

# TRANSGENDERISM IN MALAYSIA

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## 1. Introduction

Sexuality and gender are parts of the natural identity of human beings that have been given ample attention within socio-cultural and political studies around the world. The change of gender and sexuality apparently affect the sexuality of both the male and the female to varying degrees, while socio-cultural factors influence sexual behaviour, as well as gender relation and the sense of responsibility in such relations.

As a social phenomenon, social practice is often influenced by the religion where the issues of transgenderism are concerned. While some traditional religions are more relaxed in adjusting to social changes or accepting transgender community, religions like Islam and Christianity are said to have low tolerance towards transgender. This leads in some cases to tension in the Muslim and Christian societies. The attention accorded to the issues of transgender in the modern socio-cultural, political and religious discourse show that there is a need for Islam and Christian authorities to clarify their position on such matters, provide reassurance for its believers and treat emerging questions on the basic human rights of transgender community and accepting them as part of the society.

It is undeniable that the current discussions on gender and sexuality are largely influenced by Western socio-cultural practices. Some current views and practices on gender and sexuality are not consistent with traditional Western Christian and Islamic values. On the other hand, it is hard to ignore the influence of Western socio-cultural views and practices on various aspects of life and on the intellectual engagement with world cultures and religion. Islam and its believers are not exempted from this either, since the normative Islamic values may not be totally adhered to by Muslims, while local cultural norms and activities may not conform to all basic principles of Islam.

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In Malaysia, there are various forms of open social transitions that have long been in existence, even though they conflict with the religious beliefs there. One of the biggest challenges faced by the transgender community in Malaysia is that they are excluded from decisions that affect their welfare, livelihood and legal status. Malaysians generally shun the transgender community who are locally known as the *Mak Nyahs* (Transgender women or male to female transgender individuals) or *Pak Nyahs* (Transgender men or female to male transgender individuals). Social stigma and marginalization are often associated with poor psychological adjustment and increased psychological distress, both critical predictors of high-risk behaviour.<sup>1</sup> Many *Mak Nyahs* are categorised of low social status and forced to work as sex workers due to the rampant discrimination while seeking employment. Employers often reject *Mak Nyahs* on the basis of their appearance and gender expression disregarding their qualifications. The general perception towards transgender individuals is that all their problems are regarded to be of their own doing.

The objectives of the present research are to understand and determine the issues faced by the transgender community in Malaysia viewed in three aspects – the perspective of Islam, the socio-cultural point of view and from the transgender community members themselves. This article does not pretend to be a comprehensive and conclusive discussion of all issues that the transgender community faces in Malaysia. It only covers the perspective of Islam towards transgenderism in Malaysia because most of the *Mak Nyahs* in Malaysia are Muslims and Islam is the official and only religion in Malaysia that has religious rulings against some of the practices of the transgender community. The targeted transgender individuals for questionnaire and interview are all from the Pink Triangle Foundation, which is one of the few non-government organizations that are active and dedicated to help transgender community in Malaysia.

This research is also done to indirectly raise the awareness of the Malaysian government and public towards the diversity of gender and sexuality. Concurrently, it is an effort to encourage acceptance of the transgender community as part of the society, increasing the attention given to the transgender community's public health and welfare.

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<sup>1</sup>Bockting, W. O., Robinson, B. E., Rosser, B. R. "Transgender HIV Prevention: A Qualitative Needs Assessment, *AIDS Care*, 10, 1998, 505-525.

## 2. Background

Though there are many researches on this phenomenon, so far, there is no conclusive scientific explanation to transgender individual existence. Genetic influences and prenatal hormone levels, early experiences, and experiences later in adolescence and adulthood have been suggested as factors that may contribute to the development of transgender identities. Biologically a person with XY chromosomes is generally considered male and a person with XX chromosomes as female. However, there are also people with XXY, XYY, etc.; yet these genetic differences may or may not contribute to the transgenderism of a person. Some medical theories claim that hormones fluctuations or imbalances or the use of certain medications during pregnancy may cause intersex or transgender conditions. Other researches indicate that there are links between transgender identity and brain structure. Psychological factors are also suggested as the reason for the existence of transgender individuals. Some of the transgender persons, however, are aware of the fact that they are transgender from their earliest memories. Many transgender individuals feel that their gender identity is an innate part of them, an integral part of who they were born to be.

We conclude that sex and gender are complex issues and a variety factors that cause one to become a transgender individual are still unknown. Many factors are at work in making individuals the persons they are and there is no one reason causing people to be transgender. It is quite likely that there are different causes for different individuals.

Activists have estimated that there are around 100,000 transsexuals in Malaysia.<sup>2</sup> The number of transsexuals in the capital alone is estimated to be 50,000. This estimation indicates that more than one out of every 200 individuals in Malaysia is a transsexual.<sup>3</sup> In Malaysia, the term ‘transsexual’ generally refers to male transsexuals, although there are also female transsexuals.<sup>4</sup> The number of female transsexuals is, however,

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<sup>2</sup>“Malay Transsexual Loses Court Bid to Change Gender,” <http://news.yahoo.com/malay-transsexual-loses-court-bid-change-gender-053645639.html>, Accessed 9 November 2011.

<sup>3</sup>Wong, E. L., *Neither Here Nor There: the Legal Dilemma of the Transsexual Community in Malaysia*. [http://www.malaysianbar.org.my/gender\\_issues/neither\\_here\\_nor\\_there\\_the\\_legal\\_dilemma\\_of\\_the\\_transsexual\\_community\\_in\\_malaysia.html](http://www.malaysianbar.org.my/gender_issues/neither_here_nor_there_the_legal_dilemma_of_the_transsexual_community_in_malaysia.html), Accessed 9 November 2011].

<sup>4</sup>Teh, Y. K., “Understanding the Problems of *Mak Nyahs* (Male Transsexuals) in Malaysia,” *South East Asia Research* 6 (1998), 165-180.

small compared to male transsexuals.<sup>5</sup> The increasing number of transgender individuals in Malaysia has caught the government's attention. In 2000-2001, the Women and Family Development Ministry announced its intention to look into the problems of the transsexual community, and to provide as much assistance as they could.<sup>6</sup> Prior to that, there was no ministry regarded as appropriate to hear and handle issues pertaining to the transgender community, leaving the community to continue to be heavily marginalised, underrepresented and misunderstood by the society of Malaysia. Malaysian government and public need to pay more attention to understand transgender persons, their needs, and welfare as well as their legal status and consider them as part of the Malaysian community.

### 3. History of the Term Transgender

The term transgender was first introduced in print by Virginia Prince, an American transgender activist in the 1960s.<sup>7</sup> However, the term has only been popularly used since the 1970s. It was used to describe people who live a cross-gender lifestyle without undergoing any sex change or sex reassignment surgery. In the 1980s, the meaning of the term expanded further and became popular as a term which carried the meaning of all those with a gender identity that did not match their assigned gender at birth. However, in the 1990s, the term took on a political dimension as an alliance covering all those who have at some point not conformed to the gender norms, and the term is used in a way as to question the validity of those norms and also to pursue equal rights and anti-discrimination legislation, which then further led to the widespread usage of this term in the media, academic world and law.

In an influential essay that marked the emergence of “transgender studies,” Susan Stryker describes “transgender” as an umbrella term that refers to all identities or practices that cross over, cut across, move between, or otherwise queer socially constructed sex/gender boundaries. The term includes, but is not

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<sup>5</sup>Khairuddin, Y., Low, W. Y., Wong, Y. L., “Social and Health Review of Transsexuals,” Seminar *mak nyah ke arah menentukan identiti dan status mak nyah dalam masyarakat*, Law Faculty, University of Malaya, 1987.

<sup>6</sup>Ministry of Health Labour and Welfare Japan, “Healthy Next Generation: Strengthening Joint Collaboration Between Health and Social Welfare,” Country Report: Malaysia of The 6th ASEAN & Japan High Level Officials Meeting on Caring Societies, Tokyo, 2008.

<sup>7</sup>Ekins, R., King, D., *Pioneers of Transgendering: The Life and Work of Virginia Prince*, <http://www.gender.org.uk/conf/2000/king20.htm>, Accessed 1 November 2011.

limited to, transsexuality, heterosexual, transvestism, gay drag, butch lesbianism, and such non-European identities as the Native American *berdache* or the Indian *Hijra*.<sup>8</sup>

Joanne Herman referred transgender as individual with alternate identity (how you feel) and/or gender expression (how you look and act).<sup>9</sup> The American Psychological Association defines transgender individuals as people whose gender identity, gender expression, or behaviour differs from birth sex.<sup>10</sup>

There are certain common beliefs that inform the operative notions of sex and gender in the thinking of most people.<sup>11</sup> Among these beliefs are:

- a. There are two and only two genders.
- b. Genitals are the essential sign of gender, meaning that an anatomical male must have a masculine identity, and an anatomical female must have a feminine identity.
- c. One’s gender is invariant.
- d. Everyone must be classified as a member of one gender or the other.

Subjects who fail to reflect these beliefs by manifesting the wrong configuration of body parts, behaviours, desires and overall comportment, are opening up the possibilities for calling those beliefs into question. This is because human beings still divide themselves according to the binary gender system, which is either a male or a female according to the sex a person is born into.<sup>12</sup>

These beliefs are characterized often as the “natural attitude” about gender and they are thought to be anchored in the human nature. The male or female and corresponding masculine or feminine dichotomy is said to be “natural,” and that membership in one gender or the other is simply a reflection of an indisputable biological reality. In other words, it also means that only two genders are the fundamental organizing principle of experience and expression. This “natural attitude” is so pervasive and powerful that questioning it can appear absurd as gender in this sense is thought to be something intrinsic to our nature.

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<sup>8</sup>Stryker, S., *The Transgender Issue*, Durham, NC: Duke University Press, 1998.

<sup>9</sup>Herman, J., *Transgender Explained for Those Who Are Not*, Bloomington, IN: AuthorHouse, 2009.

<sup>10</sup>“What Does Transgender Mean?” <http://www.apa.org/topics/sexuality/transgender.aspx>, 9 November 2011.

<sup>11</sup>Ilancheran, A., *Genital Sex Reassignment Surgery: Male to Female Evolution of an Operative Technique*, Singapore: National University of Singapore, 1989.

<sup>12</sup>Teh, Y. K., *The Mak Nyahs: Malaysian Male to Female Transsexuals*, Singapore, Eastern Universities Press, 2002.

#### 4. Transgenderism and Islam

According to Islamic jurisprudence, humans can be divided into four groups: male, female, *khunsa* (hermaphrodites), and *mukhannis* (males whose behaviour is closely aligned to women's behaviour) or *mukhannas* (an effeminate male who does not want to change his sex). *Mukhannis* want a change in their gender identity, while *mukhannas* are considered "effeminate;" but they do not want to change their gender identity.<sup>13</sup>

The Hadith in Sahih Bukhari, Volume 7, Book 72, Number 774, states that "Narrated Ibn' Abbas: Prophet Muhammad cursed effeminate men who assume the manners of women and those women who assume the manners of men." According to the Hadith in Sunan Abu-Dawud, Book 32, Number 4087, "Narrated Abu Hurayrah: The Apostle of Allah cursed the man who dressed like a woman and the woman who dressed like a man."

Building on the notion that biology is destiny, a *khunsa* is permitted to change his or her gender via an operation and become either a man or a woman. However, as seen in the Hadith, cross-dressing violates the tenets of Islam. Thus, gender change is not permitted for *mukhannas*, out of the belief that he was created by God, and the operation would modify God's work and is an abomination in God's eyes. Neither does Islam allow *mukhannis* to use make up, dress as women nor express their chosen gender identity, since any act that masks the given sex of a person is seen as going against God's wishes. Therefore, Muslim *Mak Nyah* who usually cross-dress are also said to have violated the Islamic religion.

A process termed *ijtihad*<sup>14</sup> is used to deduce ruling on issues that so far have no direct guidance in the primary sources of *Shariah*. Among the examples of the issues are transgenderism, abortion, cloning and genetically modified foods. The end product of *ijtihad* is *fatwa*, an explanation from *Shariah* perspective given by a *mufti*<sup>15</sup> for any problem

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<sup>13</sup>Ramli, W. A., *Dilema Mak Nyah: Suatu Illusi*, Kuala Lumpur, Utusan Publications, 1991.

<sup>14</sup>*Ijtihad* in the juristic terminology denotes the deduction of general rulings from religious evidence, or the effort exerted in extracting religious rulings and reaching a conjecture to religious rules; in the courts' jargon, this term means the set of judiciary judgments from which general rules may be deduced to settle similar disputes. See Abdulaziz Othman Altwaijri, "Ijtihad and Modernity in Islam," *Journal Islam Today*, 24-1428H/2007. [http://www.isesco.org.ma/english/publications/Islam today/24/p1.php](http://www.isesco.org.ma/english/publications/Islam%20today/24/p1.php), Accessed 9 November 2011.

<sup>15</sup>A qualified scholar who is a Muslim, a reliable trustworthy person who never sinned, has broad knowledge of *fiqh* and Islamic law. He also had a sound mind and

as an answer for a query made either individually or collectively.<sup>16</sup> A *fatwa* is also a religious opinion on Islamic law issued by an Islamic scholar on a specific issue after referring to *Al-Quran Al-Karim*, *Al-Sunnah Al-Nabawiyyah* (examples of prophets saying, actions,) *Al-Ijmak* (consensus), *Al-Qiyas* (analogy) and *Ijtihad* in the Islamic faith. A *fatwa* is often sought by the Muslims since they are divinely encouraged to ask guidance from those who are qualified. Interestingly, in Malaysia the *fatwa* is not conducted individually. The *fatwa* is normally issued officially by a council such as the National *Fatwa* Council (NFC). The NFC was established in 1970. Its function is to conduct decision-making processes on issues related to Islamic teachings.<sup>17</sup> In 1983, the NFC in Malaysia imposed a *fatwa* which prohibits gender change or sex change operations among the Muslims. Cross-dressing was also prohibited.

### 5. Police and Islamic Religious Authority Enforcement in Malaysia

Islam in Malaysia permits *khunsa* to undergo sex reassignment surgery so that they can become either male or female. *Mukhannis* or *mukhannas* are forbidden, however, from undergoing sex-reassignment surgery. *Mak Nyahs* consider themselves transsexuals who have accepted their femininity, but may not go for the sex reassignment surgery and do not mind the presence of their penis. As such, *Mak Nyahs* basically share the same characteristics as transsexuals in other parts of the world. As most *Mak Nyahs* in Malaysia are Muslims and are considered to violate the tenets of Islam, they have become non-entities in Malaysian society.<sup>18</sup> They have lost all their basic rights as a human being simply because they are “different from the others.”<sup>19</sup>

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proper conduct and capable of comprehending one thing from another and drawing conclusion. See A. H. Al-Harrani, *Sifat al-Fatwa wa-al-Mufti wa-al-Mustafti* (Features of the Fatwa, Mufti and People Who Ask for Fatwa), Beirut: al-Maktab al-Islami, 1984, 13.

<sup>16</sup>Rispler-Chaim, V., *Islamic Medical Ethics in the Twentieth Century*, Leiden: Brill, 1993.

<sup>17</sup>Rahman, M. A., *Manhaj Fatwa Jawatankuasa Fatwa Kebangsaan* (Mechanism of Fatwa Issuance of the NFC), *Seminar Manhaj Pengeluaran Fatwa Peringkat Kebangsaan*, 5 -6 December 2006, Kuala Lumpur, 2006.

<sup>18</sup>Teh, Y. K., “Understanding the Problems of *Mak Nyahs* (Male Transsexuals) in Malaysia,” *South East Asia Research* 6 (1998), 165-180.

<sup>19</sup>Sulastrri Arriffin, Nasib Seorang Mak Nyah. *Malaysiakini*, [www.malaysiakini.com/letters/44459](http://www.malaysiakini.com/letters/44459), 1 November 2011.

The non-Muslim transsexual individuals can be charged with indecent behaviour which includes cross-dressing, under Section 21 of the Minor Offences Act 1955.<sup>20</sup> Under this section, they can be fined RM 25 to RM 50. As the term “indecent behaviour” has not been defined in the Act, it is up to the discretion of the police to determine what constitutes “indecent” behaviour. If the transsexual people caught by the police are Muslims, they can be sent to the Islamic Religious Affairs Department to be charged under Section 28, Syariah Criminal Offences Act 1997, for immoral behaviour, and are liable to a fine not exceeding RM 1000 or to imprisonment not exceeding one year, or both, at the *Shariah* Court for offences against the Islamic law. The Islamic religious authority, like the police, can also carry out raids among the Muslim community to identify wrongdoings against Islam.

## 6. Transgender and Basic Human Rights

The review of the relevant literature on transgender issues in Malaysia reveals a variety of views, some seem to support the position that transgender individuals should be given the liberty to choose their preferred gender, while some disagree due to religious belief which does not encourage nor allow transgenderism in life.

In the United Nations Press Conference on Issues of Exclusion Against People Living with HIV, Marginalized At-Risk Populations in year 2008, Laxmi Tripathi, Chair of ASTIVA, an organization for the support and development of sexual minorities mentioned that there is still no government had ever called for the protection and promotion of the transgender communities’ basic human rights. Throughout the world, especially countries from the South, transgender individuals were also part of an ethnic group, yet they were forced to beg for basic services and health care or forced to be sex workers as there was no political will to recognize or defend their fundamental rights. They were often afraid to assert their rights, as they knew the authorities would not back them up.<sup>21</sup>

In Geneva on 16 September 2011, the United Nations High Commission for Human Rights, Navi Pillay showed her support by urging

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<sup>20</sup>Dina Zaman, “Time to Engage *Mak Nyah*,” *The Star Newspaper*, 2008. <http://thestar.com.my/columnists/story.asp?col=awriterslife&file=/2008/8/14/columnists/awriterslife/22069684&sec=A+Writer>, Accessed 1 November 2011.

<sup>21</sup>*Press Conference on Issues of Exclusion Against People Living with HIV, Marginalized At-Risk Populations*, [http://www.un.org/News/briefings/docs/2008/080611\\_HIV.doc.htm](http://www.un.org/News/briefings/docs/2008/080611_HIV.doc.htm), Accessed 10 November 2011.



countries around the world to review their own laws, policies and practices to ensure that discrimination against transgender and intersex individuals is addressed in a systematic and effective way.<sup>22</sup> The Islamic Declaration of Human Rights created by the Organization of the Islamic Cooperation (OIC), however, does not cover any rights for transgender community. Transgenderism is said to contradict the Islamic values, on issues or rights of the transgender community has not been discussed thoroughly among the OIC members so far.

### 7. Level of Acceptance towards Transgender Community

In this study, the researchers obtained 100 university students as respondents for a socio-cultural questionnaire and 20 transgender individuals as respondents for a transgender community questionnaire. For interview sessions, three *Mak Nyahs* and one Islamic religious authority were interviewed.

Ethnic Groups	Number of Respondents		Percentage (%)
	Male	Female	
Chinese	23	44	67
Malay	5	23	28
Indian	1	3	4
Others	1	0	1
Total	30	70	100
	100		

Socio-demographic Data of Respondents

The majority of the respondents (98%) were between 20 and 29 years old. Most of the respondents (36%) were Buddhists, followed by Muslim (29%), Christian (17%), Taoism (9%), Hinduism (4%) and others (4%). Only 31% respondents felt that members of the transgender community are accepted as part of the society in Malaysia, while 69% do not accept them as such. This is because religions such as Islam and Christianity prohibit transgenderism.

Out of the 31% respondents that accept the transgender community as part of the society in Malaysia, 42% respondents said that the transgender community is accepted by the Malaysian society because they

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<sup>22</sup>“Pillay Welcomed Australian Decision on Identity for Transgender and Intersex People,” <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11384&LangID=E>, Accessed 10 November 2011.

are human beings as well. 35% respondents said that the transgender community is accepted because they have the right to be who they want to be. There were 23% respondents who said that the community presents no harm to the society, therefore, there is no reason not to accept them as part of the society.

Conversely, out of the 69% respondents who disagreed to accept the transgender or transsexual community, most of the respondents (77%) said that transgenderism is against the Malaysian laws and contradictory to the tenets of religion. There were 20% respondents who said that the transgender community was not accepted because of their low social status, especially transgender individuals who work as sex workers. The rest of the respondents (3%) did not accept transgender individuals as they felt that they have lost their minds.

74% respondents did not agree that human beings should be given the right to choose the gender they want. This is assumed to be caused by two main reasons: (1) transgenderism is a contradiction to the tenets of religion, and (2) transgenderism is causing the ratio of human gender to be imbalanced. However, out of the 100 respondents who took part in this questionnaire survey, 80% agreed that the Malaysian government and society should pay attention to the transgender community's welfare, livelihood and legal status.

Out of the 80% of respondents who agreed that the government and society should pay attention to the transgender or transsexual community's welfare, livelihood and legal status, there were 56% respondents who felt that priority should be on HIV/AIDS prevention, followed by their legal status, health and job opportunities. This was because most of the transgender individuals were sex workers, thus HIV/AIDS prevention was considered as the most important aspect that the government and society should pay attention to.

## **8. Transgenderism in Malaysia**

The study managed to obtain 20 transgender individuals as respondents for the transgender community questionnaire. All of the respondents were *Mak Nyahs* from the Transsexual Drop-In Centre at Jalan Tunku Abdul Rahman, Kuala Lumpur. The Transsexual Drop-In Centre has about 20 to 25 *Mak Nyahs* visiting daily. All of the respondents were above 30 years old and majority of them (70%) were between 30 and 39 years old. The majority of the respondents were Malays (80%). The religious affiliation of the respondents was 85% Islam and 10% Christian. 5% respondents

were non-believers. As for their educational qualification, the majority of the respondents had secondary schooling (80%). Only 10% respondents had attended institutes of higher learning. As for the others, 10% had only finished up to primary school.

At present, the majority of the respondents (35%) were unemployed, 25% had turned to the sex industry for their livelihood and 10% worked as administrative assistants or receptionists. Some of the respondents worked part time as entertainers, dancers or make up assistants. The majority of the respondents were unemployed because of their level of education and also due to the social stigma and discrimination towards them.

More than half of the respondents had an income of below RM 1000 and some of them were living below the poverty line of RM 500. As for the rest, 45% had an income of between RM 1001–3000. This result showed that the life as a transgender individual is very hard. A monthly income of RM 1000 is not enough to cover the basic living expenses especially living in Kuala Lumpur, a city with high living costs.

### **9. Issues and Constraints Faced by the Transgender Community**

The majority of the respondents (45%) felt that Malaysians could not accept the transgender community as part of the society and 35% felt that Malaysians do. As for the rest, 20% felt that it depended as they felt that some Malaysians accepted them while some did not. When asked about the reactions of the society after knowing they were part of the transgender community, majority of the respondents (75%) said that they had been treated unfairly, as abnormal and some of them were scolded and humiliated. Only 25% said that they had been accepted like a normal person. There were 65% respondents who felt that they had been given a disapproving look when walking along the streets, 20% respondents felt they are treated unfairly and humiliated by Malaysian society in general. Only 15% respondent had not faced any issues being transgender individual.

When asked about Malaysian culture and religious beliefs towards transgender community, 40% respondents claimed that religion does not accept the transgender community, causing them to be humiliated and discriminated by the society. 25% respondents said that they are deemed as committing a sin because Islam does not allow transgenderism. 5% respondents claimed that the media has created a wrong perspective, causing the society to misunderstand the transgender community. As for the rest, 15% respondents said that they were indifferent and 15% of them had no comment.

Majority of the respondents (70%) said that the Malaysian government should pay more attention to the transgender community's human rights. 79% respondents said that the Malaysian government should pay more attention to transgender individual's livelihoods by providing jobs instead of discriminating against them. 36 % respondents said it was important to pay attention to their legal status and health care. Most of the respondents felt that the most critical issue faced by the transgender community was the absence of the basic human right to live as normal as other citizens in Malaysia.

## **10. Findings from the Interview Sessions**

### **10.1. Interview with Sulastri**

Sulastri (pseudo name) is the manager, and also an outreach worker at the Transsexual Drop-In Centre at Jalan Tunku Abdul Rahman, Kuala Lumpur. She is a *Mak Nyah* but she has not and will not undergo sex change to become a female because for her, gender and sexuality are two different matters. Besides that, the laws in Malaysia also prevent a transgender individual from having a sex change surgery. This is because it is hard for a *Mak Nyah* to apply for a female identity card or passport. However, most of her *Mak Nyah* friends have gone for sex change in Bangkok as there is no such facility in Malaysia since 1983.

Sulastri feels that Malaysian society should discover the diversity of gender and sexuality and accept the transgenders as part of the society. Transgenderism is not a religious issue, and to press charge a transgender individual for being a cross-dresser is unacceptable. Transgenderism is not an offence and the law cannot charge a person for who they are.

Sulastri revealed that almost all of the Muslim transgender individuals feel disheartened when they are considered committing offence for becoming who they are. Yet, it does not change their minds about being *Mak Nyah*. Moreover, Sulastri personally does not care what the religious authority will do when a Muslim is deceased; for her, it is just a ritual and she is the one who is going to answer to God, not the religious authority.

### **10.2. Interview with Manis**

Manis (pseudo name) is one of the outreach workers at the Transsexual Drop-In Centre at Jalan Tunku Abdul Rahman, Kuala Lumpur. She graduated from Universiti Putra Malaysia (UPM). She is currently working as an administrative assistant in a private company. Manis considers herself as a *Mak Nyah* even though she has yet to take hormones to have breasts, or go for sex change.

Manis wishes she was born as a female so that every constraint she faces would fade away. She became aware that she had been assigned to the wrong gender when her thinking, mannerism, behaviour and such was opposite from the norm. In her case, she definitely agrees to have a sex change operation in order to complement the look and feel “perfect” as a female. Yet, financial limitation is one of the main factors that hold her back from going for a sex change operation. Besides, her mother was against transgenderism.

Manis wishes that the Malaysian society would try to understand the needs and the plights of the transgender community as human beings like any other people around the world. They deserve the right to live. Manis also mentioned that it must be misunderstandings that cause the transgender community not to be accepted by Malaysian society. From the religious point of view, Manis feels that the misinterpretation of the religious books by the Islamic religious authorities have caused the social stigma that marginalized the transgender community. It is ironic to note that some Islamic countries like Iran allow sex reassignment surgery, but not Malaysia.

### **10.3. Interview with Nisha**

Nisha (pseudo name) is an outreach worker at the Transsexual Drop-In Centre at Jalan Tunku Abdul Rahman, Kuala Lumpur. She is a Hindu-Muslim who has undergone a breast implant surgery but not the sex change operation. Nisha considers her childhood to have been unhappy due to family affairs. Nisha was raised by her mother’s family, while her brother was raised separately by her father’s family. Nisha started to feel and think like a female when she was 7 years old. She used to wear female clothing, make up and even wear her mother’s high heels when she was a child. She was never forced to wear female clothes and her mother had never been hard on her when she wore female clothes. She also liked to play with female friends and often dreamt of being a girl with breasts and getting married to a man when she was just a child.

Nisha’s decision for being a *Mak Nyah* was hardly accepted by her family members. Since then, she left her home and stayed with her *Mak Nyah* friends in Kuala Lumpur. Nisha once worked as a receptionist. Yet, she revealed that time has changed and things were very different now. Most of the *Mak Nyahs* are currently jobless due to the social stigma created by media and religious authorities. Some of them are forced to work in the sex trade to earn a living. Even Nisha herself once worked as a sex worker. It was unpleasant but she did it for survival.

According to Nisha, Malaysian society is still not ready to accept them as part of the society. The understanding of the transgender community among the public is still very low. Thus, she feels that unless the public is educated about the diversity of gender and sexuality, discrimination towards the transgender community will continue. There was an unfortunate case involving one of her *Mak Nyah* friends the day before Nisha was interviewed. Nisha's *Mak Nyah* friend, who works as a sex worker, was abandoned at a highway in Malaysia and was brutally beaten up. Yet, when they went to file a report at the nearest police station, the police ignored them and asked them to leave.

Nisha strongly feels that transgender persons are born with the nature to become a *Mak Nyah*. To Nisha, it is her innate nature and a gift of God. Thus, it is not right that Islam prohibits gender change. For Nisha, God creates everything, including the nature of *Mak Nyahs*. Thus, she decided to be who she really is, and she will go for a sex change in Bangkok when she has the financial means.

Besides that, contrary to most Islamic religious authorities saying that a *Mak Nyah* is influenced by her friends or family to become a *Mak Nyah*, Nisha says otherwise. She has her life experience as important evidence. Nisha and her brother were raised separately in different families due to the events that happened in their home. Up to the day they were separated, Nisha and her brother had never demonstrated any characteristics of a *Mak Nyah*. Yet, when she met him again after 18 years, they had both become *Mak Nyahs*. So, the claim that *Mak Nyahs* are influenced by family members causing them to become a *Mak Nyahs* is inaccurate.

### **11. The Religious Interpretation on Transgenderism in Malaysia**

As seen in the Hadith (Sahih Bukhari, Volume 7, Book 72, Number 774; Sunan Abu-Dawud, Book 32, Number 4087), cross-dressing or for a man to behave and wear clothes like a woman is said to contradict the Islamic religion. Therefore, the Muslim *Mak Nyahs* who usually cross-dress are said to have violated the tenets of Islam.

Anisah binti Ab Ghani, Islamic expert from the University Malaya, explains that the factors that cause one to become a transgender individual are most probably due to the influences of the surrounding. These include the influences from friends and also the family. A male who becomes a *Mak Nyah* is said to be influenced by his friends who are also *Mak Nyahs*.

According to Anisah, family members also could play an important role in preventing transgenderism from happening. Early education is the main factor. It is said that in one family, when the son’s hormone testosterone is lower compared to the hormones oestrogen and progesterone, and he is not taught not to dress like a girl, sooner or later he will become a *Mak Nyah*. Conversely, if the son is taught to dress like a boy and act like a boy, he will never become a *Mak Nyah*.

In Islam, being a *Mak Nyah* is deemed as committing a sin as transgenderism is said to be a violation of the religion. Thus, *Mak Nyah* should blame no one when they are being discriminated or humiliated as Islam does no wrong (although, as explained, the failure to prevent the change can be put on the family to begin with) and a Muslim *Mak Nyah* should be following the teachings of Islam. Human beings are not allowed to challenge or go against God’s will.

To the question, “Everything is created by God, so is the thinking and mindset of the *Mak Nyah* to become who they are, but why can’t Islam accept *Mak Nyah*?” asked by one of the *Mak Nyahs*, Anisah responded that human beings are also given the wisdom to choose the right things to do, thus there is no excuse for one to blame God after he or she is influenced by things that opposes the good and the right.

Therefore, as for the issues on transgenderism, Anisah’s advice to *Mak Nyahs* in Malaysia is:

1. Accept who you are as what God has given to you.
2. Obey every teaching of Islam. God is never wrong. Muslims should be the ones who follow the teachings of Islam.
3. *Mak Nyahs* can speak or even behave “effeminately” but they need not cross-dress or change their gender and sex.

The *fatwa* has diversely affected Malaysia’s transgender community. Some of them have accepted the ruling, and agree that God’s will cannot and should not be challenged as religion is part of their upbringing. They are deemed as committing a sin if they challenge or go against God’s will. However, there are still many transgender individuals who identify and feel so strongly as a “complete woman”. Therefore, since the enforcement of the *fatwa*, several transgender individuals have gone to neighbouring countries like Thailand or Singapore for the sex reassignment surgery. There was a case in which one of the Muslim respondents in this research study decided not to believe in *Allah* as the Islamic religious authorities in Malaysia do not recognize the transgender community as part of the Malaysian society.

The prohibition on cross-dressing assumes great significance in Muslim *Mak Nyah* daily lives, since they are not allowed to pray in mosques when dressed as women. They are often forced to worship at home, even though for Muslims it is more meaningful to pray in groups. The Islamic ban on sex changes also affects the death rituals of transsexual individual. Certain rituals in the religion are gender specific. For example, the body of a deceased Muslim has to be bathed by someone of the same sex. But because the religion does not acknowledge sex change, a transsexual would be treated as a man even if he has had the operation, and would presumably be bathed by a man.

The tolerance of transgenderism in the Muslim community, however, varies from one geographical area to another. Hence, the extent of marginalization, rejection, and discrimination by Malaysian society and by the state differ as well. It is said that the enforcement of the religious edicts or *fatwa* by the police and Islamic authority is based on the Muslim Religious Department in each state in Malaysia. Kelantan is said to have the highest level of rejection of the transgender community.

Islam is the official religion and it is the only religion in Malaysia that has official religious rulings against some of the practices of the transgender community. And as for the non-Muslim transgender individuals, they are not under formal religious constraints, yet they are still not accepted in society as the police can still carry out raids and arrest them for “indecent behaviour” although Buddhism and Hinduism could accept the transgender persons. Although the Muslim transgender individuals in Malaysia, who make up the majority of the transgender community, share similar characteristics with other transgender individuals in other countries, many of them are certain it is innate. And as for Muslim *Mak Nyahs*, they have accepted the fact that they are not allowed to undergo sex surgery due to their religious beliefs and objections from family members. It could, therefore, be said that the Muslim *Mak Nyahs* are influenced to a large extent by their religion. However, though to many of them, cross-dressing and the deep feeling that they are female are enough to have the identity of *Mak Nyahs*, they wish the Malaysian society and Islamic religious authority could understand them for being a *Mak Nyah* instead of discriminating and humiliating them, or even carry out raids to put them in prison.



## 12. Conclusion

This research has shown that the transgender or transsexual phenomenon cannot be adequately explained by social factors alone. It is a complex phenomenon that needs explanations considering biological, environmental, as well as social factors.

The transgender community is essentially a non-entity in Malaysian society, and the majority of them have been brought up with this belief. Although many of the transgender individuals feel that they would be happier if they underwent the sex change surgery, they are reluctant to do so. They believe that if they had pursued it, they will face greater challenges to their legal status. For example, constraints faced when applying for a female identity card or passport and uncalled for issues when travelling abroad.

With Islam being the official religion of the country, most of the Muslim transgenders' lives are also challenged by the enforcement of the religious edicts by the police and the Islamic authority. As explained before, transgender individuals can be charged for indecent behaviour, cross-dressing or behaving like a female, under the Minor Offences Act 1955 or under the *Shariah* Law. Although this has never discouraged transgender individuals from cross-dressing, many of them would not go for sex change due to the prohibitions of religion and law in Malaysia. Cross-dressing and the feeling of being a female are said to be enough for the transgenders to have the identity as a *Mak Nyah*. They have accepted that they are *Mak Nyahs*, even though the Malaysian society and government do not recognize them as a person with a female identity.

With regards to non-Muslim transgenders, they share similar characteristics with their Muslim counterparts. Since there are no official restrictions imposed on them, many lead the life they prefer, including going for a sex change operation overseas if they can afford it, even though their religion (Christianity) may not accept transgenderism. They also face fewer problems with family members. Occasionally, they are caught by the police during raids for indecent behaviour under the Minor Offences Act 1955; this does not deter them from cross-dressing or going for sex change surgeries to lead a better life.

In conclusion, most of the transgender individuals are generally influenced by their culture and religious values, which shape their current identity. Yet, they consider themselves to be a transgender who has accepted that they are female at heart, although they are not allowed to undergo sex change surgery. Apart from that, as the world began to deal

with issues of sexual orientation, issues of gender identity remained in the closet as Malaysia had no policy that would support transgender community. In the past few years, this has begun to change. Transgender community of Malaysia are coming out of the closets and it is perhaps time for the Malaysian government and society to re-examine the current policies and practices in order to ensure that the transgender community can have fairer treatment. The public should at least try to understand more about the transgender community before any inaccurate assumptions or interpretations are made. Transgender individuals are human beings like any other citizens and they deserve the basic human rights to live in the society.

Lastly, it is hoped that with this research the society will be able to accept the transgender community and thus, stop any undue humiliation and marginalization. The changing of Malaysia's policies to better cater for gender identity would be one of the powerful ways to send a message that debates are necessary, given the understanding that as much as transgenderism is seen as an innate condition, the right of the majority in the society to believe in their perception that transgenderism may also just be a state that is the product of a certain way of living that need not be so to begin with, should also be given a fair hearing. For example there are innumerable effeminate men who leave normal life as fathers, husbands and the general male figure in Malaysian society.