

Evaluation of Islamic Perspectives on Social and Legal Issues of Intersex (*Khunthā*)

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Abstract

*Intersex persons are also the creation of Allah(azza wa Jallah). They have sexual deformity (having both genital organs i.e., masculine and feminine) or none of any. They are also bound of the Islamic commandments. The Sharī'ah commandments for intersex (**Khunthā Ghair Mushkal**) are obvious whose identity is clear. The rulings for such person regarding worship or any other social issues will be same as that of other Muslims. The second kind is intractable intersex person (**Khunthā Mushkal**) whose identity is difficult to determine due to equivalent signs. Such person also keeps one particular identity either of male or female. This article focuses on the rulings about worship and other social matters of intersex person.*

Keywords: Intersex, Medical Reasons, Khuntha, Sharī'ah

1. Introduction

Intersex usually has the sexual characteristics of both male and female. Intersex is the one who is congenitally born with both male and female organs. The transgender community mostly pretends to have such identity.¹ According to Oxford Learners Dictionary, intersex is the person or animal that has both male and female sex organs and characteristics.² Literally, the word intersex is the combination of two words ‘inter’ and ‘sex’. Inter means ‘mixed’ or ‘blend’ and sex means ‘the biological characteristics in the body’. Technically, intersex deals with the number of situations related to unusual evolution of physical features. The term ‘Disorders of Sex Development’ has been used by the medical research community in 2006. This term is associated with the biological state features.³ According to International Commission of Jurists, ‘intersex’ belongs to the variety of physical situations which do not come in the spectrum of male or female divisions. The sequence of chromosomes is XXY or XO instead of XX or XY. The genital organs of some intersex persons are unable to recognize as male or female organs. Intersex is not a medical situation inherently but this term is used as a tag to describe the biological diversity.⁴ The first type of hermaphrodites is female pseudo who has ‘XX’ chromosomes but has male organs and looks like male physically. This type is opposite to ‘Male Pseudo’. The second type has ‘XY’ chromosomes but has female organs and has male physical appearance.⁵

¹Jami, “Status of *Hijra* in *Pakistan* (Country Report)”, 4.

² ‘Intersex’ Oxford Learners Dictionaries, intersex_1 adjective - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com

³ “Key Terms and Concepts in Understanding Gender Diversity and Sexual Orientation Among Students”, Wesleyan University – Counseling and Psychological Services (CAPS), December 28 2018, <https://www.wesleyan.edu/caps/Gender>.

⁴ En Espanol, “Intersex”, International Commission of Jurists, accessed June 15, 2023, [Chapter six: Intersex | International Commission of Jurists \(icj.org\)](https://www.icj.org/)

⁵Mithani, *Burfat*, “*Hijra*- The Sex in Between”, 1

1.1 Concept of Transgender in Islam

Transgender is an umbrella term used for the person who thinks himself/herself opposite to his/her biological sex. In some cases, such person perceives himself neither as male nor female (non- binary) and known as ‘Gender Dysphoria’ in medical term.⁶

1.1.1 Qur’anic Perspective

Being a transgender is a disability rather than any curse. Islam treats transgender as similar to other male and female. They are born with sexual disability as similar to other disabilities such as hearing.

هُوَ الَّذِي يُصَوِّرُكُمْ فِي الْأَرْحَامِ كَيْفَ يَشَاءُ ۚ لَا إِلَهَ إِلَّا هُوَ الْعَزِيزُ الْحَكِيمُ⁷

*He it is Who shapes you in the wombs as He pleases. There is no God but He, The Exalted in Might and Wise.*⁸

It is explicit from the above verse that every human being is created by the will of Allāh(عزوجل). Transgender is also one of the creations of Allāh(عزوجل).

1.1.2 *Hadīth* Literature

Transgender community was also present at the time of the Holy Prophet Muhammad(ﷺ) and His companions. In *hadith*, the word ‘*mukhannath*’ has been used for ‘effeminate’ person who is similar to a woman. They were associated with entertainment during *Umayyad* and *Abbasid* period. They were employed as servants in the early days of Islam.⁹ There are some proofs in the Islamic history that they used to copy the feminine appearance. There is strict warning for those males who copy female and those females who copy males. It is narrated from Ibn Abbas, ‘*The Prophet (ﷺ) cursed effeminate men (mukhannath) and women who*

⁶Haq, “Intersex and Transgender from Medical Point of View”326-328.

⁷ Al-Qur’an, 3:6

⁸ Ali, “Meaning of Holy *Qur’an*”,126-127.

⁹ Everett K. Rowson “*The Effeminate of Early Medina*”, *Journal of the American Oriental Society*, 111, no.4 (1991), 671-673.

imitated men, saying: Put them out of your houses, and put so-and-so out.¹⁰

1.1.3 Islamic Jurisprudence

In *fiqh*, both terminologies ‘*mukhannath*’ and ‘*khunsa*’ have been used as alternative for ‘transgender’ and ‘intersex’.

1.1.3.1 *Mukhannath*(مخنث)

Mukhannath(مخنث) is an Arabic terminology extracted from the root word *خنث* which means ‘crushed’, ‘smashed’ and ‘twisted.’¹¹ In Islam, *mukhannath* is the person who has female voice. According to Ibn-e-Manzoor, *mukhannath* is neither male nor female. In Arabic language, male intersex (*rajul khuntha*) is the one who has both male and female organs.¹² According to the *Hanafī* and *Hanbali* school of thought, there are two types of *mukhannath*. First type of *mukhannath* has no interest in women and such persons can also enter in female places. The other type has physical attraction towards women but they are not allowed to have interaction with them.¹³ According to *Māliki* and *Shāfi* school of thought, *mukhannath* is not a person who perform vulgar act but has firm delicacy and feminine attitude.¹⁴

1.1.3.2 *Khunthā*

The word ‘*khunthā*’ means ‘gentleness’ and ‘flexibility’. The plural of *khunthā* is *khansaa* and *wa-khinas*. Technically,

¹⁰Abu Dawud, “Sunan Abu Daud”, 5, Hadith no. 4930, 325.

¹¹Ibn e Manzoor Muhammad Bin Muqaram, “Lisa ul Arab” 2, Nashr Adab al-Jawza, 1405 AH.

¹²Ibn Manzoor, “Al-Lisan al-Arab 2

¹³Rezwana Karim Snigdha, “An Obscure Perception of Transgender in Islam: A Case of Hijra in Bangladesh” 19, no.5, 3.

¹⁴Fozia Naseem, Muhammad Hamzah, and Syed Muhammad Najam Ameer Shah, “Rights of Transgender Persons: An Analytical Study of Sharia”, Global Legal Studies Review 6 no.1, 81-82.

khunthā is that person who has both male and female organs.¹⁵ The word ‘*khunthā*’ has been eradicated from ‘*khuns*’ (خُنث) which means ‘gentleness’ and ‘flexibility’. The plural of *khunthā* is *khansaa* and *wa-khinas*. Technically, *khunthā* is that person who has either both male and female genitals or none of them.¹⁶ In *fiqh*, ‘*khunthā*’ is used for the person having two genitals.¹⁷ In English language, *khunthā* are known as ‘intersex’ or ‘hermaphrodite’.

2. Classification of *Khunthā*

The jurists have classified *khunthā* into two different types:

2.1 Non- Problematic Intersex (*Khunthā Ghair Mushkil*)

The non-problematic *khunthā* (خُنثَى غَيْرِ مُشْكِل) is the one who has both genital organs but has one dominant sexual feature either of male or female. If he has male dominant feature then he will be considered as male and vice-versa. Similarly, all rules and commandments of *Shariah* will be according to particular gender. If he is *khunthā* male, male rulings will be applied on him and if he is *khunthā* female then all female commandments will be applied on him.¹⁸

2.2 Problematic/Intractable intersex (*Khunthā Mushkil*)

The problematic intersex (خُنثَى مُشْكِل) is the person who has both genital organs. It has further two kinds:

2.2.1 Recognition of Gender Identity of Intersex before Puberty

¹⁵ Trans. *Islamic Fiqah Academy India, Mousua Faqhiyah 20*, (Kuwait: Wazarat e Oqaaf o Islami Amour), 51.

¹⁶ Trans. *Islamic Fiqah Academy India, Mousua Faqhiyah 20*, (Kuwait: Wazarat e Oqaaf o Islami Amour), 51.

¹⁷ *Waheed uz Zaman Qasmi Kiranvi, "Qamoos al Waheed"*, (Lahore, Karachi, Pakistan: Idara Islamiyat, June 1, 2001), 478.

¹⁸ *Fiqah Academy, Mousua Faqhiyah 20*, 51.

Before attaining puberty, the type of organs will identify the kind of hermaphrodite.

2.2.2 Recognition of Gender Identity of Intersex After Puberty

According to the *Hanafi* school of thought, male has beard and female undergoes menstruation.¹⁹

3. Medical Reason of Born as Intersex

There are three main factors which may lead towards the birth of an intersex person:

3.1 Abnormalities in Chromosomes

The normal order of chromosomes is XX in woman and XY in man whereas an intersex person has some abnormalities in these regular patterns of chromosomes. They have chromosomes of 46-XX, 46XY, 47XXY or 47-XXX, 45-XO (a missing chromosome).²⁰

3.2 Hormonal Reasons

There are some hormonal reasons which may be the output of this reason. This condition includes increased production of some enzymes which leads towards excess in estrogen (female hormone).²¹

3.3 Physical abnormalities

They do not have any visible cause.²²The determination of gender identity of such an intersex person is difficult Allah (عزوجل) has created him also with one particular gender identity. It can be ambiguous before puberty but after getting into adulthood, gender is clearly revealed. On the basis of his dominant sexual characteristics, he will be kept in the category of one particular sex either male or female.

¹⁹Hassan, "Al Qadoori", 308-309.

²⁰Haq, "Intersex and Transgender from Medical Point of View", 326

²¹Haq, "Intersex and Transgender from Medical Point of View", 326

²²Haq, "Intersex and Transgender from Medical Point of View", 327

4. *Sharī'ah* Commandments related to Worship of *Khunthā*

Ibādah means 'subjugation'. Technically, it is obedience and adherence to Allāh (عزوجل).²³ Allāh(عزوجل) has created human to worship Him alone. This is one of the foremost objectives of His creation.²⁴ The objective of worship is to get closer to Allāh (عزوجل) to attain His love. The one who relinquish worship of Allah (عزوجل) commits sin.²⁵ Allah (عزوجل) said in 41:56, *I have only created Jinn and men, that they may serve Me.*²⁶

Islām is the complete code of life. In the Holy Qur'ān, Allāh (عزوجل) addressed all mankind without the discrimination of man or woman or any person having both physical attributes i.e., intersex. All humanity is subject of law and will be accountable for their deeds on the day of resurrection.

4.1 Rulings related to Congregational Prayers

There is agreement of jurists that intersex can also join congregational prayers. Male will stand in the first row followed by children and then intersex and in the last row females will stand. According to the *Hanbali* School of thought, intersex person will stand on the right side of male.²⁷ When the intractable intersex person stands behind *imam*, he should stand between the rows of male and female. With the possibility of being female and standing in the row of male will not make the prayers null and void of anyone. He has to repeat his prayers while standing in the row of female because there are chances that he can be a male. The people

²³ "*Ibādah*", DB pedia accessed on July 2, 2023, [About: Diya \(Islam\) \(dbpedia.org\)](https://dbpedia.org)

²⁴ *Aminu Yakubu et al, "Legal and Illegal Earning in Islām: A Literature Review"*, SSRN (2019), 3

²⁵ "*Importance of Worship According to the Qur'ān and Sunnah-Types of Worship in Islām*", *Qur'ān Reading*, accessed on July 2, 2023, [Importance of Worship According to the Quran & Sunnah - Types of Worship in Islam - Islamic Articles \(quranreading.com\)](https://quranreading.com)

²⁶ Ali, *The Meaning of The Holy Qur'ān*, 1363.

²⁷ Trans. *Islāmīc Fīqah Academy India, Mousua Faqhiyah 20*, (Kuwait: Wazarat e Oqaaf o Islami Amour), 54

who stood by his any side have to repeat prayers with the same possibility.²⁸

4.2 Ruling related to *Imamate*

There is agreement between the jurists that the *imamate* of intersex person is not appropriate for both male and female.²⁹ According to *Imām Mālik* (رحمته الله عليه), the *imamate* of an intersex female is strictly prohibited.³⁰ According to *Ḥanafī*, *Shāfi'ī* and *Ḥanbali* school of thought, the problematic intersex will stand in front of women instead of center during *imamate*. There is possibility that the problematic intersex *imam* is a male so he would stand in front of them. According to *Imam Ahmed*, it is possible for intersex person to lead *Tarawih* prayer if he is *Qari*. According to *Imam Mālik*, it is not appropriate for the intersex person to lead the prayer of male as the leadership of intersex person is illegitimate. If the intersex person stands in the row of male as a follower (مقتدى), in this condition prayer will be valid in case of both male and female according to *Ḥanbali* school of thought.³¹

4.3 Ruling related to *Adhan and Iqamah*

There is no contradiction between jurists that the *adhan* of problematic intersex is inappropriate as it is unknown that whether he is man or not. There is consensus of jurists on this issue that the *adhan* of intersex is not permitted.³²

²⁸Jameel Ahmad Sakrodhavi, *Ashraf ul Hidayah Sharha Urdu Hidayah* 16 (Karachi, Pakistan: Dar ul Ishaat, 2005),280-281.

²⁹Fiqah Academy, *Mousua Faqhiyah* 20, 54-55.

³⁰Dost Muhammad, Hafiz Saleh Uddin Haqqani, Zia-ur-Rehman, "Khunsa (Khuwajasira) Ka Taruf aor is k Shar'ae Ihkaam aor in k Huquq k Liye Tajaweez", *Pakistan Journal of Islamic Research* 9, (2012):209.

³¹Fiqah Academy, *Mousua Faqhiyah* 20, 54-55.

³²Fiqah Academy, *Mousua Faqhiyah* 20, 54.

4.4 Rulings related to Pilgrimage (*Hajj*)

According to *fuqaha*, intersex person is similar to female in the rituals of *hajj*. She has to wear stitched clothes and cannot perform pilgrimage without *mahram*. According to *Hanbali* school of thought, when an intersex person will put on *ihram*, it is unnecessary for him to wear stitched dress and if he covers his head there will be no atonement on him because there is a possibility that he might be a woman. Similarly, if he covers his face and does not wear stitched dress as *ihram* then there will be no atonement on him because there is a possibility that he is a male. But if he covers his head and face simultaneously, he has to pay the expiation because if he is a man then he has covered his head and if he is woman and he has covered his face. Similarly, if he has covered his face and wears stitched dress in this case, he has to pay the expiation because if he is a woman, he has covered his face and if he is a man, he has worn stitched dress.³³ The intersex that is near to puberty and put on *ihram* is abominated on him to travel without *mahram*.³⁴

5. *Sharī'ah* Commandments related to Social and Legal Issues of Transgender Persons (Intersex)

According to Islam, there is sovereignty of Allāh (عزوجل) on each and every right of human.

5.1 Covering of *Satr*

According to *Hanaftī* and *Shāfi'ī* school of thought, the body parts of intersex are obligatory to be covered. He cannot disclose his private parts in front of anyone. If he discloses his parts in front of any man it is possibility that he might be a woman and vice-

³³*Fiqah Academy, Mousua Faqhiyah* 20, 55-56.

³⁴*Muhammed, Haqqani, and Rehman, Khunsa K Shar'ae Ihkaam*, 206-207.

versa. According to *Ḥanbali* school, intersex is similar to a male so he has to cover his *satr* according to males.³⁵

5.2 Obligation of Bathing

According to *Māliki* and *Shāfi'ī* school of thought, the ablution of intersex person will break if he touches his private parts. In case of additional organ, ablution is not nullified in both male and female cases. According to *Hanaḥī*, *Shāfi'ī* and *Ḥanbali* school of thought, besides of adult and sane intersex person, bathing is not obligatory in any case.³⁶

5.3 Prohibition for Intersex Person to Visit Women

It is prohibited for such person to visit women. In the *hadīth* of the Holy Prophet Muhammad (ﷺ), there is clear prohibition for such person who is easily impressed by the beauty of opposite gender.

5.4 Circumcision of Intractable Intersex

There is difference of opinion of jurists related to the circumcision of intersex. In *Hanaḥī* school of thought, it is legitimate to do circumcision.³⁷ A concubine is also bought for circumcision depending on the amount of wealth. If he does not have wealth then a concubine is bought from the government treasury. Then after the circumcision, the ruler sells the concubine and returns the money to the treasury.³⁸

5.5 Testimony of Intersex Person

³⁵*Fiqh Academy, Mousua Faqhiyah* 20, 53

³⁶*Fiqh Academy, Mousua Faqhiyah* 20, 54.

³⁷*Muhammed, Haqqani, and Rehman, Khunsa K Shar'ae Ihkaam*, 208.

³⁸*Sakrodhavi, Ashraf ul Hidayah* 16, 282.

Majority *fuqaha* hold the view that the intersex person is like a woman in matter of testimony. According to *Hanaḥī* school of thought, intersex is like a female in every matter except retaliation (*Qisas*). According to *Māliki*, *Shāfi'ī* and *Hanbalifiqh*, he cannot be appointed as judge because there is no surety of male or female.³⁹

5.6 Status of Vote

From *Sharī'ah* perspective, vote is a type of testimony. He has right of testimony and as well as vote.⁴⁰ All the rulings concerning testimony are also applied on vote. The vote gives confirmation that the concerned person is capable of getting membership of parliament and leadership.⁴¹

5.7 Rulings Concerning Blood Money (*Diyat*)

Blood money (*diyat*) is remuneration of bloodshed.⁴² It is the financial penalty which a murderer pays to the prey or heirs in matter of murder or destruction of property. It is a substitute punishment of *qiṣāṣ*. It is only applied when the murder is done by mistake and the *wārith* of the prey are agreed to take compensation from the culprit. If the heirs are not willing to take the compensation, then punishment will be implemented.⁴³ There is clear commandment of blood money in the *ḥadīth* of the Holy Prophet Muḥammad *صلى الله عليه وآله وسلم*. According to all four (*Hanaḥī*, *Māliki*, *Shāfi'ī* and *Hanbali*) schools of thought, sane intersex will not give the blood money until his gender is revealed. When he gets adult and he is murderer then according to *Hanaḥī*, *Māliki* and *Hanbali* school, half blood money will be obligatory on

³⁹ *Fiqah Academy, Mousua Faqhiyah* 20, 58.

⁴⁰ *Muhammed, Haqqani, and Rehman, Khunsa KShar'ae Ihkaam*, 207

⁴¹ *Muhammad Taqī Usmani, Islam aor Siyasat e Hazira, (Karachi, Pakistan: Makataba Dar ul-Alum, 2008)*, 8

⁴² 'Diyāh', *Encyclopedia Britannica*, accessed on July 6, 2023, [Diyāh | Definition, Punishment & Compensation | Britannica](#)

⁴³ *Diya (Islam)*, accessed on July 4, 2023, [About: Diya \(Islam\) \(dbpedia.org\)](#)

him. According to *Shāfiʿī* school, the blood money of woman will be obligatory because there is no chance of doubt. According to *Ḥanafī* and *Shāfiʿī* School, retaliation on the basis of organs will be half of the blood money. *Ḥanbalī* and *Mālikī* school is of the opinion that it will be equal to one third of blood money.⁴⁴

5.8 Retaliation (*Qiṣās*) of Intersex Person

Qiṣās is an Islāmic terminology which means ‘retribution’.⁴⁵ The word *qiṣās* is originated from *قص* and *قصص* which means ‘pursue’ or ‘to go after’.⁴⁶

There is consensus of jurists that if man or woman is killed by intersex then intersex person will be killed for their murder as retaliation is compulsory. According to *Mālikī*, *Shāfiʿī* and *Ḥanbalī* school of thought, retaliation is obligatory in case of organs if a man or a woman cuts off any organ. According to *Ḥanafī*, there is no retaliation on the cutting hands of intersex.⁴⁷

5.8 *Qasāma* on Intersex

The word *qasāma* is derived from ‘*iqṣam*’ meaning ‘taking pledge’. It is the act of taking vow of about 50 men within the family of the murdered person. This may be applied when there are numerous people and the murderer is difficult to identify. According to *Mālikī* school of thought, *qasāma* is used when evidence identify the suspect.⁴⁸ According to *Ḥanafī* and *Ḥanbalī*

⁴⁴*Fiqah Academy, Mousua Faqhiyah* 20, 58-59

⁴⁵Muhammad Zahid, “Justice System of Islām in the Form of *Qiṣās*, *Diyāt* and *Hirābah* for the Protection of Human Dignity”, *International Research Journal on Islamic Studies* 1, no.1 (2019), 6

⁴⁶*Qiṣās in Islām*, accessed on July 5, 2023 [Qisas In Islam - Islam Hashtag](#)

⁴⁷*Fiqah Academy, Mousua Faqhiyah* 20, 58

⁴⁸Magala Fred, “*Qasāmat*”, Studocu, accessed on July 5, 2023, [Qasama in Islamic law of evidence - Magalafred18@gmail ISLAMIC UNIVERSITY IN UGANDA KAMPALA CAMPUS - Studocu](#)

school, the intersex person cannot take *qasāma* because he is similar to a woman and according to *Māliki*, intersex can take *qasāma*.⁴⁹

5.9 *Hadd* Punishment on Person for accusation of *Zinā*

According to *Māliki*, *Shāfi'ī* and *Hanbali* school of thought, if someone is accused of such act then *ḥadd-e-qadhaf* will be obligatory. If someone accused them of adultery by his organ so there will be no *ḥadd*. When he will do fornication from any one of his organs then no *qadhaf* will be imposed. According to *Imām Abū Hanīfa* (رحمته الله عليه), there is no *ḥadd* punishment on the one who accused the intersex person because if he is a male he is like an impotent person and if he is a woman, he will be like *rataqaa* (a woman whose vaginal track is blocked) but that person will come under *ta'zīr*.⁵⁰

5.10 Concerning the Marriage of Intractable Intersex

According to the *Hanafi* school of thought, if the father of an intersex person contracted his marriage with a male or female person then his marriage is legitimate. According to *Māliki* and *Shāfi'ī fiqh*, marriage contract is inappropriate in both cases. *Imam Shāfi'ī* says that the intersex should marry either man or woman once. If he has given preference of being a male so choose female as his partner. He cannot divorce his wife in order to contract another marriage as a female with a male person. *Hanbali fiqh* has their mutual disagreement related to the marriage of intersex person. The statement of an intersex will be as valid as the statement of woman concerning *idah* and menstruation.⁵¹ Before the age of puberty if the father of an intersex person contracts his marriage with a woman or man so this marriage contract will be suspended. The decision will be pending until they attain the age of

⁴⁹*Fiqah Academy, Mousua Faqhiyah* 20, 59

⁵⁰*Fiqah Academy, Mousua Faqhiyah* 20,59

⁵¹*Muhammed, Haqqani, and Rehman, Khunsa KShar'ae Ihkaam, 210-211.*

puberty. If his father contracted his marriage with a female and that intersex person turns into male then this marriage will be declared as valid. The second condition is of before puberty that if problematic intersex person has contracted marriage with same person on the condition of being male and female then their marriage contract will be suspended until their gender is revealed. If two males are contracted in a marriage contract then such type of marriage is void and vice-versa. Whereas, if one is man and the other is woman so such marriage contract is valid and legitimate. If one of them died before attaining the age of puberty then there is no share in inheritance as marriage is suspended.⁵²

5.11 Freedom of Concubine on the Birth of Intractable Intersex

If the man says that all slaves and concubines are free and have a problematic intersex so he will also get free until his condition appears on the basis of this statement. If he used both sentences together then he will be free because there is possibility of either male or female.⁵³

5.12 Inheritance of Intractable Intersex Person

Inheritance is the left property of the deceased person whether in the form of money or any other asset. According to the Qur'anic teachings, the heirs of the deceased person will get the share of inheritance as prescribed in the Holy Qur'an.⁵⁴

According to ImāmAbū Ḥanīfa(رحمته الله عليه)if father died and left a son and a problematic intersex person then the wealth will be divided in threefold. Two shares are for boy and one for intersex. According to ImāmAbū Ḥanīfa(رحمته الله عليه),problematic intersex is similar to women in inheritance and will receive two-third of

⁵²Muhammed, Haqqani, and Rehman, *Khunsa KShar'ae Ihkaam*, 211- 212.

⁵³Sakrodhavi, *Ashraf ul Hidayat* 16, 283-284.

⁵⁴Muhammad Zubair et al, "The Law of Inheritance in Islam", *Journal of Basic and Applied Scientific Research*, 2014, 84-85.

property. According to Imam Abu Yousaf, in case of only son, he is entitled to whole inheritance and in case of intersex person, 3/4 will be distributed between them. Imam Abu Hanifa said that if the intersex is real sister with two real brothers and one real sister then the share of inheritance will be half for husband and one-third for the mother.⁵⁵ The ruling for an intersex person who has both masculine and feminine signs is that if he married a woman and their children are entitled to inheritance. At the time of Hazrat Ali رضي الله تعالى عنه an intersex person who had both male and female organs and it was concluded that he is male then the same share was distributed among his children as in Islam. But if it remained unknown that whether the intersex is male or female then his inheritance will be distributed equally among both children.⁵⁶

5.13 Punishment of Homosexuality

Homosexuality is having interest towards same gender. The homosexuals are known as gay and lesbians.⁵⁷ This is one of the biggest sins in Islām and strictly abominated act of sodomy. In the Islamic history, this shameful act was firstly found in the nation of Hazrat Lūṭas it is mentioned in the Holy Qur’ān 7:81.

There is difference of opinions among jurists concerning the punishment of this act and for problematic intersex there is no such punishment. According to *Ḥanaḥī* school, the sodomy (same sex) intercourse is similar to fornication and left the punishment on the decision of the judge or court. The early scholars of *Ḥanaḥī* school have fixed the punishment of death for such people. *Imām Shāfi’ī* (رحمة الله عليه) refers the sodomy as similar to *zinā* and for married, there is punishment of stoning till death whereas the unmarried person will be punished with hundred stripes. According to some scholars, when two males commit this sin of

⁵⁵ *Sakrodhavi, Ashraf ul Hidayah* 16,289-290

⁵⁶ *Mehran Ali, "Jamiah al Fatawa", Multan: Idara Taleef Ashrafia*) 9, 412-413

⁵⁷ "Homosexuality", *Encyclopedia Britannica*, accessed on July 1, 2023, [Homosexuality | Meaning, History, & Facts | Britannica](#)

homosexuality then active partner will be punished with stoning or stripes as per his marital status but the passive partner will be killed without keeping in view his marital status.⁵⁸

5.14 Ruling related to the Fake Transgender

In Islām, it is prohibited to change the gender as some people become transgender by their own desire and will. For such people, there are strict rulings and warnings as it is said, ‘*The Prophet (ﷺ), cursed effeminate men (those men who are in the similitude (assume the manners of women) and those women who assume the manners of men, and he said, "Turn them out of your houses." The Prophet (ﷺ) turned out such-and-such man, and `Umar turned out such-and-such woman`.* The people who adopt the similitude of opposite sex are ordered to expel such people from houses. Even the Holy Prophet Muhammad (ﷺ) exiled such person from Madinah and later Hazrat Umar رضى الله تعالى عنه also dislodged such persons.⁵⁹

5.15 Earning of Intersex Person

Islam emphasizes to earn by lawful means. Those people who earn by their hands through lawful means are adored in Islam. Begging is the most popular way of earning among transgender community. They are found everywhere on signals, markets and houses. Islam discourages begging and on the Day of Judgment, such people will come up with no flesh as it is narrated by Abdullah Umar that, ‘*the person would continue begging from people till he would come on the Day of Resurrection and there would be no flesh*

⁵⁸Shafini Abdul Azeez Bello, 5-7 C.F “*The Punishment of Homosexuality in Islamic Contemporary World, [Malaysia, Iran, Pakistan and Saudi Arabia as a case study]*”.

⁵⁹Naseem, Hamzah, Shah, “*Rights of Transgender Persons*”, 80

on his face'. In the *ḥadīth* of the Holy Prophet Muhammad (ﷺ) (صلى الله عليه وآله وسلم), it is strictly recommended to earn by lawful means.⁶⁰

5.16 Ruling Regarding Intersex Identity

If the problematic intersex person claims that he is male or female so his argument will be accepted. It has been proved by all signs that he is an intractable intersex person as he knows his situation better than anyone else.⁶¹

5.17 Applying Hair Dye

There is a *ḥadīth* which highlights the ruling of Islam regarding *henna* and hair dye, it is narrated by Abu Hurairah that, 'an effeminate man (*mukhannath*) who had dyed his hands and feet with henna was brought to the Prophet (ﷺ) He (ﷺ) asked: What is the matter with this man? He was told: "Messenger of Allah! He imitates the look of women." So, he issued an order regarding him and he was banished to *an-Naqi'*. The people said: Messenger of Allah! (ﷺ) Should we not kill him? He said: I have been prohibited from killing people who pray. Abu Usama said: *Naqi'* is a region near Medina and not a *Baqi'*.⁶²

5.18 Wearing Jewelry and Silk

The problematic intersex cannot wear silk and jewelry in his life being a man. It was narrated from Abu Musa that, 'The Messenger of Allah ﷺ said, "Gold and silk have been permitted for the females of my Ummah, and forbidden to the

⁶⁰Muhammad Bin Yazeed Ibn Majah Al-Qazwini, trans. Nasiruddin al-Khattab "Sunan Ibn e Majah"3 (Arabic to English), (Canada: DARUSSALAM, 2007) Chap 38, Hadith no.2613, 497-498.

⁶¹Sakrodhavi, *Ashraf ul Hidayah* 16, 284.

⁶²Abū Dāwūd, "Sunan Abū Daud",5 (Arabic to English), Ḥadīth no. 4928, 324.

males.⁶³ If the gender is not confirmed of problematic intersex person, then the meaning of forbidden is given preference. It is clear that avoiding from forbidden is obligatory and it is not obligatory to act on the permissible so wearing silk and jewelry for intersex person is disapproved act (*makruh tehrimi*) because it is near to prohibition (*haram*).⁶⁴

5.19 Death Rituals of Intersex

When the intractable intersex person did not reach the age of puberty and he died so it legitimates for both man and woman to give him bath. But if he was near the age of puberty and died so dry ablution will be given to him instead of bath. According to Hadiyah: *'And if he died before his affairs became clear, neither the man nor the woman should wash him, because the solution to washing is not established between men and women, so he dies without bearing the burden of sanctity, and he performs tayammum with kinship so that washing is excused'*. The concubine will not be arranged for him just like for circumcision as now he cannot be his owner now. The funeral prayer of intersex person is done secretly at night according to the teachings of Islam. If someone did not do this then his funeral prayer is offered later on his grave as early as possible.⁶⁵ When both male and female intersex funeral take place at the same time male dead body is kept in front of the *imam* and at last the dead body of a woman is kept behind intersex.

6. Rights of Transgender Community in Islām

In Islam, all human beings are provided with basic and fundamental rights. Everyone is equal in terms of rights and transgender community also has same fundamental rights as being male and female as it is said in

⁶³ *Aba Abdur Rahman Ahmad bin Shuaib bin 'All An-Nasa 'I*, trans. *Nasiruddin al-Khattab*, "Sunan an-Nasa", 6 (Arabic to English), Book :48, Hadith no, 5151, 97.

⁶⁴ *Muhammed, Haqqani, and Rehman, Khunsa kShar'ae Ihkaam*, 204-205.

⁶⁵ *Sakrodhavi, Ashraf ul Hidayah*, 16, 286

the Quran 49: 13 that Allah created mankind from a single (pair) of a male and female, and made you into nations and tribes, so that you may know each other (Not that ye may despise each other. *Khunsa mushkil* whose identity is ambiguous and apparently difficult to determine and specified as male or female also has rights.

6.1 Right of Living

The life of each and every person is sacred in Islam and no one is entitled to take the right of living from them on the basis of gender discrimination. The unlawful killing is not permitted in Islam as it is said in the Holy Quran:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَعُضِبَ اللَّهُ عَلَيْهِ وَلَعْنَةُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا⁶⁶

*If a man kills a believer intentionally, his recompense is hell, to abide therein (forever); and the wrath and the curse of Allah are upon him, and a dreadful penalty is prepared for him.*⁶⁷

6.2 Right of Equitability

All human beings are equal and are entitled to get equal treatment according to Islamic law. In the spectrum of Islam, all human beings including *khunthā* hold equal rights and other obligations because they are also created by Allāh (عزوجل).⁶⁸

6.3 Right of Honor and Dignity

Islam is the religion of love, peace and harmony and teaches its followers to give respect and honor to other. Islam refrains to call with inappropriate names and also dislikes insult of another.⁶⁹

⁶⁶ Al- Qur'ān, 4:93

⁶⁷ Ali, "Meaning of Holy Qur'ān", 215-216

⁶⁸ Hussain, Saeed, Muhammad, "Rights of Khunsa in Islamic State", 412

⁶⁹ Hussain, Saeed, Muhammad, "Rights of Khunsa in Islamic State", 412

فَمَا رَحْمَةٌ مِنَ اللَّهِ لِنْتَ لَهُمْ ۗ وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لَانْتَضُوا مِنْ حَوْلِكَ ۗ فَاعْفُ عَنْهُمْ
وَاسْتَغْفِرْ لَهُمْ ۗ وَشَاوِرْهُمْ فِي الْأَمْرِ ۗ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ ۗ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ⁷⁰

'It is part of the Mercy of Allah that thou those deal gently with them Wert thou severe or harsh - hearted. They would have broken away from about thee: so, pass over (their fault) and ask for (Allah's) forgiveness for them; and consult them in affairs (of moment), then, when thou hast taken a decision, put thy trust in Allah, For Allah loves those who put their trust (in Him).'⁷¹

6.4 Right to Attain Education

In Islam, transgender community also has a right to acquire education. This is the right of every human being without any discrimination.⁷² In the Islamic society, knowledge holds importance status from every aspect⁷³ and the first revelation was also about knowledge. As it comes in the Quran 39:9 This verse shows the importance of learning and even the 'Section 8' of the Transgender Act 2018, the right of education has been given to the transgender without any discrimination.

6.5 Right of Occupation

Transgender community is being neglected from long time in every field of life. In the ancient times, they used to work as helpers in the female section of the houses. At the time of Mughal emperors, they were kept in haremas guardians and were known as 'khuwajasira'.⁷⁴

6.6 Right to Own Property Rights

Everyone has an equal right to attain his own property whether that person is male, female or transgender and no one has right to deprive such person from this right. The transgender person has also right in inheritance

⁷⁰ Al- Qur'an, 3:159

⁷¹ Ali, "Meaning of Holy Qur'an", 169.

⁷² Hussain, Saeed, Muhammad, "Rights of Khunsa in Islamic State", 412

⁷³ Riffat Hassan, "Religious Human Rights and the Qur'an", 5

⁷⁴ Hussain, Saeed, Muhammad, "Rights of Khunsa in Islamic State", 412-413

from the property of his deceased ancestor as stipulated in *Shariah* without any discrimination.⁷⁵

6.7 Right of Faith

Everyone including transgender community also has a right to follow their faith without any compulsion. Islam is a peaceful religion and allows everyone to live their lives according to their religion.⁷⁶ There is no compulsion in religion (2:256).

6.8 Right of Justice

In Islām, justice is one of the moral values. It is significant for all mankind because it is the most valuable aspect of life.⁷⁷ It is important to be just in every field of life whether it is social or economic life. Even in the Transgender (Protection of Rights) Act 2018, all the rights of transgender person made possible with just manner. The Quran 4: 58 emphasize that when you judge between man and man, you should judge with justice.

7. Conclusion

Islam gives rulings regarding everything in a comprehensive manner for man and woman. The jurists have deduced the rulings related to the worship and social issues from the divine sources for intersex. Although they are physically different as compare to other people based on their physical deformity but in rights and duties, they are similar. They are not exempted from any worship nor any other social matter.



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⁷⁵Hussain, Saeed, Muhammad, “Rights of Khunsa in Islamic State”, 413

⁷⁶Samee-Ullah Bhat, “Human Rights in Islamic Tradition”, Journal of Advanced Research in Humanities and Social Science 5, no.3 (2018), 14

⁷⁷Bhat, “Human Rights in Islamic Tradition”, 15