the Court of Appeal ended up obligating the defendant to correct the gender of the plaintiff from male to female and his name from Hussein to Sarah in support of the evidence provided, it would have applied the law properly. (Decision No. 6341/2019, Cassation of Rights, Public Authority)

Thus, we find that the Court of Cassation approved gender correction based on the opinion of medical expertise to perform such an operation after establishing that there is a factor related to the psychological factor, which is the factor of the apparent signs that confirmed that the change requester has a different gender, so the court permitted the procedure of correcting the gender and the name, and obligated the Civil Status Department to recognize the new legal status of this person. And by analyzing the researcher to define sex change according to the law of medical and health responsibility referred to previously, she finds that the Jordanian legislator has adopted the criterion of external and internal signs by saying: "His sexual physical features correspond to ..." He also took the functional criterion of the body's organs, as the legislator expressed that By using the term "physiological characteristics" and he did not neglect the criterion itself, as it is noted that the legislator said, "There is no suspicion of his sexual affiliation, male or female."

Accordingly, the Jordanian legislator has given consideration to the psychological element combined with the rest of the physical and biological elements to determine the human sex. The legislator completed the definition by saying: It also means deviation in the process of correcting the sex in a way that contradicts the sexual characteristic that the medical examinations concluded, stressing that the opinion is the opinion of medicine in this regard, as it is the specialist.

1-3- Distinguishing gender change from related terms

Sexual change differs from some phenomena of homosexuality, which we will try to highlight the difference as follows:

1-3-1 Sex change and effeminacy

Jurisprudence defines the term effeminacy as someone who has both male and female genitalia, or does not have genitalia at all, which creates a state of confusion in defining his gender. Therefore, effeminacy is based on an original sexual illusion. The hermaphrodite is a victim of nature by carrying both male and female organs, which justifies the operation. Surgical procedures to determine his original sex, while the person subject to the change, by contrast, has a definite and completely distinct morphological gender, but he feels that he belongs to the opposite sex to his natural sex. Because the matter is not related to correcting the sex, but rather to changing it, which imposes that there is no confusion in the gender, because the person subject to the change was never a victim of a mistake on the day of birth, except that he feels belonging to a gender opposite to his gender, so he searches no matter how safe it is to change him through difficult surgeries. (Nasr al-Din, 199, p. 437). The Jordanian legislator did not define the term (intersex) but it was mentioned in the second appendix to the Military Medical Commissions Regulations in the first article thereof, as the legislator said (... 5- The state of the female sex - the lack of development of the genitals) in the context of his statement of diseases that affect health physical condition for persons joining the military service), and although the Jordanian legislator did not explicitly define intersex, but according to the text of Article 325 of the Personal Status Law, any issue that is not addressed is due to the provisions of Islamic Sharia. Accordingly, the researcher believes that the Jordanian legislator has adopted the term hermaphrodite, even if he has not singled out a special text that regulates his conditions. In contrast, the Egyptian legislator, in Article 46 of the Personal Status Law, defined the hermaphrodite as he who does not know whether he is male or female.

1-3-2 Sex correction and sex change

In Article 2 of the Medical and Health Responsibility Law, the Jordanian legislator defined gender correction as: “medical intervention with the aim of correcting the sex of a person whose affiliation is ambiguous, so that he is suspected of being male or female, and that he has sexual physical features that contradict the physiological, biological and genetic characteristics of the person as well. His features indicate that he is male when in fact he is female and vice versa. The Jordanian legislator distinguished between sex change and sex correction, so that he criminalized change and considered it contrary to human nature, as it constitutes sexual anomaly, while he permitted the act of correction and considered it a treatment for a sick condition that affected the human body, male or female, which requires medical intervention.

This is the position of the UAE legislator in the Federal Medical Liability Law of 2016, in Article 1. Whereas, the definition of correction was the same as the definition provided by the Jordanian legislator. And jurisprudence defines correction as a pathological condition that pertains to patients with gender identity disorder. It is intended to love belonging to the other sex and to try to change the other sex, even if surgically. (Naguib, 2020, p. 406). The jurists linked the term correction with the French term Transsexualism, which represents a situation in which a person suffers from an urgent desire to appear in an appearance that is contrary to what he is, and is absolutely convinced that what he suffers from is a mistake of nature and that he has a gender different from what he really is, to the extent that he resorts to mutilating his body. Or suicide, but it is not considered crazy, though. (Sharkawy, 2002, p. 156)

Accordingly, the researcher believes that jurisprudence did not mention in the definition the urgent need for medical intervention by specifying the defect that must be achieved in order for a person to have the right to correct his gender. His gender, which was not referred to by the Jordanian legislator when regulating the medical and health responsibility law, as he contented himself when defining

gender correction in Article 2 of it by mentioning the phrase (.... in contravention of the nationality that the medical examinations concluded) without specifying the body from which the medical reports are issued , However, the practical reality is that the regional medical committee of the Ministry of Health is authorized to issue medical reports, as it considers the medical reports issued by it as legal evidence before the trial court. This is the same position of the UAE legislator, as he specified the conditions for making corrections in Article 7 of the Federal Medical Liability Law of 2016, and these conditions:

1- Objective conditions that there be a state of sexual ambiguity, meaning that his affiliation is vague and suspected between male and female, and that there is a contradiction between the person's physical sexual features and his physiological, biological and genetic characteristics, which indicates that a disorder of sexual identity that is not compatible with a physical defect is not considered a cause

To correct the gender in the UAE law. The imbalance must be physical and not moral, as if he feels his belonging to a gender.

2- Formal conditions: There must be medical reports and the formation of a committee to study the case and give its approval to conduct the correction process after verifying the person's sexual affiliation and a suspect between male and female. This is identical to the position of the Iraqi legislator in the instructions issued by the Ministry of Health for gender correction.

This is what the Jordanian legislator neglected to address.

2- The general elements of the crime of changing sex

2-1- The legal element of the sex change crime

The legal element, or what is also called the legal element of the crime, is known as the illegal character of the act or activity that emanates from the individual, which the legislator bestows through the law, especially the penal code and the laws complementing it. If there is no text in the law that criminalizes this act and assigns a penalty for it, then this act is a permissible and legitimate act, so the description of the crime cannot be applied to a specific act unless there is an explicit text in the Penal Code that criminalizes this act, and determines the necessary punishment for the perpetrator of the act (Al-Majali). (2020, 101-103). An act acquires the unlawful character with two conditions, the first: that the act is subject to the criminalization text and that it is prescribed by law as a punishment for the one who commits it, and the second condition: that the act is not subject, in the circumstances of its commission, to any reason of justification. (Tawfiq, 2020,106)

This pillar is expressed in the principle of the legality of crimes and penalties, which stipulates that there is no crime or punishment without a text, as stated in the third article of the Jordanian Penal Code: (There is no crime without a text, and no punishment or measure is imposed that was not stipulated by the law when the crime was committed, and the crime is considered complete If actions are performed without regard to when the result occurred). The legal basis for the crime of changing sex is legal provisions that are determined by the legislator, so that the Jordanian legislator stipulated the criminalization of sex change for the first time in the Medical and Health Responsibility Law No. (25) of 2018, after doing this act was a violation of the law, and decided Where it was stated in Article (8) of the aforementioned law: (The service provider is prohibited from the following: h- Performing sex change operations) and in Article (22) it clarified the penalty that results from performing this act. The position of the Jordanian legislator is clear regarding this type of operation, as it has criminalized the act of the service provider that entails changing the sex of the person, and the service provider, according to the Medical and Health Responsibility Law, is: (any natural or legal person who practices a medical or health profession and performs a service or work of participates in carrying out them in accordance with the provisions of the applicable legislations), As for the medical professions mentioned in the previous text, they were stipulated in the Public Health Law, as the Jordanian legislator specified what is meant by them: Medical and health professions include practicing any of the following jobs: Medicine, dentistry, pharmacy, nursing, anesthesia, radiology, speech therapy, hearing, vision testing, supplying medical glasses, fitting contact lenses, clinical psychology, mental health..... and any other medical or health profession or trade decided by the Council of Ministers based on a recommendation from the Minister) And the UAE legislator has criminalized the conduct of sex change operations, as stated in the text of Article (5) of Federal Decree Law No. (4) of 2016

regarding medical liability: (The doctor is prohibited from the following... 9- Performing sex change operations), and the text came on the penalty for doing so. With this act in Article (31) of the same law.

As for the position of the Lebanese legislator; It turns out that the act of changing the sex was not criminalized in a clear and explicit manner. Rather, this came through Article (30) of the Medical Ethics Law No. (288) issued in 1994, where it came in Paragraph (9) of Article 30 that talks about emergency mutilation cases, and the text came on It is not permissible to perform any medical act that would lead to disfiguring the patient, and any medical or surgical treatment that leads to changing the sex and affects the future of the patient is considered disfigurement, and this act is punishable under Article (61) of the same law.

2-2- The material element of the sex change crime

The material element of the crime is an external act of a tangible material nature that can be perceived by the senses, that is, it is the material manifestation that appears in the external world. Therefore, the person does not ask about sinful thoughts and intentions as long as they do not exceed his conscience, and are not translated into material activity or behavior that appears to the external world. The material element of any crime is based on three main elements: 1. Criminal behavior, 2. The criminal consequence of this behavior, 3. The causal relationship between the behavior and the criminal consequence.

First: criminal behavior

Criminal behavior is an external physical activity emanating from the person of the offender in order to achieve the criminal result punishable by law. However, the legislator does not punish this activity that constitutes the crime before its issuance. The offender, before committing the crime, goes through a stage of mental activity that is not punishable by the legislator, and the reason for this is that the crime It begins with an idea in the mind of a specific person who may abandon it and who may be determined to implement it, and up to this idea the person does not engage in a criminal activity that deserves to be punished for, because the legislator does not punish sinful intentions as long as they did not come into existence in a physical form. Perceptible and tangible (Al-Shazly, 1998, p. 369). According to what was stated in Article (8/h) of the Jordanian Medical and Health Responsibility Law, the criminal behavior in the crime of sex change is represented by the service provider performing sex-change operations in the sense stipulated by the legislator in the aforementioned second article, and thus it is contrary to what was stated in Article (8/ h).that is, the criminal liability is based on the perpetrator of this act in the event that he performs a sex change operation without any medical justification that authorizes this act, as his criminal activity is material actions that he performs from the use of surgical tools, to perform an operation to change a person's sex from female to male or vice versa. And that positive behavior is the most common form in the crime of changing sex, through the performance of material actions that bring this crime into existence.

Second: the criminal result

The criminal consequence constitutes the second element of the material pillar of the crime, and the criminal consequence in its material meaning is the change that occurs in the external world under the influence of the perpetrator because of the criminal behavior that he committed, whether his behavior was positive by his action or negative by his reluctance or abstention from doing an action. In terms of its legal meaning, it is any attack on an interest protected by law, whether this attack led to damage to this interest or threatened it with danger. (Al-Saeed, 2009, p. 210)

The researcher believes that the criminal result in the crime of changing the sex is achieved through the change, that is, changing the sex of the male to female or the female to male, and the process of changing the sex requires the removal of the genital organ and its replacement with the genital organ of the other sex, which can lead to permanent disability for the transgressor.

Third: the causal relationship

The third element of the material element of the crime is the causal relationship, which means that the criminal result occurred due to the behavior of the offender, meaning that had it not been for the

offender's criminal behavior, the result would not have occurred. This relationship between the two elements of the material element, the criminal behavior and the criminal consequence, has a major role in building the material element of the crime. Causation is a relationship between a cause and an effect, that is, between an action and the result resulting from this action, and it is a physical link that connects two sensory phenomena that are related in a necessary way, and in a temporal succession that indicates that one of these phenomena is a cause of the other. (Al-Shazly, 1998, p. 279). In the crime of changing sex, there must be a causal link between the act of the perpetrator and the criminal result, i.e. the act of the service provider represented by the removal of the genitals leading to changing the sex of the person into a gender different from the one he is in without a medical justification must be in a way that allows him to violate the law. And it is not considered as a direct reason for sexual correction, and so that the service provider is responsible for the crime of changing the sex. Therefore, there must be a causal relationship between the criminal behavior or activity carried out by the service provider to a healthy person who does not have any congenital defects, and there is no medical justification that authorizes the service provider's action to achieve the criminal result, which is represented by changing the person's gender.

2-3- The moral element of the sex change crime

The moral pillar of the crime is defined as: the psychological link between the criminal behavior, its consequences, and the perpetrator who committed this behavior. In another description, it is the psychological elements of the materialities of the crime¹. The moral element of the crime assumes the existence of a psychological relationship between the perpetrator of the illegal act and this act that he did and the harmful result resulting from it. This element also takes two forms: the image of intent, and then the crime is described as a deliberate or intentional crime, Or he takes the form of a mistake, and then the crime is described as unintentional. (Al-Qahwaji, 2001, p. 392). The crime of changing sex is considered an intentional crime, meaning that the moral element in it takes the form of intent, which requires the presence of criminal intent based on the elements of knowledge and will. Jurisprudence defined criminal intent as: knowledge of the criminal elements, and the direction of the will to achieve or accept these elements ((Hosni, 2014, p. 375-376) And the Jordanian legislator defined the criminal intent in Article (63) of the Penal Code, and expressed it with the expression of intention, so in the text of the aforementioned article it was stated that the intention is: (the will to commit a crime as defined by the law), and the Jordanian legislator added another form of intent, which is the contingent intent, and that According to Article (64) of the same law, which states: (The crime is considered intentional, even if the criminal result arising from the act exceeds the intention of the perpetrator, if he had anticipated its occurrence and accepted the risk).

Criminal intent is based on two elements:

First: knowledge

The study of science as one of the elements of criminal intent requires an explanation of its scope, whether in terms of knowledge of the law or knowledge of the facts. Science, which is one of the elements of criminal intent, means that the offender has full knowledge that the act he has performed leads to a criminal result punishable by law, and he is therefore aware of what he did, and will do so. It is assumed that the perpetrator of the act that the law criminalizes is aware of the provisions that criminalize and punish the act that he commits. From this standpoint, it becomes clear that the establishment of criminal intent in the crime of changing sex requires the knowledge of the offender that the act he is doing is an illegal act, and is considered a crime under the law.

A question arises about the extent to which the offender can invoke lack of knowledge of the law as an excuse for committing the crime?

Article (85) of the Jordanian Penal Code stipulates that: (Ignorance of the law is not considered an excuse for those who commit any crime), meaning that knowledge of the law is assumed, and in sex change it is not conceivable that the service provider is not aware that this act of change is illegal and criminalized in law, The fact that this crime is contrary to morals and values and is religiously unacceptable and was recently criminalized in Jordanian law in accordance with the Jordanian Medical

and Health Responsibility Law No. (25) of 2018 , In terms of knowledge of the facts, the basic principle for the offender is that he is aware of all the facts whose existence results in the commission of the crime, i.e. the offender knows that his actions constitute a crime under the law and necessitate punishment. The element of knowledge of the crime of changing sex is determined by the knowledge of the service provider that the criminal acts he performs fall on the body of a living human being.

Second: the will

The will is the second element of the criminal intent, which is defined as a psychological force that the perpetrator has upon at the time of his initiation to commit the crime. illegitimate purpose .The will is a psychological phenomenon, and it is the main engine of material behavior that appears in the external world, and this will seeks to achieve an end through a specific means, as it is a force that man uses to influence others ((Al-Hadithi, and Al-Zoubi, 2010, p. 180 . The will is defined as: (a psychological activity that a person relies on in influencing the things and people around him, as it is considered the directive of the nervous forces to perform actions that have material effects, and thus satisfies his needs). criminal behavior. In the crime of changing sex, the will of the service provider must be directed towards achieving a result that includes changing the sex of a person, whether male or female, to the opposite sex of his natural sex, and this result is a result of his act of removing or wounding the genital organ. And when both knowledge and will are available, the criminal intent in the moral element of the crime has been achieved.

3- Penal responsibility for the crime of changing sex

3-1 The responsibility of the service providers for the crime of changing the sex

Through the legal texts that dealt with the crime of changing sex under the Jordanian Medical and Health Responsibility Law No. (25) of 2018, it is clear that the legislator linked this crime to persons working in the medical field, and based on that, the punitive text contained in the same law is related to everyone who meets the above description Service, and according to Article 2 thereof, is: (any legal or natural person who practices a health or medical profession and performs a service or participates in performing it in accordance with the provisions of the applicable legislation). The natural person providing the service is any person practicing a profession from the medical or health professions, and therefore the crime of changing the sex is imagined to be committed by any person from the medical and health professions, and there are many natural persons practicing these professions according to what was stated in the Public Health Law, including: (Al-Bayati, 2020 , p. 7).

1. The doctor. A physician is defined as any physician licensed to practice medicine in accordance with the provisions of the laws and regulations in force.
2. Dentist: is a surgeon who specializes in the diagnosis, prevention, and treatment of diseases within the oral cavity.
3. Pharmacist: a person who practices the profession of pharmacy, which specializes in preparing and selling medicines.
4. Nurse: A person responsible for providing care to patients, and holder of a nursing certificate after a study period of no less than four years in the College of Nursing.
5. The anesthesiologist: He is the one who assesses the patient's health condition in general, and then discusses with him the best anesthesia plans for him and the possible procedures for the pathological condition he is in. He is a specialized doctor who answers questions about the risks of anesthesia in general, and it is possible that an anesthesiologist Anesthesia by giving the patient information about how to deal with pain after the operation.
6. Radiology technician: He is the one who works on medical x-ray equipment of any kind, and this work he does in order to create medical images of the human anatomy in order to assist doctors in the medical diagnosis of the patient

According to the principle of legality, there is no crime or punishment except by a text, and accordingly the sex change operation is prohibited from being performed as it is stipulated in Article (8/h), in the Medical and Health Responsibility Law No. (25) of 2018, therefore this text must be met Which criminalized the act of changing the sex, another text that clarifies the penalty resulting from committing this crime, and this is what has been clarified according to Article (22) of the same law,

In which the text came as follows: (Whoever violates the provisions of paragraph (h) of Article (8) of this law shall be punished with temporary labor for a period of not less than three years and not exceeding ten years).

Whereas, Paragraph (h) of Article 8, which was mentioned in the previous article, is the one that dealt with the prohibition of performing a sex change, as the text in this article came: (The service provider is prohibited from doing the following:...c. Performing sex change operations). The penalty prescribed by the Jordanian legislator for a service provider in the event that he performs a sex change operation for a person is a criminal penalty, as the criminal penalties are death penalty, life and temporary labor, and life and temporary imprisonment. The researcher believes that the legislator was right when considering that this crime constitutes a felony and requires a criminal penalty. It should be noted that this punishment, although it is a criminal punishment, is not compatible with the heinousness of this crime, especially since it is related to people in the medical sector, i.e. those who work in the medical and health fields, according to what the legislator indicated.

The UAE legislator decided that the doctor would be held criminally liable for performing a sex change operation, as mentioned in Federal Law No. (4) of 2016 regarding medical liability under Article (31), which is imprisonment for a period of not less than three years and not more than ten years. In the event that the service provider's act of causing a wound and excision of the organ to be removed leads to the death of the person requesting the change, then the service provider is fully responsible for the death of this person, because his act was originally in violation of the law, which means that he is asking about the contingent intent expected to result from doing so. with the original offense in addition to the direct intent. ((Salman, 2022, p. 48).

In addition, it is conceivable that the crime of gender reassignment stops at the point of attempt, and the legislator in the Jordanian Penal Code clarified the attempt of the crime, and identified two cases for it: full attempt and incomplete attempt, as stated in the text of Articles (68) and (70) of the Pardons Law. In Article (68) of the Jordanian Penal Code, a definition of incomplete intent was stated as: (the initiation of the execution of an act that is apparent leading to the commission of a felony or a misdemeanor, and if the perpetrator is unable to complete the acts necessary for the occurrence of that felony due to the occurrence of reasons that have nothing to do with his will, he shall be punished accordingly. the next...). The incomplete attempt, according to Article 68 Penalties, occurs in cases in which the offender does not complete his criminal activity, as this activity stops before reaching the criminal result. That is, the execution acts that the offender started with, but he has not yet been able to complete them. It is possible to imagine the case of incomplete attempt in the crime of changing sex, in the event that the perpetrator of the criminal act has started the criminal activity that constitutes the material element of the crime and has not yet completed his actions, and that is as a result of a reason outside the will of the perpetrator, for example if a person knew of the crime and intervened to stop him, i.e. That in the case of the perpetrator of the crime, he proceeded to carry out physical acts such as: preparing the equipment for the operation, and began to cause a light wound in the person's body, but he did not yet proceed in cutting the genital organ. As for the case of complete intent, according to Article 70 Penalties, the offender exhausts all his criminal acts in order to commit the crime and achieve the result he seeks, but the result is not achieved for a reason that has nothing to do with the will of the offender. This state of initiation is called by the term "disappointed crime" because the offender failed in realizing the criminal result even though he had exhausted all his criminal activity. (Al-Saeed, 2009, p. 236), And to determine the penal responsibility for the attempted crime of sex change, reference is made to the general provisions of the Penal Code. Changing sex is considered a felony. The penalty is prescribed in the event that the actions necessary to complete the crime were done, but for reasons not related to the will of the perpetrator in which the crime was not completed, and according to Article 70 Penalties Jordanians shall be punished : Life imprisonment or twenty years of labor if the penalty for the attempted felony entails the death penalty, fifteen to twenty years of the same penalty if the penalty is life labor or life imprisonment and twelve to fifteen years of the same penalty if the penalty is labor or imprisonment. Life imprisonment for a period of twenty years, and if the perpetrator reconciled of his own free will without completing the crime he intended to commit, the aforementioned penalties shall be reduced to two-thirds. As for the responsibility of the legal person in accordance with the plan of the Jordanian

legislator, Article 74/3 Penalties stipulated it: (The legal person, with the exception of the government department or official or public institution, is considered penally responsible for the actions carried out by its boss or any person of its administration, directors, representatives or His workers when they carry out their work in his name or by one of his means in his capacity as a legal person, and legal persons are only sentenced to a fine and confiscation, and if the law provides for an original penalty other than a fine, then this mentioned penalty is replaced by a fine according to the type of crime committed.

Accordingly, if a sex change operation took place in a hospital, and the operation was under the supervision of one of the doctors working in that hospital or its director, with his knowledge of the nature of this operation, and there was a common criminal intent to carry out this act that is punishable by law, then there is no doubt that the responsibility of the legal person inevitably takes place. By performing a sex-change operation inside this hospital, without the knowledge of the administration in charge of the hospital as a legal person, the latter is removed from the scope of criminal responsibility, especially in the event that it is proved that the doctor was able to perform this operation inside the hospital was not due to the administration's failure to control and organize what is happening. inside it (This is possible in the event that the service provider who will perform the operation deceives the administration that he will perform a gender correction operation and not a gender change. (Salman, 2022, p. 53). As for the UAE legislator, we find that he did not expand the scope of the responsibility of the one who performs the sex change operation to include the legal person, and this is understood through what was stated in Article (5/9) of the Federal Law on Medical Liability.

3-2 Liability for non-medical workers.

It can be imagined that people who do not work in the medical and health fields carry out a sex change operation, as this is possible for medical students and non-practitioners and others who impersonate a doctor and therefore are not included in the legal text that clarified the concept of medical professions practiced by the service provider, and thus one of the persons who The description of the service provider as a possible sex change crime does not apply to them, but the punishment for him is not according to the text in which the legislator clarified the penalty for the service provider for committing the same crime. Where it is required to carry out the sex change operation to perform a physical activity represented in the infliction of wounds and cuts to the organ to be removed, which leads to its disruption, Thus, the penalty can be imposed on those outside the medical and health fields by referring to the Jordanian Penal Code and researching Article (335) which states the following: (If the act leads to amputation or amputation of a limb or leads to its disruption or disabling one of the senses from work, or causes gross distortion or causes any other permanent disability or has the appearance of permanent disability, the perpetrator shall be punished with temporary labor for a period not exceeding ten years). By permanent disability, what is meant is when a person loses one of the members of the body or one of its parts, or loses or reduces the benefit of the member, and permanent disability is achieved by every act that reduces the strength of one of the members of the body or by reducing its natural resistance (Namour, 2017, p. 141). The permanent disability is not required for the person to completely lose the benefit of the member, but rather it is sufficient for partial loss of his benefit, or it makes the resistance of the member less.

According to Article (335) of the Jordanian Penal Code, the amputation of organs is considered as causing permanent disability, and there must be a causal relationship linking the act of assault with the result that occurred, which is permanent disability. Based on the foregoing, the closest description to a person who is not working in the medical field, and does not apply to the description of a service provider, making a wound and cutting of the genital organ, to complete the process of changing the sex of a person, is that the act he did is represented in causing a permanent disability, which falls under the crimes of abuse His punishment, according to the Jordanian Penal Code, is temporary labor for a period not exceeding ten years.



4-The conclusion

At the conclusion of this study, which dealt with the issue of gender reassignment as an emerging crime in the Medical and Health Liability Law No. (25) of 2018, the nature of this crime and the penal responsibility of those who carry it out were examined.

The researcher reached a number of conclusions and recommendations, which she presents as follows:

5 Results.


1. It was found that there is a difference between the act of sex change and sex correction, as the former does not justify doing it, as it is done without there being a medical need that calls for it, and therefore it is a criminal act according to the law, while sex correction is a permissible act, as it is considered a treatment for a condition Pathological, such as hermaphrodite, requires medical intervention to treat the sexual ambiguity of this condition.
2. The Jordanian and Emirati legislators did not stipulate a penal liability towards the person who changes his sex, and only mentioned the responsibility of the one who performs the operation only.
3. By referring to the general provisions of the Jordanian Penal Code and examining the provisions of criminal participation, it becomes clear that a transgender person can be punished by considering him as an instigator to commit a crime.
4. The Jordanian legislator defined the service provider as any natural or legal person, but when mentioning the penalty imposed on the service provider, it stipulated only a penalty of deprivation of liberty, and it is a penalty that suits the natural service provider, and does not fall against the legal person.
5. The Jordanian legislator has attached a crime that changes the bond with the servants of the servant, and according to the definition of the legislator to the presenter of servitude, it is any person who neglects a medical or health profession, and thus the establishment of doctors who are not the one who is the one who does not perform the servant of the person who does not perform the servant, who does not perform. According to the medical and health liability law, they can even be punished on the grounds that the act they did is considered harm that leads to permanent disability
6. The Jordanian legislator defined the service provider as any natural or legal person, but when mentioning the penalty imposed on the service provider, it stipulated only a penalty of deprivation of liberty, which is a penalty that suits the natural service provider, and does not fall on the legal person.

6 Recommendations:

1. The researcher hopes that the Jordanian legislator will add a provision in the medical and health liability law that clarifies the conditions and controls that govern the conduct of a sex correction operation, as did its Emirati counterpart.
2. The researcher recommends that the Jordanian legislator create a text under the Medical and Health Responsibility Law, in which he indicates the penal liability incurred by the person requesting the change, and not leaving that to the general provisions of the Penal Code.
3. The Jordanian legislator made it clear that the service provider is every natural and legal person, and when mentioning the penalty imposed on the service provider within Article (22) of the Medical and Health Responsibility Law, the text came with a penalty that deprives of freedom only, and it is a penalty that is not enforced against the legal person, and for the weak person. The researcher recommends that the legislator add a penalty represented by a financial fine, to be implemented against the legal person according to the previous article.

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