



RESEARCH ARTICLE

Gender Identity Disorder from a Legal Perspective

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ARTICLE INFO	ABSTRACT
Received: Jun 6, 2024 Accepted: Aug 27, 2024	Islamic Sharia considers sexual health an integral part of general health and encourages seeking medical and psychological solutions for sexual problems. It does not leave those suffering from sexual disorders to search aimlessly for their gender identity; rather, it directs them towards medical examinations to uncover hidden signs that could help them identify with one of the two sexes. However, in modern times, a phenomenon known as "Gender Identity Disorder (Intersex)" has emerged, where some claim that their true gender differs from their assigned one at birth. In reality, this is often not the case but rather a deviation in behavior, driven by a desire to change their gender based on personal inclinations. The research concludes with findings regarding the legal ruling on gender correction surgeries, whether the disorder is fabricated as an attempt to imitate the opposite sex or is a genuine condition requiring the revelation of one's true identity, along with the consequences associated with such actions.
Keywords Gender Identity Intersex Gender Correction	
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INTRODUCTION

God created mankind in the best of forms, creating two types of human beings: male and female. Each of these types possesses clear and distinct characteristics that differentiate one from the other, in accordance with the natural order (fitrah) upon which God created people, without introducing a third type between them.

Islamic Sharia aims to protect human life from all forms of harm, using every means possible to ensure its preservation and well-being. Muslim jurists have given considerable attention to medical issues, and Islamic heritage sources are filled with discussions on various medical topics. Among these issues is the subject of "Intersex (Khuntha) or Gender Identity Disorder." You will rarely find a book of Islamic jurisprudence that does not address the legal rulings related to intersex individuals, highlighting the fact that this issue was a focal point of concern for scholars, who saw it as a complex jurisprudential dilemma requiring further investigation. This concern even led jurists to propose hypothetical scenarios that may not exist in reality, a practice known as "theoretical jurisprudence," undertaken as a precaution in matters of faith.

Accordingly, Islamic Sharia encourages comprehensive care for the sexual, mental, and physical health of the individual. It directs those who suffer from such issues to seek appropriate treatment, whether through consultation with medical professionals or by benefiting from psychological and

social support, in line with Islamic values and principles that emphasize the importance of holistic and integrated healthcare for the individual.

Prelude: The Reality of Intersex (Khuntha)

- First: **Definition of Khuntha in Language**: Khuntha refers to someone who is neither purely male nor female, or someone who possesses the characteristics of both sexes, derived from the word "khunth," meaning softness and flexibility (Lisan al-Arab, Ibn Manzur, 2/145).
- Second: **Definition of Khuntha in Terminology**:
- In Islamic Jurisprudence: Jurists provide similar definitions of intersex. A precise definition is that of Khuntha as someone who has both male and female organs. A person cannot be both a true male and female at the same time; they must be either male or female (Bada'i al-Sana'i, al-Kasani, 7/327). This definition refers to what is known as "false intersex," which will be further explained in the medical definition.
- In Medicine: Physicians define intersex (Disorders of Sex Development, DSD) as a person whose genitalia are ambiguous or atypical, meaning the external genitalia do not clearly align with male or female characteristics. This condition makes it difficult to classify the individual as male or female without further medical examinations, including assessments of the person's physical, genetic, and hormonal characteristics (The Physician's Etiquette and Jurisprudence, al-Siba'i and al-Bar, p. 315).

Types of Intersex (Khuntha) Cases and Their Impact on Classification:

First: The Cases Mentioned by Jurists:

Jurists have categorized intersex individuals into two types: non-problematic intersex and problematic intersex.

1. Non-Problematic Intersex: This refers to someone who displays clear male or female characteristics, making it evident whether they are male or female. Such individuals are not considered problematic; they are either male with additional organs or female with additional organs.
2. Problematic Intersex: This refers to someone whose male or female characteristics are not clear, making it uncertain whether they are male or female. Their signs and characteristics may confuse the examiner. Problematic intersex can be divided into two categories:
 - A person with two reproductive systems (two organs), where both male and female characteristics are equally present.
 - A person without either reproductive organ but with an opening, such as someone who has both a male organ and a female vulva and urinates from both (Hashiyat Ibn Abidin, 6/727; Minh al-Jalil, al-Hattab, 6/424; Rawdat al-Talibin, al-Nawawi, 1/78; Al-Mughni, Ibn Qudamah, 9/109).

First and Before Delving into Jurisprudential Details

Jurists often cite a narration attributed to Ibn Abbas (may God be pleased with him) that the Messenger of God (peace be upon him) was asked about a newborn who had both male and female genitalia. The question was: "From which will the inheritance be determined?" The Prophet replied: "The inheritance will be determined based on where the child urinates from" (Sunan al-Kubra, Al-Bayhaqi, No. 12518).

This hadith shows that when such a case was presented to the Prophet, he acknowledged its existence and did not deny it. He then provided a legal ruling, setting a criterion to resolve the matter by examining the urine outlet. From the Prophet's ruling, we can infer another judgment: if the source of urination is identified, then the rulings of masculinity will apply if urination occurs through the male organ, and the rulings of femininity will apply if urination occurs through the female organ.

Summary of Jurisprudential Opinions:

The leading scholars of the Islamic schools of thought have exerted significant effort to establish criteria by which an intersex individual can be classified as male or female. They considered various factors, such as the urination outlet, albeit with differing views on the importance of quantity and frequency. Other indicators included signs of puberty, such as the emission of semen or menstruation, as well as visible characteristics and bodily changes, along with internal traits like sexual desire.

However, when these indicators are absent or equally balanced in an intersex individual, most jurists faced difficulty in determining the person's gender. As a result, they classified such individuals under the category of problematic intersex, particularly those who lack any sexual organs.

The early jurists did their best to establish indicators that would help determine gender, and they are to be rewarded for their efforts, God willing. Their knowledge of medical issues was limited to what was available during their time. However, in our era, with advancements in medical science, it has become imperative for contemporary jurists to re-examine the inherited jurisprudence in light of modern medical research. This is necessary to develop a new legal interpretation that clarifies the complexities of intersex conditions and aligns individuals with their true gender identity. (Bada'i al-Sana'i, al-Kasani, 7/328; Al-Bahr al-Ra'iq, Ibn Nujaym, 8/539; Minh al-Jalil, al-Hattab, 6/424; Rawdat al-Talibin, al-Nawawi, 1/78; Al-Mughni, Ibn Qudamah, 9/108-109).

Second: Cases Defined by Medicine (Types of Intersex in Medicine)

True Hermaphroditism (Khuntha Haqiqi):

True hermaphroditism refers to an individual who possesses both male and female reproductive systems, specifically having both ovaries and testes. The external genitalia may resemble that of a female, male, or both due to chromosomal abnormalities. (The Creation of Man Between Medicine and the Qur'an, al-Bar, p. 495; The Physician's Etiquette and Jurisprudence, al-Siba'i, p. 316; Emerging Medical Issues in Light of Islamic Sharia, al-Batnishi, p. 525). This rare medical condition involves the presence of both ovarian and testicular tissue in one individual. (The Physician's Etiquette and Jurisprudence, al-Siba'i, p. 316).

Pseudohermaphroditism (Khuntha Kadhaba):

In pseudohermaphroditism, the external genitalia do not correspond with the internal reproductive organs or the individual's sex chromosomes. Pseudohermaphroditism is more common than true hermaphroditism. In these cases, the individual is chromosomally normal, with either ovaries or testes but never both. However, the external genitalia are the opposite of the internal reproductive organs. For example, an individual with ovaries may have male-like external genitalia, or someone with testes may have female-like external genitalia. (The Creation of Man Between Medicine and the Qur'an, al-Bar, p. 496; The Physician's Etiquette and Jurisprudence, al-Siba'i, p. 317; Emerging Medical Issues in Light of Islamic Sharia, al-Batnishi, p. 525).

This type of condition includes several specific cases, such as:

Female Pseudohermaphroditism:

In this condition, the individual is chromosomally female (XX) and has ovaries. However, the external genitalia may be ambiguous or appear masculine due to the influence of androgens (male hormones) from the adrenal glands or exposure to masculinizing hormones. In such cases, the clitoris may become enlarged, resembling a penis, and the labia majora may fuse, making them resemble a scrotum. The difference is that the scrotum contains testes, whereas in this case, it only contains fat. (The Physician's Etiquette and Jurisprudence, Al-Siba'i, p. 319).

When such a female is born, the parents may mistakenly believe the child is male and raise her as such. However, upon reaching puberty, signs of femininity, such as breast development, softening of the voice, and a female pattern of fat distribution, begin to emerge. Although the vagina may be closed, and menstruation absent, the uterus may show changes, leading to a buildup of blood. At this stage, the family may seek medical consultation, and the true nature of the condition becomes apparent, prompting them to request surgery.

In reality, the doctors in this case are not transforming a male into a female; rather, they are restoring a true female, even in her internal reproductive organs, to her natural state by removing any obstructions and surgically reconstructing the vulva to its normal condition.

Male Pseudohermaphroditism:

In this condition, the individual is chromosomally male (XY) and has testes, but the external genitalia appear female. This is much rarer than the previous case of a true female appearing male. (The Physician's Etiquette and Jurisprudence, Al-Siba'i, p. 320).

There are several underlying causes for this, including:

Feminization despite the Presence of Testes:

The external genitalia develop as female because the body does not respond to testosterone, the male hormone. This results in the development of female-like external genitalia, possibly including a vagina, although a uterus is absent. This condition is particularly challenging to diagnose because, at puberty, the breasts may develop like those of a female, but menstruation does not occur. (The Creation of Man Between Medicine and the Qur'an, Al-Bar, 3/288; Emerging Medical Issues in Light of Islamic Sharia, Al-Batnishi, p. 525; Islamic Legal Rulings in Light of Modern Medical and Biological Advances, Hammad, pp. 158-160).

Feminization Due to Hormonal Activity from the Adrenal Glands:

This results from a rare adrenal gland tumor that increases the secretion of estrogen (the female hormone). If such a tumor occurs in the fetus—a very rare occurrence, as this tumor is more common in adults—the influence of female hormones may dominate, preventing the descent of the testes into the scrotum. This causes the scrotum to split and resemble the labia majora, while the penis fails to develop fully. In such cases, the parents may mistakenly believe the child is female, and the child is raised as such until signs of masculinity emerge at puberty.

Feminization of the External Genitalia Due to Maternal Hormone Intake During Pregnancy:

Medical experts note that if a pregnant woman takes estrogen, especially during the first trimester, and the fetus is male, it can prevent the full descent of the testes. This results in the splitting of the scrotum, making it resemble the labia majora, and the penis may be underdeveloped, resembling a large clitoris. This condition is often not recognized until after puberty. (Emerging Medical Issues in Light of Islamic Sharia, Al-Batnishi, p. 528). In such cases, medical intervention is needed to restore the individual to their natural male condition through surgery.

Islamic Ruling on Gender Reassignment Surgery

There are three cases concerning surgeries related to gender reassignment:

First Case:

This involves converting a female into a male by removing external organs such as the breasts and eliminating the female reproductive system, followed by the construction of a male organ. Conversely, converting a male into a female involves the removal of the male organ and castration, followed by constructing an artificial vagina in place of the male organ and breast augmentation,

either through hormones or injections. In both cases, psychological and hormonal treatment is administered before the surgery.

Most gender reassignment surgeries today fall into this category, and the Islamic ruling on them is clear, as they are categorically forbidden. There are numerous evidences supporting this prohibition, as these procedures are seen as promoting immorality and corruption in society. The Islamic Fiqh Council in Mecca, in its 11th session, explicitly declared this type of surgery as forbidden.

Second Case:

This involves medical examinations of the reproductive glands. If the results indicate that the gland is an ovary, while the external genitalia appear male, the individual is classified as having "pseudohermaphroditism" (false female). The body has only one type of sexual gland, but also has some characteristics of the opposite sex. This condition is generally due to an imbalance between male and female hormones. In such cases, surgical intervention is performed to reveal the true female genitalia.

In many instances, this condition may confuse the family due to the influence of male hormones causing the genitalia to appear masculine. For example, the clitoris may grow significantly, resembling a penis, and the labia may fuse, resembling a scrotum, which in this case, contains fatty tissue rather than testicles. At birth, the child may be mistakenly identified as male, but upon reaching puberty, the true nature becomes evident. However, modern medical examinations can reveal the condition from birth, allowing for surgical correction to restore the individual's true gender.

Third Case:

This involves having both male and female reproductive organs, known as "true hermaphroditism," where the individual possesses both a testicle and an ovary. In this case, the external genitalia may resemble either male or female organs, or both. This condition is extremely rare, if not nonexistent, as there are no recorded cases of such an individual in modern medicine. Additionally, it is implausible for a hermaphrodite to fully function as both a male and female.

The scholars have mentioned this scenario when defining hermaphroditism as having both male and female genitalia, or having neither, with a single opening for urination. Islamic jurists have often relied on medical opinions in many matters where the ruling was unclear, and have considered the testimony of qualified physicians to be authoritative. Examples include rulings on the harmful effects of sun-heated water or the permissibility of using medical conditions as excuses for certain religious exemptions.

It is important to note that jurists' discussions on medical matters were based on the medical knowledge available at their time, whether from consulting women, receiving cases, or seeking the advice of contemporary physicians. The various juristic opinions and legal interpretations regarding hermaphroditism were often based on personal reasoning or the medical knowledge of their era. Not all jurists accepted these strange views; for instance, Al-Hasan Al-Basri stated, "Allah would not impose such hardship on His servant that they wouldn't know if they are male or female."

- Imam Al-Juwayni, when confronted with the claim that there is a difference between male and female in the number of ribs on the chest, where if the ribs on the left side are fewer, the individual is a man, and if they are equal on both sides, the individual is a woman, rejected this notion by saying: "This claim about the disparity in ribs, I do not understand it, nor do I see a difference between men and women," adding that it has no basis in religious law or anatomy books (Rawdat al-Talibin, Al-Nawawi, 2/48). Thus, it can be understood that the scholars have considered and reflected upon accepting opinions that might contradict reason and medical conclusions.

- Ibn Qudamah also states: "A hermaphrodite is one who has two genitals; a male organ and a female organ. It must be either a male or a female. Allah says: {He created you in the wombs of your mothers, creation after creation} [Surah An-Najm:45]. He also says: {O mankind, fear your Lord, who created you from one soul} [Surah An-Nisa:1]. There is no third creation" (Al-Mughni, Ibn Qudamah, 10/94). Therefore, the external appearance of the genital organs determines the sex. If there is ambiguity, a blood test is used to determine the genetics (male or female). If hermaphroditism is confirmed:
 - If the external genitalia resemble that of a woman, the person is treated as a female.
 - If the external genitalia resemble that of a man, the person is treated as a male.

Considering the objective of gender correction rather than change, religious evidence can be adapted to allow it, even to the extent of deeming it necessary if it causes psychological or other issues for the patient, based on the following:

- Sharia has generally commanded treatment, as evidenced by the Prophet ﷺ saying: "For every disease, there is a cure. When the cure is found, the disease is cured, with Allah's permission" (Sahih Muslim, Hadith 2204).
- The harm caused to a hermaphrodite both morally and psychologically, as well as the practical issues related to inheritance and other rulings, is addressed by Sharia through the principle of removing harm: "Harm is to be removed."
- The permissibility of corrective surgery is also supported by the Hadith of Jabir: "The Prophet (Peace be upon him) sent a doctor to Abu ibn Ka'b, who cut a vein and then cauterized it" (Sahih Muslim, Hadith 2207). Gender correction falls under this general permission, as surgery aims to treat and restore the condition to its original state (Contemporary Medical Issues in Light of Islamic Law, Al-Batnishi, p. 531).

An important issue regarding [Gender Identity Disorder]: Some propose linking the identification of a person with gender disorder to their inclinations and feelings as the determining factor. If they are inclined towards males, they are considered male, and if inclined towards females, their request is honored. In reality, this approach is not accepted because inclination alone is not a sufficient criterion due to its variability, influenced by many factors such as doubts, media, companionship, and so on.

Scholars have stated that determining the gender of a hermaphrodite based on internal inclinations is not valid except in two cases: first, when it is impossible to determine based on visible signs, and second, when there is neither a male organ nor a female organ. In all other cases, one cannot assign them to either gender based on internal inclinations or what can be expressed today as an internal feeling of belonging to the opposite sex.

Al-Nawawi stated: "Among the criteria is inclination. If someone says: 'I am inclined towards women,' he is a man, or 'towards men,' she is a woman, provided the previous signs are not present. Inclination is considered only after reaching maturity and mental soundness" (Rawdat al-Talibin, Al-Nawawi, 1/78-79).

Ibn Qudamah also noted: "If someone claims to be a woman but inclines naturally towards men, he should marry a man; this is a matter known only to him and does not impose a right on others. Hence, his statement is accepted as is the case with a woman in her menstruation and waiting period... This inclination is a matter of the self and desire not visible to others, and since the visible signs are inaccessible, it is referred to internal matters concerning his ruling" (Al-Mughni, Ibn Qudamah, 10/95).

Thus, Islamic jurisprudence does not remain rigid on transmitted texts but accepts renewal and consideration of issues open to *ijtihad*, especially those that require correct understanding from experts in fields such as medical issues.

Accordingly, a person who suffers from or claims to have [Gender Identity Disorder] falls into one of two cases:

- First Case: A fabricated and not genuine condition where one claims to have an inclination towards the opposite gender, often manifested by mimicking that gender and convincing oneself of this false inclination. This case is a behavioral deviation that requires deterrence and rehabilitation for those affected. If this pretense extends beyond behavior to undergoing surgical procedures to imitate the opposite gender, resulting in visible changes, this behavior is considered a crime, distortion, and self-harm, which Islamic law condemns and considers a major sin.
- Second Case: A genuine disorder, where the patient needs to undergo tests to examine the signs and the presence of male and female genitalia to determine their true identity. Islamic law permits this and even recommends it to alleviate the psychological distress and to enable the person to lead a stable and happy life. This may require necessary surgical procedures to reveal the true identity. Islamic law mandates the removal of harm, and since the confusion and ambiguity cause harm, it is obligatory to remove it as much as possible. Leaving it unresolved when it can be addressed leads to:
 - Psychological damage and complications negatively affecting the patient's health.
 - Sin associated with imitating the opposite gender when it can be avoided, which is subject to condemnation.

Additionally, scholars and doctors agree that a hermaphrodite performing both male and female roles does not have a basis, specifically regarding the ability to conceive and give birth in males and females (Legal Rulings in Light of Contemporary Medical and Biological Advances, Hamid, p. 165).

It is known that the legal rulings concerning hermaphrodites are based on the information provided by doctors, as well as experience and observation available in previous eras, without resorting to histological examination of the reproductive glands. Contemporary scholars should review these rulings—concerning hermaphrodites—based on the advancements and broad medical developments of the present era.

To achieve this, it has become crucial for meetings between doctors specializing in this field and contemporary scholars to produce legal rulings consistent with modern medical knowledge. There is no contradiction between ijihad-based legal rulings and scientific progress; in fact, changing ijihad rulings is a healthy process as "rulings change with the times."

These rulings are not based on definitive religious texts from the Quran and Sunnah that cannot be altered by scholars but are based on the scholars' ijihad according to the available resources. Hence, surgical intervention can determine the true nature of a hermaphrodite—whether male or female. Once the true nature is revealed, the person should be treated according to the gender of their genitalia. If the true nature remains unclear, the third case—although extremely rare—may lead to a revision of legal opinions regarding male and female characteristics as follows:

- A criterion mentioned for determining male from female was urine and its quantity, which can now be replaced with medical tests such as chromosome analysis.
- Determining internal sexual organs, such as ovaries and uterus in females, and prostate and vas deferens in males.
- Criteria for determining male from female through rib count and inclination towards the opposite gender based on mere desire. They also mentioned that the absence of menstruation indicates maleness. These criteria can be reviewed or even discarded with scientific advancements and accurate medical tests.

Based on the above, it can be concluded that performing surgical procedures aimed at gender transformation or correction, based on personal inclination and manipulation by Satan, is not permissible except in the case of a hermaphrodite with physical attributes of both male and female.

It is also not permissible, according to Islamic law, to rely on the behavior and inclinations of a hermaphrodite for determining their gender identity except in two cases:

- First Case: When it is impossible to accurately determine the signs and descriptions.
- Second Case: When the hermaphrodite does not have either male or female genitalia. In all other cases, one cannot assign them to either gender based on their internal inclinations or what an individual with a fabricated disorder might claim—that their spirit belongs to the opposite gender. Allah knows best.

In this regard, the Islamic Fiqh Academy, during its 11th session held in Mecca on 13 Rajab 1409 AH, corresponding to 19 February 1989, addressed the issue of transitioning from male to female and vice versa. After discussion among its members, it decided as follows:

- A male with fully developed male genitalia, and a female with fully developed female genitalia, should not be transitioned to the other gender. Attempting such a transition is a crime and its perpetrator deserves punishment, as it involves altering Allah's creation.
- For individuals with both male and female characteristics, the predominant condition should be assessed. Medical treatment to remove ambiguity is permissible, whether it involves surgery or hormones, as this is a disease with the aim of curing it, not altering Allah's creation.

CONCLUSION

The research has reached several conclusions, the most important of which are:

- Islamic law places significant importance on sexual health and encourages seeking medical and psychological solutions for sexual issues.
- Islamic law has clarified the rulings related to hermaphrodites and the necessary procedures.
- The internal feelings and inclinations that drive an individual to undergo gender transition are not a valid criterion for determining gender identity until an accurate diagnosis is made.
- Surgical medical intervention is permissible to correct abnormalities and restore the condition to its original state, but not to change it to a different gender from the true one.

RECOGNITIONS

"This work was supported by the Deanship of Scientific Research, Vice Presidency for Graduate Studies and Scientific Research, King Faisal University, Saudi Arabia, Grant Number: **KFU241706**").

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