

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

90 - TRANSGENDER AND GENDER REASSIGNMENT

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Transgender and transexuality is not a new issue. For thousands of years in many world cultures there have been individuals who were clearly born physically as one gender but who wished to 'become' the other gender. This has historically expressed itself through behavior and modes of dress, make-up and jewelry. In modern times, hormone treatment and Gender Reassignment Surgery (GRS) have become an option. The number of GRS operations carried out worldwide per year is not known but is estimated at up to 2500 (most Male-to-Female)¹. That means those who have had such surgery now number in the tens of thousands and it is to expected that many more people who have not had the surgery still have transgender orientations.

A number of questions need to be addressed from a Jewish perspective² when dealing with transgender:

- Is there a Jewish 'view' on gender? What are the key differences between male and female?
- Is there a Jewish perspective on a person who feels that their true 'spiritual' gender is different to their anatomical sexuality?
- Is it halachically permitted to have GRS in either direction?
- Following GRS does the halachic gender change?
- Following GRS will there still be a halachic problem of yichud with someone previously of the other gender.
- What is an authentic Jewish approach to transexuality and transgender issues, on an individual and communal level?
- How should we react to and deal with a societal transsexual and intersexual culture-shift?

A] WHAT IS TRANSGENDER?

1. Transgender people are people who have a gender identity or gender expression that differs from their assigned sex. Transgender people are sometimes called transsexual if they desire medical assistance to transition from one sex to another. Transgender is also an umbrella term: in addition to including people whose gender identity is the opposite of their assigned sex (trans men and trans women), it may include people who are not exclusively masculine or feminine (people who are genderqueer, e.g. bigender, pangender, genderfluid, or agender). Other definitions of transgender also include people who belong to a third gender, or conceptualize transgender people as a third gender. Infrequently, the term transgender is defined very broadly to include cross-dressers, regardless of their gender identity.
Being transgender is independent of sexual orientation: transgender people may identify as heterosexual, homosexual, bisexual, asexual, etc., or may consider conventional sexual orientation labels inadequate or inapplicable. The term transgender can also be distinguished from intersex, a term that describes people born with physical sex characteristics "that do not fit typical binary notions of male or female bodies".
The degree to which individuals feel genuine, authentic, and comfortable within their external appearance and accept their genuine identity has been called transgender congruence. Many transgender people experience gender dysphoria, and some seek medical treatments such as hormone replacement therapy, sex reassignment surgery, or psychotherapy. Not all transgender people desire these treatments, and some cannot undergo them for financial or medical reasons.
Most transgender people face discrimination at and in accessing work, public accommodations, and healthcare. They are not legally protected from discrimination in many places.

³Wikipedia - 29 May 2017

1. Encyclopedia of Surgery - <http://www.surgeryencyclopedia.com/Pa-St/Sex-Reassignment-Surgery.html>
 2. For an excellent shiur on this topic, see Rabbi Efreim Goldberg from Boca Raton Synagogue, available on YU Torah. I am indebted to him for some of the sources on this sheet. See <http://www.yutorah.org/lectures/lecture.cfm/837346/rabbi-efrem-goldberg/man-and-woman-he-created-them-torah-view-of-transgender/>
 3. <https://en.wikipedia.org/wiki/Transgender>

2. One effort to quantify the population gave a "rough estimate" that 0.3 percent of adults in the US (1-in-300) are transgender, overlapping to an unknown degree with the estimated 3.5 percent of US adults (1-in-30) who identify as LGBT. More recent studies released in 2016 estimate the proportion of Americans who identify as transgender at 0.5 to 0.6%. This would put the total number at approximately 1.4 million adults (as of 2016).

Wikipedia - 29 May 2017

3. **High rates of suicide and self-harm among transgender youth - Cincinnati Children's Hospital Medical Center, August 31 2016**

In a new study, 30 percent of transgender youth report a history of at least one suicide attempt, and nearly 42 percent report a history of self-injury, such as cutting. The Cincinnati Children's Hospital Medical Center study also discovered a higher frequency of suicide attempts among transgender youth who are dissatisfied with their weight.

"Our study provides further evidence for the at-risk nature of transgender youth and emphasizes that mental health providers and physicians working with this population need to be aware of these challenges," says Claire Peterson, PhD, a psychologist at Cincinnati Children's and lead author of the study. "Dissatisfaction with one's appearance and the drive to look different from one's sex assigned at birth is central to gender dysphoria -- the feeling that your gender identity is different from that at birth."

More patients transitioning from female to male reported a history of suicide attempts and self-injury than those transitioning from male to female. The study is published in *Suicide and Life-Threatening Behavior*, the journal of the American Association of Suicidology.

The researchers analyzed data from the medical records of 96 transgender patients, ages 12 to 22, with gender dysphoria visiting the Transgender Health Clinic at Cincinnati Children's. The clinic has served nearly 500 patients since it opened in 2013. Fifty-eight percent had at least one additional psychiatric diagnosis in addition to gender dysphoria. Nearly 63 percent indicated a history of bullying, 23.1 percent a history of school suspension or expulsion, 19.3 percent involvement in physical fights and 17.1 percent repeating a grade in school.

<https://www.sciencedaily.com/releases/2016/08/160831110833.htm>

B] GENDER AND SEXUAL DESIGNATION IN TORAH THOUGHT

4. וַיִּבְרָא אֱלֹהִים אֶת-הָאָדָם בְּצַלְמוֹ בְּצַלְמֵ אֱלֹהִים בָּרָא אֹתוֹ זָכָר וּנְקֵבָה בָּרָא אֹתָם

בראשית א-כז

In Chapter 1 of the account of Creation the Torah designates two genders - male and female - in human kind.

5. (יח) וַיֹּאמֶר ה' אֱלֹהִים לֹא-טוֹב הָיִיתָ הָאָדָם לְבַדּוֹ אֶעֱשֶׂה-לּוֹ עֵזֶר כְּנֶגְדּוֹ: (כא) וַיִּפֹּל ה' אֱלֹהִים תְּרַדְמָה עַל-הָאָדָם וַיִּשָּׂן וַיִּקַּח אֶחָת מִצַּלְעֹתָיו וַיִּסְגֶּר בֶּשֶׂר תַּחְתָּנָה: ... (כב) וַיִּבֶן ה' אֱלֹהִים אֶת-הַצֶּלַע אֲשֶׁר-לָקַח מִן-הָאָדָם לְאִשָּׁה וַיְבָאָהּ אֶל-הָאָדָם:

בראשית ב

In Chapter 2 we see that the woman was in some way 'separated' from the man.

6. אמר רבי ירמיה בן אלעזר בשעה שברא הקדוש ברוך הוא את אדם הראשון אנדרוגיננס בראו. הדא הוא דכתיב זכר ונקבה בראם. א"ר שמואל בר נחמן בשעה שברא הקדוש ברוך הוא את אדם הראשון דיו פרצופים בראו, ונסרו ועשאו גביים גב לכאן וגב לכאן

בראשית רבה (וילנא) פרשת בראשית פרשה ח

R' Yirmiyah in the Midrash resolves the apparent contradiction in the verses by presenting us with the concept of a creature which was originally androgynous - 'male and female' (at the same time). R' Shmuel bar Nachman gives a different explanation - that of a conjoined man and woman that required separation.

7. ואמר שאין הפרש בין יצירת הזכר והנקבה אלא מה שיש בין הראות איבריהם והסתתרים, וכבר מבואר זה בנייתו, שאיברי הנקבה כאיברי הזכר אלא שהם מהופכים אל פנים

ספר הכוזרי מאמר ז אות כה'

The Kuzari (12C, Spain) emphasizes the homologous nature of male and female reproductive anatomy.

8. מה בין מורד למורדת? ... זה יצרו מבחוץ, וזו יצרה מבפנים

כתובות ס"ד:

Chazal focus on parallels between male and female sexuality with male emphasis on the external and female on the internal. This also translates into metaphysical inclinations.

C] KABBALISTIC PERSPECTIVES

9.

בְּצֶלֶם אֱלֹהִים בָּרָא אֱתוֹ זָכָר וּנְקֵבָה בָּרָא אֹתָם - in the image of God He created him; male and female He created them. What is the meaning of the juxtaposition of the reference to the image of God with the creation of man as two sexes? In interpreting the phrase, *male and female He created them*, Chazal explained that when God initially created Adam, He created him in a dual form (see Rashi here). Male and female in this context are to be taken not only in a physiological sense but also in a spiritual/metaphysical one.

Every soul consists of a spiritual androgyny, a male and female persona. The combination of these elements is known in Rabbinic literature as *duchra venukva*, which can be found in every individual. *Duchra* refers to dynamic, active man while *nukva* refers to affected, passive man. Man is both influences and is influenced; he is both giver and receiver. Only in the biological world is man exclusively male or female. In the spiritual world, every individual carries both traits, and only through the development of both the *duchra* and the *nukva* perspectives can individuals attain their full spiritual potential.

For example, when a teacher instructs his students, he is the giver, the "male," the *duchra*, while his students, who absorb his ideas, are the "female," the *nukva*. At one point in the lesson, however, a perceptive student may ask a particularly incisive question that leads the thoughts of the teacher in new directions. Indeed, Rabbi Chanina exclaimed; *I learn from my students more than from anyone else* (Taanis 7a). At this juncture, the *duchra-nukva* roles are reversed. The student has planted a seed that blooms into a beautiful flower within the mind of his teacher. The young student with eager eyes and an inquisitive expression becomes a *duchra*, while the teacher, with the grey beard and the august title of *Harav HaGaon*, is transformed into a *nukva*.

Who is the giver and who is the receiver? Who influences and who is influenced? As undeveloped as one's intellect may be, no one is exclusively a student. And as great as a person may be intellectually, no one is exclusively a teacher.

The blessing that God bestowed on man during Creation operates in both the spiritual-metaphysical realm as well as in the physical realm. Actualizing the potential of *duchra venukva* is the greatest and most exalted of blessings. A person must actualize his *nukva* blessing to absorb spiritual wealth and beauty. Concurrently, he must actualize his *duchra* blessing by using his spiritual energies to give to others. The student who lacks a teacher, although born with great potential, cannot realize his potential as *nukva*. Similarly, sometimes a great teacher can lack students to absorb his wisdom and he therefore cannot develop his potential as *duchra*. One spiritual personality is necessarily dependent on the other in order to develop an elevated level of self-actualization. *Deushot Harav 11, 13*

Rav Yosef Dov Soloveitchik - Derashot HaRav

'Male' and 'female' metaphysical realities are a mainstream of kabbalistic thought. In general terms this does not filter down into the world of practical halacha, although it DOES influence strongly certain hashkafic perspectives of male and female characteristics and thus the dynamic of gender roles and interactions in modern society.⁵ Unsurprisingly, those contemporary Jewish societies which generally see kabbalistic thought as being more central to hashkafa, will be more likely to translate these ideas into practical gender norms.

10. דע כי האדם אעפ"י שהוא זכר יש מיני עזירות שגורמים לו להתהפך ולהיות נקבה ... וכן יש מיני עזירות שגורמים לו להתהפך ולהיות גוי ... וכן יש מיני עזירות שגורמים לו להתהפך ולהיות עבד ... כי בכל לילה עולה נשמתו למעלה לתת דין וחשבון לפני קונו והנה לפי מעשיו כך דינין אותו. ולפעמים נותנים לו איזו נשמה בסוד העיצור של גוי או של עבד או של אשה. ונדע כי אפילו מי שהוא משכים ללמוד ולעסוק בתורה אינו חוזר בו נשמתו ...

כף החיים או"ח מ"לב

The more kabbalistic commentators - here the Kaf HaChaim⁶ - see male/female, Jewish/non-Jewish, free/slave as metaphysical realities.⁷ This can lead to a system of transmigration of souls or parts of souls, even during sleep!

5. There are a number of interesting books on this issue. In particular, see Miriam Kosman - *Circle, Arrow, Spiral: Exploring Gender in Judaism*.

6. R' Yaakov Chaim Sofer, 1870-1939.

7. The fascinating topic of whether Torah mitzvot should be seen primarily as a metaphysical 'reality' or as Divine communications is addressed in full in Menachem Kellner's excellent book, *Maimonides' Confrontation with Mysticism*.

11. ... ואין רחיה ממיכל בת שאול וכו' אפש"ל דמיכל בת שאול היתה אשה חכמה וידעה צעלמה שהיתם לה נשמה מעלמא דכורא, ולכך ולמיכל בת שאול לא היה לה ולד עכ"ל. ועיין שער הגלגולים הקדמה ט' שכתב שאשה המגולגל צה נשמת זכר א"א לה להתעבר אס לא ע"י זכות גדול שתתעבר צה איזה נשמת אשה נקצב אחרת צסוד עיבור
 קף החיים או"ח לח"ט

12. ומכאן תעמוד על סוד תמר, שנשמת תמר היתה נשמת זכר. ואיך ילדה מיהודה? י"ל שנשמת יהודה היה בה ניצוצות מנשמת נקבה, ועל ידי כן ילדה ממנו

עוד יוסף חי

Some commentators use these concepts to explain characters in Tanach - here Michal and Tamar, who had strong male metaphysical roots. Yehuda (and Yitzchak) are sometimes described as manifesting female metaphysical roots.

13. והשתא יש להסתפק בנש' זו של איש שנתגלגלת כאשה אם נפגמת היא בהקפת הראש משום שעיקרה איש או לאו.

בני אהרן על שער הגלגולים יב' (ר' שמעון אגסי 1852-1914)

Occasionally this can even stray into the world of halacha - in this case the discussion is of a woman who is in fact a gilgul (reincarnation) of a man. Does this has any impact on her spiritual connection with certain halachic prohibitions which apply only to men, such as shaving hair around the head.

Note however:

- (i) To understand anything about kabbalistic issues such as these, one must have a deep and broad education in such matters and learn from a suitably qualified teacher. Speculation (without knowledge) about their meaning is futile and probably damaging.
- (ii) Without such background, it will not be clear what connection, if any, they have with the modern issue of transgender.

D] HALACHIC FRAMEWORK TO GENDER REASSIGNMENT SURGERY

14. מְעוֹדֵי וְכַתּוּת וְנִתּוּק וְכָרוּת לֹא תִקְרִיבוּ לָהּ וּבְאֲרָצְכֶם לֹא תַעֲשׂוּ

ויקרא כב:כד

The Torah prohibits bringing any male animal with torn or crushed sexual organs as a sacrifice in the Temple and adds a separate prohibition not to perform a castration, even in a non-Temple context.

15. לֹא יָבֵא פְצוּעֵ דְכָא וְכָרוּת שְׁפָכָה בְּקֵהל ה'

דברים כג:ב

A man with cut or crushed genital organs is prohibited from marrying a Jewish woman. This would include any operation which cuts the reproductive organs or results in sterilization.⁸

16. מניין לסיורס באדם שהוא אסור - תלמוד לומר (ויקרא כב) ובארצכם לא תעשו - בכס לא תעשו

שבת קי:

The Talmud explicitly states that the Torah prohibition on castration also applies to humans.

17. אסור להפסיד איברי זרע בין באדם בין בבהמה חיה ועוף אחד טמאים ואחד טהורים בין בארץ ישראל בין בחוצה לארץ אע"פ שנאמר ובארצכם לא תעשו מפי השמועה למדו שדבר זה נוהג בכל מקום, וענין הכתוב לא יעשה זאת בישראל בין בגופן בין בגוף אחרים, וכל המסרס לוקה מן התורה

רמב"ם הלכות איסורי ביאה פרק טז הלכה י

The Rambam rules that castrating any human or animal is prohibited in all places (i.e. not just in Eretz Yisrael), and even if one is performing the operation on an animal belonging to someone else.⁹

8. This is a much broader topic which cannot be dealt with here. There will be cases of medical need where such operations are halachically sanctioned.

9. The neutering of animals is a significant halachic issue. For more background see <http://www.rabbimanning.com/index.php/audio-shiurim/cji/jews-and-animals/>

18. והמסרס את הנקבה, בין באדם בין בשאר מינים, פטור אבל אסור

שולחן ערוך אבן העזר הלכות פריה ורביה סימן ה סעיף יא

Sterilizing a female is not punishable under this prohibition but will be prohibited at least rabbinically and possibly min haTorah¹⁰

19. לא יהיה כלי גבר על אשה ולא ילבש גבר שמלת אשה כי תועבת ה' אלקיך כל עשה אלה (רש"י - שפסא דומה לאיש כדי שתלך בין האנשים)

דברים כ"ה

The Torah prohibits cross dressing. Rashi understands from Chazal that the underlying reason for the prohibition is to prevent blurring of the genders.

20. העברת השיער משאר הגוף כגון בית השחי ובית הערוה אינו אסור מן התורה אלא מדברי סופרים והמעבירו מכין אותו מכת מרדות. במה דברים אמורים במקום שאין מעבירין אותו אלא נשים כדי שלא יתקן עצמו תיקון נשים, אבל במקום שמעבירין השיער הנשים ואנשים אם העביר אין מכין אותו, ומותר להעביר שיער שאר איברים במספריים בכל מקום

רמב"ם הלכות עבודת כוכבים פרק יב

It is rabbinically prohibited to adopt the habits and lifestyle of the opposite gender - eg for men to shave body hair - provided that such activities are exclusive to the other gender. Unisex activities are fine. Modern poskim have applied this prohibition to GRS and also to hormone treatment. Furthermore, any candidate for GRS will be required to first spend time in preparation for the other gender role. This will involve cross-dressing and other prohibitions of this mitzvah on a Torah level.

21. החובל בעצמו, אע"פ שאינו רשאי, פטור

שולחן ערוך חושן משפט סימן תכ סעיף לא

Any self-inflicted wounding without medical need¹¹ is prohibited.

GRS and other gender-changing treatments are thus prohibited according to Torah law.¹²

E] DOES THE HALACHIC GENDER CHANGE FOLLOWING GRS?

This will be relevant to many aspects of halacha, in particular marriage, divorce and mitzvot incumbent on men and women.

22. והשליח והעבד והאשה וטומטום ואנדרוגינוס מביאין ולא קורין שאינן יכולין לומר אשר נתת לי השם

משנה ביכורים א משנה ה'

The Mishna refers frequently to two questionable sexual statuses - 'tumtum' and 'androgynus'.¹³ A tumtum is born with no apparent sexual organs. An androgynus¹⁴ is born with both male and female sexual organs.

23. טומטום ואנדרוגינוס הרי הן ספק. נותנין עליהן חומרי האיש וחומרי האשה בכל מקום

הרמב"ם הלכות עבודת כוכבים פרק יב הלכה ד

*In halacha, both a tumtum and an androgynus have a status of safek male/safek female and, as such, often take on many of the halachic strictures of male and female. It is important to note that a person born with a definite gender who then has GRS is **NOT** classified in halacha as a tumtum or androgynus.*

10. This is disputed amongst the Rishonim; the view of the Vilna Gaon indicates an issur min haTorah.

11. This of course raises the question of what is considered a legitimate medical need. There is no question that psychological factors ARE halachically relevant.

12. Nevertheless, none of these prohibitions is in principle one which overrides danger to life. As such, in the event of a real suicide risk, a comprehensive psychological risk would need to be undertaken and a senior posek consulted.

13. For an overview of the relevant issues, see *Tumtum And Androgynous*, Rabbi Alfred Cohen, Journal of Halacha & Contemporary Society XXXVIII; Fall 1999 - Sukkot 5760.

14. Today known as 'intersex' - a variety of medical conditions in which male and female sexual organs or characteristics manifest. Around around 0.15% of births manifest atypical sexual organs, although wider intersex issues can affect up to 2% of the population.

24. תינוק שנולד ומבחינה חיצונית נראה כנקבה ומבחינה גנטית הינו זכר אם מותר לנתחו ולהפכו לזכר או לנקבה.
 דעתי נוטה שמותר לבצע זאת הן באופן כללי להפוך את המין היילוד שמבחינה גנטית הינו זכר, לנקבה. וגם לרבות במקרה שלפנינו העומד על הפרק שמותר לכרות את האשך היחיד ולהפוך לנקבה היילוד אשר מבחינה חיצונית כבר נראה כנקבה. בהקרה ובברכת הצלחה בכל אשר יפנה בידידות ובהערצה אליעזר יהודא וולדינברג

שו"ת ציץ אליעזר חלק יא סימן עח

According to the Tzitz Eliezer, birth gender is defined by external examination, not internal organs or genetic configuration.¹⁵

25. וְאֵת זָכָר לֹא תִשְׁכַּב מִשְׁכָּבִי אִשָּׁה תוֹעֵבָה הוּא

ויקרא יח-כב

The Torah prohibits sexual intercourse between two men.

26. ואת זכר - ויאמר רב חננאל ז"ל, כי יש מי שיחדש בגופו כלורת צמר אשה וזה לא יתכן בתולדה

אבן עזרא שם

Ibn Ezra cites Rabbeinu Chananel (11C) who stated that the definition of 'zachar' includes a man who has had surgery to create female sexual organs. It appears from this that such a person is still regarded clearly as a man. It would thus seem that, in the view of R. Chananel, GRS does NOT change gender.

27.

<p>וכשהצעת' הדבר לפני הרופאים המומחים בעניני ההולדה, כולם הסכימו שאפילו בזכר ודאי ע"י זריקת סממנים הנקראים 'הורמונים' אפשר שיגששו שערות זקנו ויגדל שדיים, ואפשר עוד שאבר הזכרות יוכל להתקטן אבל שיסתלק אבר הזכרות לגמרי ויתחזה רחם ונקבות ממש כמו באשה זה א"א. בלתי ע"י ניתוח שעושים שם נקב באותו מקום, ובודאי באופן זה לא נזהפך להיות נקיבה ובודאי זכר הוא ואינו אשה כלל. וא"כ בענינינו מסתמא עשו ג"כ ע"י זריקות 'הורמונים' וניתח והוא באמת זכר ודאי ואפילו היה אנדרווגינוס ג"כ אשתו צריכת גט מספק.</p>	<p>והנה בגידון דידן שהיה ברור לכל יודעיו ומכיריה שהיא זכר ודאי, אלא שאח"כ גשתנה שגששו שערות זקנו וצמחו לו שדיים, שזה יכול להתחזות ע"י מחלת או על ידי זריקת סממנים, ושיאבר אבר הזכרות הגיד עם הביצים ויהיה לו אבר נקיבות וזה אפשר דוקא ע"י ניתוח על ידי רופאים ופשוט דהיה באמת ודאי זכר וצריכה גט מן התורה ואשתו אשת איש ודאית ואין לה תקנה אלא ע"י שתשיג גט ממנו.</p>
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שו"ת לב אריה חלק ב' מ"ט - דיין אריה לייב גרוסנס, לונדון

The position of most poskim is that GRS will NOT change the halachic gender.

- Would the halacha be different for a non-Jew who performed a GRS and then converted to Judaism?
- What about a child who underwent a GRS prior to bar/bat mitzvah?

28. בא שאלה אחת אם צריך גט כדת משה וישראל אם יארע כזאת, והוא, בראובן שנשא אשה א' בתולה כאחת בנות ישראל והיה עמה כדרך איש ואשה, ואחר כמה שנים קרה לה מקרה דנשתנית מנקבה לזכר בכל מכל כל, מהו הדין לזאת שהיתה נקבה ואשת איש ונעשית זכר אם צריך ראובן זה לגרשה בגט כדת משה וישראל כיון שהיתה אשתו אשת איש, או דילמא אינו צריך כיון שאיננה אשה כי אם איש
 ובענין שאלתנו נראה דלא צריך גט דזכר הוא עתה ולא אשה, דהרי נוסח הגט הוא דאיש נותן גט לאשתו וכותב את אנתתי, ולא יש לפנינו אתתא כ"א גבר איש, וגם כותב לה רשאה ושלטאה להתנסבה לכל גבר וכו' ולא אתחזי לגבר דאיהו עצמו גבר, וגם כותב בגט את מותרת לכל אדם, והרי אינה אשה שראויה ומותרת לכ"א וכו' עכ"פ נראה לע"ד דאינו צריך ראובן ליתן גט לאשתו שנעשית איש גמור ושלם

שו"ת יוסף את אחיו מהרב יוסף פלגי מובא בשו"ת ציץ אליעזר חלק י סימן כה פרק כו,

In a 19C teshuva, Rav Yosef Pelagi considers the following halachic scenario: If a married woman develops a medical condition whereby she grows male sexual organs and transforms into man does she need a halachic 'get' to divorce her from her husband? He rules that she does NOT need a 'get' since she is no longer a woman, rather a man, and the marriage is automatically annulled.

15. Medical intersex issues can often be purely internal - involving abnormal internal organs, chromosomes or hormones.

29. אשת אליהו הנביא ז"ל, או אשת ריב"ל אם יכולים לינשא לאיש אחר, נפקא מינה לדורות ג"כ, אם יזכה אחד כמו הם? י"ל
אשת רעהו אסורה ולא אשת מלאך, שכולן רוחני ולא גופני

תרומת הדשן פסקים וכתבים סימן קב

The Terumat Hadeshen (15C) asks what is the status of Eliyahu's wife. Since Eliyahu was taken alive to heaven, is his wife still married to him or is she free to marry someone else? He answers that she is free to marry another man since the Torah prohibits only the wife of a man and NOT the wife of a malach!

The Minchat Chinuch (203) explains as follows. Some marriages are totally invalid in halacha to the extent that, even if a marriage ceremony is carried out, no halachic 'kiddushin' is created. Any prohibited relationship of that severity which arises subsequently in the middle of a marriage will effectively uproot the original kiddushin and render the couple retroactively not married. So too in this case, since a marriage between a woman and a malach is totally invalid, if the husband became a malach during the marriage, the marriage is annulled. Thus Eliyahu's wife is free to remarry without a get.¹⁶

30. וא"כ ה"נ בנידוננו יש לומר דאשת רעהו אסורה ולא אשת-אשה, ואע"פ שכבר התחיל וחל האישות שהיתה אשת רעהו, מ"מ נפקעין מאליהן הקדושין בהיות דנעשית שוב אשת-אשה. דהא כשם דלא תפסי קדושין ממלאך, כמו"כ לא תפסי נמי קדושין מאשה, ומכיון שבעת בעלה של זו נהפך ונהיה לאשה ולא תפסי כעת קדושין ממנה א"כ ממילא נפקעו הקדושין הקודמין מאליהן

שו"ת ציץ אליעזר חלק י סימן כה פרק כו,

Based on this principle, Rav Eliezer Waldenburg in a relatively recent teshuva (around 1970) ruled that if a married man had MtF RGS the marriage would lapse without the need for a divorce. The clear implication of this teshuva appears to be that the surgery DOES change the halachic gender of the person.

31. וגם אמינא דאיש כזה שהיה אשה תחלה ונהפך לאיש נ"ל דכשאומר ברכת השחר אינו אומר שלא עשני אשה משום דכבר נעשית אשה תחילה בבטן אמו ויצא לאויר העולם בצורת אשה, אלא ברוך אתה ד' אלוקנו מלך העולם שהפכני לאיש

שו"ת ציץ אליעזר חלק י סימן כה פרק כו

Rav Waldenberg, quoting Rav Pelagi, also discusses whether a woman who turns into a man (through a natural condition) can say 'Shelo Asani Isha'. She was created a woman but had now become a man.¹⁷

Limitations to the Application of the Teshuva of Rav Waldenberg

1. At no stage does he suggest that GRS is permitted. All halachic authorities state that it is prohibited.
2. Although he assumes that GRS effects a change in gender to dissolve a marriage, there is no indication of what evidence he bases such an assertion on. This does weaken its impact as a landmark teshuva. Using Rav Pelagi as a primary source is also fairly weak - Rav Pelagi is not known as a major halachic authority.
3. It is not clear that Rav Waldenberg is giving a psak that extends beyond the case in question - the dissolution of the marriage. To extrapolate to a general statement on gender reorientation may be overextending the teshuva.
4. Rav Waldenberg is a minority voice amongst other poskim, none of whom has indicated that GRS effects a change of halachic gender.

16. This halachic principal is based on this statement of Rashi - Yevamot 49b s.v. deah. The gemara there states a man is not allowed to remarry his wife if she became a Sotah (suspected adulteress). If he does remarry her however, the marriage is valid and a halachic kiddushin is created. Rashi clarifies that it must be the case that remarriage to a Sotah creates kiddushin since, had it not, the original marriage would have lapsed as soon as she became a Sotah.

17. Is status determined at birth or at the time of the beracha? For instance, can a convert say 'shelo asani goy'? Rav Pelagi suggests a new beracha - 'who has turned me into a man'. Leaving aside the issue as to whether we can invent new berachot today, (consider for example the origin of 'she'asani kirtzono') it is difficult to understand how a person could undergo GRS and then claim that God had turned them into the other gender.

On the basis of the above:

- GRS is prohibited according to all opinions - a number of Torah and Rabbinic prohibitions may be involved.
- According to almost all (and perhaps all) poskim, GRS does not¹⁸ effect a shift in halachic gender for general purposes.
- According to one major posek, GRS may result in an annulment of the marriage - most poskim disagree.
- A person who has had GRS will not be allowed to enter into a halachic marriage, even as the 'old' gender.
- On the question of yichud with a person following GRS, since the gender does not change, this will still be prohibited as before.¹⁹

F] INDIVIDUAL AND COMMUNAL ISSUES

32. Finally, and most importantly, the suggestion that because G-d is benevolent and He “does not demand the impossible from his creatures” (*Avodah Zarah* 3a), it must be that “everyone is capable of healing” and “change is always possible” is, in my opinion, demonstrably incorrect. Millions of heterosexual people have been born with (or developed) natural conditions that have deprived them of the blessings of marriage and physical intimacy. Whether they are not able to marry due to physical deformations, emotional handicaps, halakhic restrictions, or they have become inextricably constrained in sexless marriages through no fault of their own, or Divine Providence has simply barred them from finding a spouse (despite their herculean efforts), the result is quite “cruel.” Such individuals quite naturally crave sexual fulfillment, and if they observe the laws of the Torah, they will remain perpetually frustrated and they are clearly not “capable of healing” or finding outlets for their sexual drives that are halakhically acceptable. The suggestion that there ‘must’ always be a remedy to every problem and there is always a halakhically viable outlet for every drive is not only at odds with the facts, it is, in my opinion, theologically dangerous.

While such a doctrine may provide a temporary boost for those whose faith has been challenged by suffering, ultimately it is likely to strike a death knell to the remnants of their faith. For those who base their faith on such a premise are likely to become disillusioned. When they ultimately discover the sad facts of life, namely that there are actually illnesses without remedies and that there are challenges with no readily available solutions, they may feel compelled to desert their faith altogether. Rather than making absolute claims about the possibility of sexual reorientation based on supposedly inviolable dogmas about the nature of divinely imposed challenges, I would recommend that rabbis preach a more nuanced and true-to-life formulation. Such a statement would concede that G-d has clearly imposed on some people, whether they are heterosexual, homosexual, asexual or bisexual, “lifelong, Torah prohibited situations with no achievable solutions.” This position is not essentially connected to challenges of a sexual nature. For example, Divine Providence has historically placed many people in positions in which they have had to live their entire lives in extreme poverty in order to remain loyal to the commandments mandating the observance of Shabbos. Many couples have been deprived of the blessing of children and as a result have endured acute lifelong suffering, simply because G-d created them with a biological nature to ovulate prematurely: in such a situation those who do not transgress the laws of *niddah* remain childless for life.

As to why, from the human vantage point, G-d does apparently “play cruel tricks with His creatures,” one only needs to open up the Holy Scriptures to learn that Divinely inflicted suffering is ultimately beyond human grasp. In the Psalms and Ecclesiastes, as well as in The Ethics of Our Fathers and the Talmud, Prophets and Sages alike confront the issue of theodicy in different ways and provide a variety of theological strategies for dealing with “the suffering of the righteous.”

Yet ultimately the man of faith will humbly accept that we, with our limited intelligence, can never adequately plumb the depths of such mysteries. If we ever become inclined to presumptuousness in this regard we ought to retract and confess as did the Biblical Job (Job 42:3): “I did indeed speak without understanding, of things too wondrous for me and which I did not know”

Rabbi Chaim Rappaport - Judaism and Homosexuality - An Alternative Rabbinic View, Hakira Journal Vol 13 p38

18. R. Refael Evers (see below) confirmed to me that the position of R. Zalman Nechemia Golberg (as related to him directly by R. Goldberg) is also that the gender does NOT change following GRS.

19. Confirmed by R. Evers in personal correspondence. According to Rabbi Evers, the issue of sexual attraction following GRS is not relevant to yichud. The poskim are unlikely to take account of the Tzitz Eliezer and permit yichud with someone who had a GRS. However, in a situation of yichud derabbanan (eg multiple individuals together) the poskim will need to decide if there is room for leniency in the case of GRS, in reliance on the Tzitz Eliezer. Additionally, is there room for stringency following GRS to prohibit yichud based on the 'new' gender. If the GRS results in the person being unable to conduct a physical sexual relationship, this will also impact on the halacha, as in the case of a very sick or old person when the halachot of yichud are more lenient.

33. רבי ינאי אומר אין בידינו לא משלות הרשעים ואף לא מיסורי הצדיקים

משנה אבות פרק ד משנה טו

Chazal tell us in Pirkei Avot that we cannot understand why certain challenges are given to certain people. This is the age-old question on 'tzaddik v'ra lo' - why do bad things happen to good people.

34. הלל אומר ואל תדין את חברך עד שתגיע למקומו

משנה מסכת אבות פרק ב משנה ד

We may not make value judgements of other people until we have stood in their shoes.

Nevertheless, serious thought must be given to question of to whether we can ever accept transgender (even de facto) as a viable alternative lifestyle and include transgender individuals in public religious life. Many Orthodox communities are accepting and non-judgmental of those who do not keep Shabbat or taharat mishpacha (both halachic prohibitions of great severity). However, (i) this is often in a context of outreach; and (ii) there may be a significant distinction in that transgender lifestyle could be seen as a much more fundamental contradiction to the very fabric of Jewish community - the family. Compare the Jewish response to intermarriage which, technically, is a less serious prohibition than taharat mishpacha and yet, in real terms, is much more of a departure from Jewish life.

35. רבי הונא בשם רבי אמר דור המבול לא נימוחו מן העולם עד שכתבו גמומסיות לזכר ולבהמה

בראשית רבה פרשה כו ד"ה ה ויראו בני

Chazal tell us that the final straw which caused the flood in the time of Noach was societal and institutionalized acceptance of lifestyle choices which consciously blur sexuality.

36.

וקיבלתי תשובות מכמה גדולי הוראה בענין הג"ל ובולם
סה אחד ענו ואמרו:

א') שהניתוח לא שיה מעמדו החוקי האישי ונגד"ל נשאר
זכר כמו שנולד.

ב') אסור לו להחתן לא עם איש משום וזה זכר לא
משכב משכבי אשה, ולא עם אשה משום אסור פלוג דכה
וכרות שפטה.

ג') אין להרשות לו להכנס צנייה"ב אם הוא מלובש כאשה,
לא בעזרת נשים דנשאר איש וגם לא בחלק האגפים דנראה
כאשה. החולה הג"ל צריך להלביש איש (ובגדרתו העכשווית
צריך ג"כ להשתעף כדי שלא יראו הדדים שלו) ורק אח"כ
אפשר להרשות לו להכנס לחלק הנגרים.

ד') ל שאלנו את סי הגר"א וולדינגר שליט"א בעמח"ס
צ"ח אליעזר שאמר לי ש"מ צריך לקרבו ליהדות בכל מה
דאפשר.

קיצור:

- איש שנהפך לאשה ע"י ניתוח נשאר איש להלכה,

- אסור חמור לשנות את מינו (משום פירוק),

- אסור לו להחתן עם איש משום משכב זכור ולא עם אשה
משום אסור פלוג דכה וכרות שפטה,

- אם ואין להרשות לו להכנס צנייה"ב, ע"י כפטים, והדבר
צריך הכרעת הגדולים.

הק' רפאל אייפרס

שאלה

נשאלתי מה קק"א הלכה למעשה אם מותר לקבל בחור
חצר בקהילתנו מי שעבר ניתוח על אברי המין שלו. האיש
הזה היה זכר מלידתו צודאות לפי מצנה האברים החיצוניים
והפנימיים, אבל עקב מחלה שגיונית החליט לשנות את מינו.
הכירורגים כאן מציעים ניתוח כזה ולא מחנשיים מזה,
ומפרסמים את הצלחתם צעיתוים ר"ל. האיש הזה עבר
הניתוח לפני כשנים-עשרה שנה ונהפך לאשה מצד האברים
החיצוניים, ואח"כ נשא איש קטולי בערכאותיהם ר"ל. לפני
כמה שנים מו האיש הקטולי, ועכשיו חזר האיש בחשונה
ואוכל כשר ושומר שבת, והוא עכשיו בגיל חמישים ושלוש.
האיש הזה נא לקהילתנו ודיברתי איתו ומקולו לא ניכר אם
הוא איש או אשה (היינו שקולו עכשיו ממוצע בין איש
לאשה). מצד אבריו החיצוניים הוא נראה כאשה וממלכש
כאשה, אבל לי - משום שנודעה לי ההיסטוריה שלו - היה
מוכר שהיה לפני זה איש.

שו"ת ושב ורפא, ר' רפאל אייפרס

Rabbi Rafael Evers deals with many of these issues in a contemporary teshuva. He is dealing with the case of a man in Holland who underwent GRS to become a woman and subsequently intermarried. Now aged 53, the individual wishes to reconnect with the Orthodox community and attend services. Rabbi Evers rules that: (i) the person is halachically a man; (ii) he may not marry another man or a women (due to his castration); (iii) he may attend shul in the men's section, once suitably dressed as a man; (iv) it is essential to reach out such a person with love to encourage him to reconnect with a life of Torah and mitzvot.