

The Effect of Gender Change on the Criminal Characteristics of the Parent in Imami Penal Jurisprudence

A review of the texts of Imami criminal jurisprudence and Iranian criminal law shows that gender is one of the variables involved in a number of criminal rules and rulings; a little attention to such matters as: the difference in punishment for repeated pimping between men and women, the difference in punishment for apostate men and women, the necessity of paying the blood money in retribution for a man's murder in the event of committing the intentional crime of murder and mutilation of a woman, and the difference in blood money between men and women in excess of one-third, attests to this statement, and a reference to Articles: 233, 238, 243, 382, 388, 550, 560 of the Islamic Penal Code also confirms the stated reality. Also, a review of the written literature of Shiite jurisprudence and criminal law reports the existence of rulings that are among the criminal characteristics of the father; For example, we can mention the non-implementation of the hadd of qazf on the father in the case of qazf of the son, the non-implementation of the hadd of theft on the father in the case of theft of the son's property from the amulet, and the non-retaliation of the father in the case of intentional murder of the son, and Articles: 259, 260 (commentary), 268, 301 of the Islamic Penal Code also govern the aforementioned cases. The growth of branches of medical knowledge and their access to new technologies that have led to the possibility of determining the sex of the fetus, treating and eliminating some gender disorders, and discovering and proving the gender of a number of neutral individuals, has provided talk of speculation and the possibility of changing gender and treating transgender patients through gender reassignment. As mentioned, a number of criminal and penal provisions are based on and focused on the gender of individuals; in such a way that a different provision is assumed for each man and woman; hence, the change of gender of a single individual from the previous gender to the new gender is faced with the question of the status of his criminal provisions. Some applicants for gender reassignment are married men with children and are entitled to the title of father and parent, and among the branches and criminal and penal provisions is the criminal characteristics of the parent, examples of which were previously stated. The present article, regardless of the possibility or impossibility of gender reassignment and without paying attention to its mandatory ruling - whether it is absolutely legitimate or absolutely illegitimate or, in some assumptions and with regard to conditions, it is legitimate - seeks to explain the status of the criminal characteristics of the parent, in the event of the father's gender reassignment, in the Shiite jurisprudence and criminal law system. In this regard, in a theoretical and library research and using a descriptive-analytical method, it seeks to answer this question: What effect does the father's gender reassignment have on his criminal characteristics? What is the status of the criminal characteristics of this father who has changed gender? Is the criminal status of a parent an acquired right that does not affect gender change, and the father who has changed gender is still included in the subject and ruling of the criminal status of the parent after gender change and enjoys it, or is gender change one of the causes of the fall and decline of the criminal status of the parent, and the parent who has changed gender is outside the subject and ruling of the criminal status of the parent and is deprived of it? It should be noted that the issue in question has several assumptions; because sometimes gender change occurs before the crime is committed; sometimes gender change occurs after the crime is committed and the criminal sentence is enforced; and sometimes gender change occurs after the crime is committed and the sentence is enforced, and the last two assumptions are outside the subject of the discussion; Because the criterion and standard for obtaining criminal responsibility and the right to impose punishment and related matters is the actuality at the time of committing the crime, and in the two assumptions stated, the perpetrator of the crime, at the time of committing the crime, has the description of a parent and therefore enjoys the criminal characteristics of a parent; as the inclusion of the applications and the process of istishab, in case of doubt, is also appropriate for it; Therefore, the subject of discussion is only dedicated to the case where the gender change occurs before the crime is committed; because in this assumption, the crime is committed in the new gender and apparently, due to the association of the title of parent with the male gender, following the father's gender change to the opposite gender, there is doubt that he can be called a father and parent in

order to be included in the enjoyment of the criminal characteristics of a parent. Also, it cannot be omitted to state that although, in the literature of Imami jurisprudence, the characteristics of the parent, both in civil and criminal matters, are evident and a subject of discussion, contemporary jurists have apparently only turned to discussing the status of the characteristics of the parent in civil matters, in the event of a change in the father's gender, and have exhausted their pens and have stopped talking about the status of the characteristics of the parent in criminal matters, in the event of a change in the father's gender; the alleged evidence is that the written literature of contemporary jurisprudence does not report the existence of any writing or comment on the status of the characteristics of the parent in criminal matters, in the event of a change in the father's gender, to be examined, refuted and concluded. A search in specialized academic research systems also indicates a similar situation; Therefore, due to the obvious similarity between the characteristics of the parent in civil and criminal matters, the present article inevitably seeks to expose and mirror the statements of contemporary jurists regarding the characteristics of the parent in civil matters, in the event of a change in the father's gender, in order to speculate on the view of contemporary Imamiyya jurisprudence regarding the status of the characteristics of the parent in criminal matters, in the event of a change in the father's gender. In this article, the reference to the jurisprudential writings of jurists who have made the characteristics of the parent in civil matters, in the event of a change in the father's gender, a subject of discussion, is justified from this point of view.

The written literature of Imamiyyah penal jurisprudence states criminal provisions that are specific to the father; criminal titles that, if the father commits against his child, contrary to the general rule, the initial punishment for committing it will not be applied to him and he will be punished with another criminal guarantee. These exceptions and exemptions that are specific to the father are called the criminal characteristics of the parent. In Imamiyyah criminal jurisprudence, what effect does the change of the father's gender have on the criminal characteristics of the parent and whether the father, after changing gender, is included in the subject and ruling of the criminal characteristics of the parent or whether the change of gender prevents the enjoyment of the criminal characteristics of the parent and the parent who changed gender is excluded from the ruling of the criminal characteristics, are two views and speculations that can be put forward. Of course, the subject of discussion is only specific to the change of the father's gender before committing the crime and the change of the father's gender after committing the crime is out of the scope of the discussion; Because the offender has the title of parent at the time of committing the crime, but in the first assumption, the crime was committed in the new gender, and there is doubt that the father who has changed gender can be called a parent to be included in the subject and ruling of the criminal characteristics of the parent. The effect of the father's gender change on the criminal characteristics of the parent and the specialized exclusion of the father who has changed gender from the inclusion of the criminal characteristics of the parent, and the ineffectiveness of the father's gender change on the criminal characteristics of the parent and the inclusion of the criminal characteristics of the parent with respect to the father who has changed gender, are two hypotheses raised in the subject of discussion; the first hypothesis seeks support in two ways: the current untruthfulness of the titles: father and parent, with respect to the father who has changed gender, and the documented narrations of the criminal characteristics of the parent. The first aspect, due to the contradiction of the language and custom, with it and the sufficiency of the survival of masculinity, when describing the titles: father and father, and the second aspect, due to the appearance of a man in father and father, the lack of external duality, masculinity and fatherhood, in the subject of discussion, the lack of generalizability and the dominance of other narrations over the cited narrations, lacks the necessary and unacceptable evidential ability. The current truth of the titles: father and father, on the father who has changed gender, which is confirmed by the language and custom, in addition to the lack of evidence that has the ability to prove the specialized exclusion of the father who has changed gender from the scope of the subject and the ruling of the criminal characteristics of the father, is an aspect that the argument to it is sufficient and sufficient to prove the view of the lack of the effect of gender on the criminal characteristics of the father and the inclusion of the subject and the ruling of the criminal characteristics of the father, with respect to the father who has changed gender, and with the current truth of the title of father, on the father who has changed gender, he is included in the aforementioned title of father in the narrative evidence of the criminal characteristics of the father. Therefore, changing the father's

gender does not deprive the father of the criminal characteristics of the parent and does not cause his subject matter and specialization to be excluded from the scope of the criminal characteristics of the parent, and it does not affect his enjoyment of the criminal characteristics of the parent. A father who, after changing his gender, commits a crime against his child that is among the criminal characteristics of the parent is subject to the subject matter and the criminal characteristics of the parent.