

## Status Of Transsexuals<sup>1</sup>

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### שאלה

What is the sexual status of a person who has undergone SRS? Can SRS redefine the basic status of male and female?

### תשובה

In order to discuss these issues certain terms and procedures must be defined so that the exact nature of what is being discussed is clear.<sup>2</sup>

- A *transsexual* is a transgendered person who wants to change his/her sex and gender and to live permanently in a new sex and gender status.
- *Gender Dysphoria* is the clinical term for transgenderism. The favored diagnostic term is *Gender Identity Disorder (GID)*.
- *MTF* and *FTM* indicates the direction of the desired change and of the transition to accomplish it.
- *Transition* is the process of changing sex and gender role and also the time period in which the change occurs. It usually begins with the decision to change gender and ends with SRS.
- *Full-time* or *Real Life Experience* describes the situation of a person who is cross living “full time” in the desired gender status, professionally, socially and privately. It is a prerequisite for SRS according to the Standards of Care.
- *Harry S. Benjamin International Gender Dysphoria Association’s Standards of Care for Gender Identity Disorders (SOC)* is the document that outlines the medical, psychological and psychiatric standards for working with transsexuals. Major points include recommendations of:
  - 1) three months of psychotherapy or real life experience before being recommended for hormonal therapy for either MTF or FTM person, or for breast surgery in FTM persons;
  - 2) one year of hormone treatment before being recommended for genital surgery;
  - 3) one year of real life experience before being recommended for genital surgery; and
  - 4) two psychological evaluations and a diagnosis of gender identity disorder before being recommended for genital surgery.

- *Cross Dressing* refers to people who dress in clothes appropriate to the opposite gender. (An example this would be during their full time or real life experience prior to hormonal or surgical transformations.) Usually these people have no interest in changing gender.
- *Hormone Treatment* has major effects: breasts and hips for MTF persons; FTM persons will develop a lower voice, and facial and body hair. These effects are not reversible.<sup>3</sup> Significant side effects of long term usage include sterility and impotence for genetic males. Hormone therapy is necessary for transition, and is not without risk.<sup>4</sup>
- *Sex Reassignment Surgery (SRS)* is the term for surgery which changes sex status. It is sometimes also referred to as gender confirmation surgery. FTM persons have bilateral mastectomy and chest reconstruction, and a hysterectomy and salpingo-oophorectomy (removal of the ovaries and fallopian tubes.)<sup>5</sup> MTF persons will have cosmetic surgery to feminize the appearance, rhinoplasty, trachea shave and breast implants, penectomy, orchiectomy (removal of the testes), and vaginoplasty.<sup>6</sup> In some cases SRS will be performed on people who will genetically remain the same as before surgery, and in other cases the surgery will match the genetic make up of the patient.
- *Non Genital Transsexual Surgery* refers to corrective or reconciliation surgery without a vaginoplasty for MTF or metiodioplasty or phalloplasty for FTM.

### **Halakhic Issues**

Due to the nature of the subject matter there are not too many sources that deal with SRS. The basic text dealing with orchiectomy is:

ומעוד וכתות ונתוק וכרות לא תקריבו לה' ובארצכם לא תעשו.<sup>7</sup>

You shall not offer to the Lord anything [with its testes] bruised or crushed or torn or cut. You shall have no such practice in your own land.

The Talmud states:

והתניא מניין לסירוס באדם שהוא אסור ת"ל ובארצכם לא תעשו בכם לא תעשו.<sup>8</sup>

Surely it has been taught: How do we know that castration of a man is prohibited? From the verse "nor should you do this in your land." [This means] you should not do [thus] to yourselves.

This law is codified as follows:

אסור להפסיד איברי זרע בין באדם בין בהמה...וענין הכתוב לא יעשה זאת בישראל בין בגופן בין בגוף אחרים וכל המסרס לוקה מן התורה בכל מקום.<sup>9</sup>

It is forbidden to remove the genitals both from a human and from an animal...and the meaning of the verse is that it should not be done in Israel whether it is on their bodies or on the bodies of others, and anyone who does castration anywhere is biblically liable for flogging.

ובשלשה איברין אפשר שיפסל הזכר בגיד ובביצים ובשבילין שבהן תתבשל שכבת זרע והן נקראו חוטי ביצים.<sup>10</sup>

And in three organs it is possible for a man to be invalid to marry if they are removed, the penis, testicles and the tubes in which the semen is ripened, and they are called the testicle tubes.

This ruling applies only to male castration. However the *Shulhan Arukh* states that sterilization of women (oophorectomy and hysterectomy) is also prohibited but not punishable.

והמסרס את הנקבה בין באדם בין בשאר מינים פטור אבל אסור.<sup>11</sup>

A person who sterilizes a female human being or any other species is not liable (for punishment) but it is prohibited.

A different issue that SRS raises is dressing in a manner that is associated with the opposite sex. The Torah states: *לא יהיה כלי גבר על אשה ולא ילבש גבר שמלת אשה*.<sup>12</sup> A woman must not put on man's apparel, nor shall a man wear woman's clothing.<sup>13</sup>

Additional issues that apply to operations in general as well as to SRS are: endangering oneself, *איסור*, by undergoing surgery and anesthesia; and changing that which has been created, *שינוי מעשה בראשית*.<sup>14</sup>

Once a person has undergone SRS additional halakhic issues are raised. What is the status of a marriage in which one spouse has undergone SRS? If the case is that of a MTF person, is a *get* necessary? Can a transsexual get married since the operation makes the person sterile? Is circumcision required for FTM persons? What gender specific *mitzvot* should the transsexual perform or refrain from observing?

### Rabbinic Sources

Rabbi Hananel is quoted by the Ibn Ezra in his commentary to Leviticus 18:22<sup>15</sup> as follows:

ואמר רבינו חננאל ז"ל כי יש מי שמחדש בגופו כצורת בשר אשה וזה לא יתכן בתולדה וי"א אנדרוגינוס.

And Rabbenu Hananel said that there is one who fashioned something new in his body in the form of a woman and that is not naturally possible and some say it is an androgynous.

Rabbi Avraham Hirsch uses this as a proof that an MTF person is still considered a male, and therefore sexual intercourse with a male would be a violation of the biblical prohibition of homosexuality despite the presence of apparently female sexual organs.<sup>16</sup> Thus according to Rabbenu Hananel SRS can not change sex status.<sup>17</sup>

Rabbi Yosef Pelaggi<sup>18</sup> concludes that no divorce is necessary for the dissolution of a marriage contracted prior to SRS.

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 שנשתנית מנקבה לזכר בכל מכל כל מהו הדין לזאת שהיתה נקבה ואשת איש ונעשית זכר אם צריך ראוּבן זה לגרשה בגט כדת משה

וישראל כיון שהיתה אשתו 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 אנת אנתתי ולא יש לפנינו אתתא כי אם גבר איש...וגם כותב בגט הרי את מותרת לכל אדם והרי אינה אשה שראויה ומותרת לכל אדם...על כל פנים נראה לע"ד דאינו צריך ראובן ליתן גט לאשתו שנעשית איש גמור ושלים.

A question came if a *get* is necessary if this should happen, namely, Reuven married a woman in the manner that Jewish women get married, and he had intercourse with her as men and women do, and after a number of years something occurred to her and she changed from a woman to a man in all ways. What is the law concerning this woman who was a woman and a married woman, and then became a man? Does Reuven have to divorce her with a *get* in accordance with Jewish Law since she was his wife, a married woman, or perhaps he doesn't have to give her a *get* since she isn't a married woman but a man...In regard to our question it seems that a *get* is not necessary for he is a man now and not a woman. The *get* procedure is that the man gives a *get* to his wife and writes in the *get* "you my wife," and we have no woman before us but rather a man...and he also writes in the *get* "you are permitted to any man" and she is not a woman who is permitted to any man...therefore in my humble opinion it seems that Reuven does not have to give a *get* to his wife who became a complete man.

Rabbi Pelaggi states that this woman has changed her sex status and has become a male. This person is no longer Reuven's wife and therefore a *get* is not necessary since the language of the *get* would not apply to a male. Therefore sex change does change the sex status of the person.<sup>19</sup>

In *Besamim Rosh*<sup>20</sup> a question is raised concerning a husband who had his genitalia removed, whether he needs to divorce his wife in order to dissolve the marriage, or whether a *get* is unnecessary since a person with a new sex status has appeared. No resolution of this question is reached. However the author asserts that once the male sexual organs have been removed the person is no longer competent to contract a valid marriage as a male. Sex status, in regard to marriage depends entirely upon the presence of male genitalia.

אשר שאלתני מאיש שנחתך הגיד והביצים שלו לגמרי ונשא אשה והיא לא ידעה אי היא קידושין...וסברתך דאי ידעה דהכי ודאי לא מקדשה נפשה שלא יהיה לו כלל חיבת ביאה ומספר כתובה נלמד ומיעל לותיכי...תשובה עד שאתה שואלני אם היא בסתם מתקדשת בכך שואלני אם שניהם רוצים אפשר שאין אשה מתקדשת אלא למי שיש לו זכרות והוא כאשה דמי שאין האשה נושא אשה אפילו ברצונה ובקידושין שאין מסורים לביאה כאלו אפילו אביי מודה...אבל שדומה להתיר בלא גט אם נעשה זה לאחר נישואי' ולומר דגוף חדש אתי לכאן וכאשה דמי זה קשה בעיני ואין ולא רפי' ביד.

That which you asked me about a man whose his genitalia have been removed, and he married a woman who didn't know that he had lost his genitalia, is this betrothal valid...and your reasoning that she would not agree to be betrothed if there would be no sexual intercourse, and we can derive this from the *ketubah* which states we will have marital relations...Answer: You are asking if she would agree to be betrothed in such a situation, I ask if they both agreed. Perhaps a

woman will not betroth herself except to a person who has male genitalia, and this man is similar to a woman, and a woman can not marry a woman even if she agrees, and in a case of *qiddushin* that can not lead to sexual intercourse even Abayee agrees (that it isn't valid)...but those who wish to permit her to marry without a *get* if this happened after the marriage saying that this is a new person, and is similar to a woman, yes and no, I am undecided.

The Trumat Hadeshen doesn't require a *get* from Elijah's widow since his status changed from human to angel, and the wife of an angel is not prohibited to others.<sup>21</sup>

אשת אליהו הנביא ז"ל או אשת ריב"ל אם יכולים לינשא לאיש אחר נפקא מינה לדורות גם כן אם יזכה אחד כמו הם...תמיהני טובא למה טרחת לשאול שאלה כזאת הלא ידעת דאיתא בפרק תינוקות די"ב דברים שאלו אנשי אלכסנדריא את ר' יהושע בן חנניא' ובהן שלשה דברים בורות. אשתו של לוט מהו שתטמא' בן השונמית מהו שיטמא מתים לעתיד לבא כו' ופשטא להן מת מטמא ואין נציב מלח מטמא' מת מטמא ואין החיים מטמאין' אף על פי שודאי אשתו של לוט מתה' אלא שנהפכה לגוף אחר' ובן השונמית היה מת אלא חזר ויחי אף על פי כן אמר שאין מטמאין. הכא נמי יול אשת רעהו אסורה ולא אשת מלאך' שכולן רוחני ולא גופני.

The wife of Elijah the prophet of blessed memory, or the wife of Rabbi Yehoshua ben Levi, are they permitted to remarry? The practical application of this question is for the future if someone should merit as they did...I am really bewildered why you bothered to ask this question, surely you know that in Chapter Tinoket (TB Niddah 70b) the Alexandrians asked Rabbi Yehosua ben Hananya 12 questions, among them three that were nonsense. Does Lot's wife cause ritual defilement, and does the son of the Shunamite woman cause ritual defilement in the future etc? It was clear to them that a dead body causes ritual defilement and a pillar of salt does not, and that a dead person causes ritual defilement but a live person does not. Even though it is clear that Lot's wife died, nevertheless she changed into a different thing, and the Shunamite's son died but he was return to the living, even so he said that they do not defile. Similarly here we say a man's wife is prohibited to others and not the wife of an angel who is non corporeal.

The Minhat Hinukh<sup>22</sup> is of the opinion that even a marriage that was contracted legally is automatically annulled if the husband could no longer betroth the woman. Therefore a *get* is not required.

וגם ניחא לי דברי בעל תרומת הדשן שכת' דאשת אליהו ואשת ריב"ל מותרת דלא נקראת אשת איש רק מלאך ולכאורה נהי דלא תפסי קידושין ממלאך דלא נקרא איש מכל מקום אם היה בה קידושין גמורין היאך נפקעין הלא למיתת הבעל צריכין ילפותא בקידושין שיתיר ובוזה ניחא כיון דאין תופסין קידושין אם כן ממילא פקעו הקידושין ואין להאריך.

And the approach of the Trumat Hadeshen makes sense to me. He wrote that the wife of Elijah and the wife of Rabbi Yehoshua ben Levi are permitted to marry others since they are not wives of men but rather wives of angels. Apparently,

granted that betrothal by an angel is invalid, for he is not a man, nevertheless if she was fully betrothed how could it be annulled, since the release of a betrothed woman to remarry in a case where the husband died requires a derivation (and is not automatically assumed)? In this case it is fine since betrothal has no effect therefore the betrothal of itself is annulled, and there is no need to go into detail.

Rabbi Eliezer Waldenberg<sup>23</sup> is of the opinion that a *get* is not necessary for the dissolution of a marriage contracted prior to SRS.

והספק האמור בנהפכה לאיש אם צריכה גט יש להחילו גם על בלהיפך היכא שהאיש נהפך לאשה (כפי שנתפרסם מעשה כזה לפני כמה שנים שקרה בכזאת במדינה גדולה באירופה) אם אשתו זקוקה לגט פטורין ממנו' וכן להחיל ע"ז גם הספיקות .. באם שיארע ששוב יהפך לאיש. ובהרהורי דברים עולה בדעתי לדמות למה שמצינו בתרומת הדשן בפסקים ס' ק"ב שכותב לחקור על אשת אליהו הנביא ז"ל או אשת ריב"ל אם יכולים לינשא לאיש אחר...ופשיט דאשת רעהו אסור ולא אשת מלאך שכולו רוחני ולא גופני ע"ש...ואם כן ה"ל בנידונינו יש לומר דאשת רעהו אסורה ולא אשת אשה. ואע"פ שכבר התחיל וחל האישות שהיתה אשת רעהו מכל מקום נפקעין מאליהן הקידושין בהיות דנעשית שוב אשת אשה.  
...ויש להוסיף להסביר את זה ביותר על פי מה שהמנחת חינוך במצוה ר"ג...  
דכל היכי דלא תפסו בה קדושין אם נעשה דבר זה תחת בעלה אינו צריך גט רק נפקא הקידושין ממילא ...ואם כן דון מינה גם לנידונו ש"ל גם כן בכזאת דהא כשם דלא תפסו קדושין ממלאך כמו כן לא תפסי נמי קדושין מאשה ומכיון שכעת בעלה של זו נהפך לאשה לא תפסי כעת קדושין ממנו אם כן ממילא נפקעו הקדושין הקודמין מאליהן.

The doubt about a woman who has become a man if she needs a *get*, should effect the opposite, namely, where the man has become a woman (as the case that became famous a couple of years ago that took place in Europe) if his wife requires a *get* from him, and would also effect the doubts...if the woman changed back to a man. In contemplating these matters it occurs to me to compare this to what is found in Trumat Hadeshen, 102, where he writes to investigate if Elijah's wife or the wife of Rabbi Yehoshua ben Levi can marry another man...and he answers that a man's wife (is prohibited) but not the wife of an angel who is not corporeal, see there...and therefore the same would apply in our case, it is possible to say that a man's wife is prohibited and not the wife of a woman. And even though that it began as a case where she was a man's wife nevertheless the betrothal is in itself annulled because she became a woman's wife.

And it can be explained even more so on the basis of what is written in the Minhat Hinukh 203...that in all cases where the betrothal can not and do not have validity if this matter took place while she is married to her husband there is no need for a *get* because the betrothal is annulled in and of itself...and therefore derive from that for our case that it is possible to say the same in our case, that just as *qiddushin* by an angel is invalid, similarly *qiddushin* by a woman is invalid. And since her husband has become a woman, *qiddushin* at present from him would be invalid, therefore the prior *qiddushin* (before SRS) is in and of itself annulled.

His argument is based on the fact that this person no longer can contract a marriage as a male. The emergence of such a condition terminates any existing marriage. In effect undergoing SRS transforms the sex status of the person. Rabbi Waldenberg is following the position of Rabbi Pelaggi. Rabbi Waldenberg compares this case to the removal of the prophet Elijah from the earth. Just as the wife of a person who has been removed from the earth has had her marriage terminated, so too does a wife of a person who has had his sex status changed. Rabbi Waldenberg bases his position on the position taken by the Minhat Hinukh.<sup>24</sup> Rabbi Waldenberg is of the opinion that SRS does change the sex status.

Rabbi Waldenberg also permitted the removal of male genitalia of an hermaphrodite. This person was to be considered a female even though genetically the person was a male. What matters most are the external genitalia.<sup>25</sup>

ברצוני לשאול שאלה הלכתית שהתעוררה אצלי במשך עבודתי בבית החולים. השאלה קשורה בענינו של תינוק אשר נולד לפני יותר משנה. בלידה אי אפשר היה לקבוע בבירור את מינו של היילוד. המראה החיצוני נראה היה כנקבה. בבדיקה: האברים המיניים החיצוניים נראו כאצל נקבה...בתוך אחת השפות היה גוש בצורת אשך. בוצעו בדיקות...של תאי הגוף...הבדיקות העלו תאי זכר...ולא נמצאו אברי מין פנימיים...ונמצא כי גוש זה אכן היה אשך...בסכום המדובר ביילוד שמבחינה חיצונית נראה כנקבה אך למעשה הינו גבר. מבחינה ניתוחית קל יותר לשנות לנקבה למרות שלא תוכל להרות...אך כדי שהיילוד זה יהיה נקבה יש צורך לנתח ולכרות את האשך היחיד הקיים כדי למנוע פעילות הורמונלית זכרית שתפריע להתפתחותה של נקבה. שאלתי היא: א. האם בכלל מותר להפוך את מין היילוד שמבחינה גנטית הינו זכר' לנקבה. ב. האם מותר במקרה שלפנינו לכרות את האשך היחיד ולהפוך לנקבה... לפי דעתי סוג היצור הנולד שעליו מוסב שאלתו גם אילו ישאירו אותו כפי שהוא יהא דינו כנקבה' רצוני לומר' שלא יהא עליו אפילו דין אנדרוגיניס על השלכותיו כי סימני אנדרוגיניס...שיש לו במציאות אבר זכרות ואבר נקבות... והילוד דן כפי שתיאר אותו lic, fnc הרי למעשה האברים המיניים החיצוניים נראים אצלו כאצל נקבה' ואין לו שום סימן חיצוני מאבר זכרות' ורק הבדיקות המיוחדות שבוצעו בו הראו כי נמצאים בפנימיות גופו תאי זכר' ולכן דעתי הוא כנידון זה שגם אם נניחהו כפי שהוא דינו יהא כדן נקבה' כי האברים החיצוניים הנראים לעין הוא הקובע בהלכה... ולכן ברור שרק האברים הממשיים החיצוניים המשונים בין זכר לנקבה המה הקובעים בזה למעשה. בהיות כן נראה לפשוט בנידון השאלה שמותר איפוא לנתח ילוד זה ולהפכו על ידי כך לנקבה גם בפנימיות התפתחותו. ...ואם מותר לכרות האשך היחיד הזה כדי למנוע על ידי כן פעילות הורמונלית זכרית שתפריע להתפתחותה של נקבה ולא יעברו בזה על איסור סירוס...נראה דמותר לעשות זאת ולא יעברו על איסור סירוס כלל' וזאת משתי בחינות' האחת בהיות ואין לו אברי זכרות חוץ מגוש זה בצורת אשך ואם כן אינו בסוג זכר כלל...והשנית...דאינו ראוי להוליד אינו חייב על סירוסו ושאפשר דאף איסור אין כאן...על כל פנים...דעתי נוטה שמותר לבצע זאת הן באופן כללי להפוך את המין היילוד שמבחינה גנטית הינו זכר' לנקבה. וגם...שמותר לכרות את האשך היחיד ולהפוך לנקבה הילוד אשר מבחינה חיצונית כבר נראה כנקבה.

I would like to ask a halakhic question about a case that occurred in my work at the hospital. The question is about a child that was born over a year ago. At birth it was impossible to determine with any certitude the gender of the child. The outward signs were female...the tests showed that the external genitalia were

those similar to a female...but in one of the lips of the vagina there was a lump that was shaped like a testicle. The body cells were tested and the results showed male cells...and no internal sex organs were found...and the growth indeed turned out to be a testicle. In summation we are dealing with a child who has the outward signs of a female but in reality is a male.

From a surgical point of view it is easier to change the child into a female even though she will be sterile...but in order to do so it is necessary to remove the existing testicle in order to prevent the functioning of male hormones so that they will not interfere with her physical maturation. My question is: A) Is it permissible to change the gender of this child who genetically is a male, to a female B) In our case is it permitted to remove the one testicle and to make the child a female?

In my view the type of child that is the subject of your questions, even if you were to leave him as he is, is considered to be a female. That is to say, that he isn't to be considered even as an androgynous with the implications thereof, for the signs of an androgynous is that he has male and female genitalia, and the child we are discussing, as described in your letter, in reality the external genitalia look like those of a female, and he has no external sign of a male genitalia, and it is only the special tests that were conducted on him that showed that he only had internal male cells, therefore in my opinion in this case that even if we were to do nothing and leave the child "as is" the child would be considered a female. That is because the external genitalia that are visible are the ones that determine gender for halakhah...Therefore it is clear that only the actual external genitalia that are different for males and females determine the gender as far as *halakhah* is concerned. This being the case the answer to your question is that it is permissible therefore to operate on this child and to change him thereby to a female as well as in his internal development.

...As far as the question about the permissibility to remove the testicle in order to prevent male hormonal influence in her female development and if this violates the prohibition against castration...it seems that it is permissible to do so, and there will be no transgressing of the prohibition against castration at all for two reasons. The first is since the only male genitalia he has is a lump in the form of a testicle, therefore he is not a male at all. The second is that since he is already sterile one is not liable for castrating him, and possibly there is no prohibition at all in this case...My position is that it is permissible to do this in general to change the gender of the child that is genetically a male to a female...and it is permissible to remove the testicle and to change to a female a child who externally already looks like a female.

Rabbi M. Tendler and Dr. F. Rosner<sup>26</sup> claim that SRS has no effect on sex status. According to them an MTF person could no longer enter a marriage as a male due to his inability to function sexually as a male, however this person can not enter a marriage as a female.

There is some discussion as to whether the prohibition of castration applies to one who can not procreate.<sup>27</sup> Rabbi Michael Broyde addresses SRS in an appendix to an article on *The Establishment of Maternity and Paternity in Jewish and American Law* and states that it is prohibited and there is no new sex status.<sup>28</sup>

There are a number of Reform Responsa dealing with SRS and they arrive at different conclu-



sions. Some prohibit SRS,<sup>29</sup> and others permit it.<sup>30</sup> Another deals with the question of a marriage between a man and an MTF person whose new sex status has been recognized by the state. After discussing the two polar positions found in our sources, i.e. is it a same-sex marriage or does the person have a new sex status, the issue of marrying a sterile woman is raised, namely may one marry an *ailonit*. The answer given is: ...it would be wise to let the decision be based upon the reaction of the community to such a marriage. The issuance of a marriage license would be the determining factor.<sup>31</sup> The question of conversion and marriage after SRS is also discussed,<sup>32</sup> and permission to marry after SRS even though one partner is sterile.<sup>33</sup>

It is clear from the sources that there are two polar positions concerning SRS. One claims that SRS has no effect on the sex status of the person, or in other words Halakhah does not accept the possibility of changing one's sex status. The other position is that a change in the sex status of the person can and does take place, since the external genitalia determine the gender.

### **What Is the sexual status of one who undergoes SRS?**

Various authorities have dealt with SRS from these two positions on how to deal and treat those who have undergone SRS. According to some, the sex status will be determined by the surgery. Therefore an MTF person would be a female, and a FTM person would be a male. According to other authorities the sex status can not be changed, therefore those who have undergone SRS are halakhically the same as before the surgery.

The position that recognizes a change in sex status is based on the concept that one's sex status is determined by the external genitalia. This has been forcefully advocated by Rabbi Waldenberg,<sup>34</sup> especially in his responsum concerning the case where it was impossible to determine the sex of a newborn. Even though tests showed the presence of male cells in the child, Rabbi Waldenberg decided that since the external signs indicated that the child was a female, it is permitted to remove a testicle, and to help the child mature as a female. Most of the other authorities quoted above recognize that the person who has undergone SRS is in fact a member of the new sex, and they accept this. They deal with the question of the necessity of a *get* but take for granted that there has been a sex change. These arguments are compelling and therefore we should recognize the new sex status of the person who has had SRS.<sup>35</sup>

The argument that is based on the statement of Rabbenu Hananel, that sex change is naturally impossible, may have been true in his time. It certainly is possible today. His position could very well change if he saw the results of hormonal and surgical treatment. Therefore to base one's position on such grounds seems implausible.

Those who claim that we can not change God's creation are closing their eyes to conversion, and to transplants as well as many other medical procedures which in fact do change God's creation. If we were to claim that sex change is prohibited on these grounds, we would have to prohibit many medical procedures as well.

*Halakhah* has always been macroscopic and not microscopic. Therefore, external organs determine the sexual status of a person. Genetic information may be helpful but at present are not considered the determining factor. The same is true as far as DNA is concerned in halakhic issues.

The position of Rabbi Waldenberg on this issue best fits the halakhic system, and therefore is the acceptable one for us.

What would be the status of those who do not undergo full SRS? This would refer to patients suffering from gender dysphoria who undergo hormonal treatment and partial surgery but do not have a metoidoplasty or phalloplasty for a FTM person or vaginoplasty for a MTF person. Based on the positions of those who do recognize sex change, that change has not taken place since the external genitalia are those of the original sex. Therefore they have begun the process but have not completed it

and would not be recognized as having changed their sex status. It would be similar to a potential convert who has completed the process for conversion except for *tevillah*. That person is still in the process and therefore their status has not changed. The same applies to those who have not had genital SRS.

Based on the arguments presented by many of the authorities mentioned above,<sup>36</sup> in cases where a couple was married and one spouse has had complete SRS, a *get* would not be required,<sup>37</sup> nor can it be given after SRS has been completed. A MTF person would be a female and can not give a *get*, and an FTM person can not receive a *get* since she is not a married woman (אשת איש). The *qiddushin* in these cases are annulled in and of itself due to the new status of the person. However since the process of transsexual change is a long one, we would recommend that a *get* be given before the process is completed in order to ease any doubts, and to make it acceptable to all. If a *get* is not given then we accept the automatic annulment of the *qiddushin* as explained in the sources quoted above.

The question of marrying someone who has had SRS revolves around the issue of marrying a sterile person, and the ability to get a civil marriage license. Many states<sup>38</sup> will amend a birth certificate or some other official document in order to recognize the new sex status. If the state doesn't recognize this change then a marriage license would not be issued because the state would consider it a same sex marriage which is prohibited at the present time.<sup>39</sup> However if the state accepts the sex change, then the marriage would be permitted.

The problem of marrying a sterile person is dependent on the knowledge and agreement of both parties. As stated in *Besamim Rosh*,<sup>40</sup> the agreement on the part of a woman to marry someone who is sterile would make the marriage valid. In addition the halakhah recognizes that sterile people whose sterility was *בדי שמים*, a heavenly act, are permitted to marry. Today many marriages take place where procreation is not part of the marriage and therefore we should permit one whose sex status has changed to marry.

An FTM person would not require a *hatafat dam brit*.<sup>41</sup> If the person would like to have *hatafat dam brit* we should permit it.<sup>42</sup>

The issue of a name has an odd twist. Names can be added according to Jewish Law, but there is no procedure for discarding a name. Since the person's sex has been changed and recognized and the person is no longer a member of the prior sex for which a name had been given, a *מי שברך* using the new name will be the ceremony through which the name will be bestowed. The old name will no longer be associated with this person. If the person was the child of a *kohen*, the person will still be the child of a *kohen*, the only change will be *bat kohen* or *ben kohen*. Once again this procedure will apply only to those who have a complete SRS.

## **Conclusions**

1. Only those who have undergone full SRS (including phallosplasty/vaginoplasty) are to be considered as having changed their sex status, and recognized so by Jewish Law
2. A person who has undergone partial SRS is not deemed to have changed their sex status.
3. A *brit* or *hatafat dam brit* is not required for one who has had a phalloplasty.
4. A *get* is not necessary if one spouse undergoes SRS since the *qiddushin* are automatically annulled. However in the case of an MTF person a *get* should be given before the SRS is completed.
5. Recognition by the civil authorities of the new sex status is required in order to marry a person who has undergone SRS. This will prevent us from performing same sex marriages according to civil law.
6. A new name should be given to the person with a new sexual status by means of a *me shebarach*.

## Appendix: Is SRS Permissible לכתחילה?

SRS can be justified on the following arguments which are based on treatment for a mental condition. However, for these arguments to be considered, reliable medical studies must verify that SRS is *letovat haholeh* - is beneficial for people suffering from gender dysphoria.

The major objection to SRS is the prohibition against סירוס, castration, which is a biblical prohibition, and sterilization which is also prohibited but not punishable.<sup>43</sup> It is considered a mutilation of the body and is clearly forbidden. While it is possible to argue that a male who has fulfilled the *mitzvah* of ורבו פרו, of procreation, is no longer obligated to perform that *mitzvah*,<sup>44</sup> and women are not obligated, nevertheless mutilation is prohibited. However according to some authorities, if the castration or sterilization caused by the removal of the sexual organs is due to disease or trauma, then it is considered to be a case of בידי שמים, a heavenly act, and the person is permitted to marry.<sup>45</sup>

It would seem that the people undergoing the long process of SRS as stated in the Standards Of Care,<sup>46</sup> are doing so because they are suffering from gender dysphoria, and SRS is treating the patient with gender dysphoria. Their pain and anguish is great and there is no doubt that they are suffering. This has led them to undergo the long and difficult procedures outlined in the standards of care. For them SRS is being done לטובת החולה, for the patient's betterment and health, and therefore would be permissible, just as it would be permissible to help treat a physical ailment.<sup>47</sup> We have permitted other procedures for mental ailments and have said that the mental illness is to be treated in the same way as a physical one.<sup>48</sup> Therefore SRS may be permissible and the prohibition against castration can be overridden in this case.

The same would apply to the question of חובל בעצמך, causing harm to oneself by undergoing an operation.

Hormonal treatment would also be permitted and would not transgress the prohibition of wearing the garments of the other sex or changing that which was created,<sup>49</sup> since it is a case of לטובתו, for the good of the patient, and בכל מתרפאין,<sup>50</sup> there are no restrictions on what type of medicine may be used to heal a person.

However due to the lack of studies about the long term effectiveness of SRS in dealing with gender identity disorder, we would recommend at this time that we counsel those who ask us for the halakhic opinion concerning this type of treatment, to consider the lack of sufficient studies that document the beneficial results of this treatment, and how this relates to our halakhic decisions. This in no way changes our conclusions concerning those people who have undergone SRS. They are to be considered as having changed their sex status as stated in the conclusions to this *teshuva*.<sup>51</sup>

## NOTES

<sup>1</sup> I would like to thank Rabbi Margaret Moers Wenig for her help and guidance in writing this *teshuva*, Rabbi David Golinkin for his help with sources, Aaron H. Devor for comments and suggestions, and my students Tracy Nathan and Leonard Sharzer for their insights.

<sup>2</sup> The definitions of the terms are based on *The Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders*, [www.hbgida.org/soc.html](http://www.hbgida.org/soc.html), and input from Dr. Aaron H. Devor. Dr. Devor's articles on the subject can be found at [web.uvic.ca](http://web.uvic.ca).

<sup>3</sup> There are some hormonal treatments that are reversible. See the *Standards of Care* for a full description of which changes are reversible and which are not.

<sup>4</sup> See Version 6.0 of the SOC VIII. *Effects of Hormone Therapy in Adults*.

<sup>5</sup> Other procedures include vaginectomy, metoidioplasty, urethroplasty, placement of testicular prostheses and phalloplasty. Phalloplasty is usually not done at the same time as the hysterectomy and oophorectomy and may require several operations.

<sup>6</sup> The last three are usually done at the same time.

<sup>7</sup> ויקרא כב' כד.

<sup>8</sup> שבת ק"ג ע"ב.

<sup>9</sup> רמב"ם הלכות איסורי ביאה פט"ז הל' י.

<sup>10</sup> שם הלכה ג.

<sup>11</sup> שו"ע אה"ז סי' ה ס' יא.

<sup>12</sup> דברים כב' ה.

<sup>13</sup> See Rabbi Meir Amsel in Ha'Maor Kislev-Tevet 5733. He would extend the prohibition to all actions and behavior that is uniquely identified with the opposite sex and would include accordingly hormone treatment as well.

<sup>14</sup> See Rabbi Shalom Krauss in Ha'Maor Kislev Tevet 5733. He also includes additional prohibitions such as mixed species, כלאים, לא תורע כרמך, and grafting, הרכבה, and giving up the obligation to perform mitzvot such as tefilin for an MTF person.

<sup>15</sup> Do not lie with a man as one lies with a woman. ואת זכר לא תשכב משכבי אשה.

<sup>16</sup> Noam 5733, Volume 16.

<sup>17</sup> Sex refers to status based on genital markers and sexual refers to sexuality.

<sup>18</sup> Yosef et Ehav 3:5.

<sup>19</sup> For a different conclusion see J. David Bleich, *Contemporary Halakhic Problems*, Vol. I. pp. 100-105. See also Michael J. Broyde, "Sex Change Operations and Their Effect On Marital Status: A Brief Comparison" Appendix of *The Establishment of Maternity and Paternity in Jewish and American Law*. This is available at [www.jlaw.com/articles/maternity\\_appendix.html](http://www.jlaw.com/articles/maternity_appendix.html).

<sup>20</sup> Teshuvot Besamim Rosh #340. This work is attributed to Rabbenu Asher but is of questionable authenticity. For a review of the history of the Besamim Rosh, see L. Jacobs *Theology in the Responsa*, pp. 347-52 (1975). While many would claim the Besamim Rosh can not serve as a valid precedent because it may be forged, nevertheless the arguments used in this work can certainly be applied to the issue we are discussing. This is a case of deciding if we should follow an authority, and in this case we do not know who the writer is, or the argument, which is certainly available to us, and we can judge it on the merits of the argument.

<sup>21</sup> תרומת הדשן חלק ב סימן קב.

<sup>22</sup> Y. Babad, *Minhat Hinukh* 203.

<sup>23</sup> Tzitz Eliezer, X, no.25, chap.26, sec. 6.

<sup>24</sup> See above p. 6.

<sup>25</sup> Tzitz Eliezer XI, 78.

<sup>26</sup> *Practical Modern Halakha* 44 (1980).

<sup>27</sup> See *Minchat Hinukh*, ibid.

<sup>28</sup> See above note 19.

<sup>29</sup> *Modern Reform Responsa*, 1971, pp. 128-133

<sup>30</sup> *American Reform Responsa* no.37 pp. 416-419 and *Contemporary American Reform Responsa*, 1987, no.199 pp. 293-296.

<sup>31</sup> *Reform Responsa For Our Times*, 1977 pp.196-200.

<sup>32</sup> *Teshuvot For The Nineties*, pp. 191-196.

<sup>33</sup> *Contemporary American Reform Responsa* ibid.

<sup>34</sup> See above p. 8.

<sup>35</sup> There are cases where the individual decides not to undergo genital surgery. For example those who decide to live a

celibate life. They will not undergo a metiodioplasty/phalloplasty or vaginoplasty, but will undergo all the other procedures. Some will argue that they should be considered as having their sex status changed. Others argue that the brain, more than the genes, reproductive organs or hormones, is the true sexual organ. Therefore phalloplasty or vaginoplasty should not be the determining factor.

My problem with these approaches is that it would become a case of having adjustable standards which make it difficult to follow-לשיעורין-נתת דבריק. In addition Jewish Law has based gender on the genitals and not on the brain. If a position would be developed using non-genital evidence for determining the sexual status of a person, then this issue could be revisited.

<sup>36</sup> See above pp. 4-5.

<sup>37</sup> Some argue that a *get humra* should be given in order to take into consideration both positions.

<sup>38</sup> In a recent case in Virginia, a F2M sought to have his birth certificate amended. The Virginia Office of Vital Records refused to do so saying that because there was no phalloplasty surgery, this case did not meet Virginia's legal requirements. Lambda Legal Defense and Education Fund prepared a lawsuit, and the state Attorney General's office backed down and granted the birth certificate amendment. If this becomes the norm we will have to request information from the person in addition to the amended birth certificate. For information about civil legal developments see [www.transgenderlaw.org](http://www.transgenderlaw.org).

<sup>39</sup> There have been some court cases that would allow same-sex marriage, and that will be determined by the state legislature who have been ordered to come up with legislation within 180 days. In Canada there are several jurisdictions in which same-sex marriage is legal.

<sup>40</sup> See above p.5.

<sup>41</sup> Medically there can be no circumcision.

<sup>42</sup> Even though we recognize that the phallic reconstruction is not a generative organ and is basically a tubular appendage that is a conduit for urine and has some prosthetic stiffening device to allow sexual penetration, we feel that if the individual wants to undergo a hatafat dam brit, he should be allowed to do so. The individual together with his Rabbi should develop some prayer or statement that would express his religious feelings now that his sex status has changed.

<sup>43</sup> See above pp. 2-3.

<sup>44</sup> TB Yebamot 61a.

<sup>45</sup> רמב"ם הלכות איסורי ביאה קט"ז הל"ט' טוש"ע אה"ע סי"ה ובב"ח שם ד"ה וס"ש רבינו ע"ש פרש"י שו"ע אה"ע ס"ה ס"ג.

<sup>46</sup> See above page 1 and note 1.

<sup>47</sup> For an article on recent books dealing with this see the New York Times, Tuesday October 29 2002, Health and Fitness section page F5. One of the books mentioned is *How Sex Changed: A History of Transsexuality in the United States* by Dr. Joanne Meyerowitz.

The number of studies about the effectiveness of SRS are very few and therefore it is hard to give figures about the benefits of the SRS, see HBIGDA Standards of Care section X. Surgery. But there are many documented cases of people who have "operated" on themselves because of this disorder.

<sup>48</sup> See the Responsa on abortion in Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement 1980-1985, pp3-37.

<sup>49</sup> See above note 13.

<sup>50</sup> TB Pesahim 25a.

<sup>51</sup> See page 12.