

A Comparative Study of Gender Transition and Its Impact on Inheritance in the Jurisprudence of Shia and Sunni Schools

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Abstract

Contemporary scientific and technological advances have made the issue of gender transition one of the most challenging topics in Islamic jurisprudence. The significance of this subject lies not only in its medical and social dimensions but also in its profound legal and jurisprudential consequences, particularly with regard to inheritance rulings. The purpose of this study is to comparatively examine the perspectives of Shia and Sunni jurists on gender transition and its implications for inheritance. The central research question asks: under what circumstances is gender transition considered permissible from the perspective of both schools, and, if acknowledged, what effects does it have on the division of inheritance?

The methodology of this research is descriptive-analytical, based on the study of classical jurisprudential sources and juristic opinions. The findings indicate that:

- In cases of physical intersex conditions (khunthā al-ḥaqīqī), both Shia and Sunni schools regard gender transition as permissible, insofar as it serves to uncover the person's true identity.
- In cases where the individual is physically healthy and seeks transition merely for personal reasons, jurists unanimously prohibit the practice, regarding it as an alteration of divine creation.
- In cases of psychological intersex conditions (gender identity disorder), opinions diverge: Sunni jurists deem transition impermissible and uphold inheritance rulings according to the original gender, whereas Shia jurists—adopting a therapeutic approach—generally permit transition under certain conditions and often recognize the new gender in inheritance matters, though internal differences of opinion exist among them.

The main conclusion of this study is that while there is consensus among jurists on the prohibition of unnecessary gender transition, significant divergences emerge in cases involving physical or psychological disorders—especially regarding legal consequences such as inheritance. The core point of contention lies in whether precedence should be given to the original or the transitioned gender identity.

Keywords: Gender Transition, Shia Jurisprudence, Sunni Jurisprudence, Physical Intersex, Psychological Intersex, Inheritance.

Introduction

In the contemporary era, remarkable advancements in medical sciences and modern technologies have made sex reassignment a viable therapeutic option for individuals experiencing gender identity disorder (transgender individuals). This complex socio-medical phenomenon has elicited diverse, and sometimes conflicting, responses within Islamic jurisprudential circles. From the perspective of Islamic jurisprudence, some scholars, citing concepts such as “modification of the created being” rather than “alteration of creation,” have accepted sex reassignment as a legitimate medical treatment. Conversely, other jurists, referencing Qur’anic verses such as “*So do not alter the creation of Allah*” (Q. 4:119), regard it as a clear instance of changing Allah’s creation and therefore oppose it.

Assuming the acceptance of the first viewpoint, and recognizing sex reassignment as a legitimate therapeutic intervention in necessary cases, numerous jurisprudential questions arise regarding the legal and religious implications of such a change. Among the most significant of these is the issue of inheritance. Since the Islamic inheritance system is fundamentally based on gender, and the shares of men and women differ in many instances, a critical question emerges: How should the inheritance rights of a person who has undergone sex reassignment be determined? Should it be based on the individual’s current gender or their original gender? This issue represents one of the most challenging contemporary jurisprudential debates and requires a comprehensive and in-depth examination through the lens of primary Islamic legal sources and principles of legal derivation.

The significance of this study can be highlighted from several perspectives. First, it addresses a novel issue that is increasingly relevant in contemporary Muslim societies and has limited precedent in traditional jurisprudential sources. While prior studies have approached this topic from jurisprudential, legal, or medical perspectives, this research specifically examines it from the viewpoints of scholars of both major Islamic schools of thought. Second, it aims to provide a jurisprudential response to one of the emerging challenges faced by modern societies. Third, by offering precise jurisprudential analyses, this study can serve as a basis for legislation in Islamic countries.

Ultimately, this research seeks to consolidate the diverse jurisprudential opinions and apply them to the specific circumstances of transgender individuals, providing Sharia-based guidance on the matter of inheritance and contributing to a clearer understanding of this complex legal issue. Using a descriptive-analytical methodology and relying on authentic jurisprudential sources, the study first compares the views of Shia and Sunni jurists regarding the permissibility of sex reassignment. It then examines inheritance rules under the assumption of the therapeutic necessity of the procedure, analyzing them in light of principles such as “*necessities permit the prohibited*” (*al-darurat tubih al-mahzurat*) and the broader objectives of Sharia. Finally, the opinions of contemporary jurists on this matter are collected, reviewed, and critically analyzed.

Section One: Conceptual Framework

This section aims to clarify and define some fundamental concepts to provide the necessary foundation for a scholarly examination of the main topic. These definitions will help facilitate a more precise understanding of the subsequent discussions.

1. The Concept of Sex Reassignment

a) Lexical meaning of sex reassignment:

The term “sex reassignment” is composed of two words: *change* and *sex*. The word *change* refers to any transformation or alteration that modifies the condition or state of an object, or to the creation of something in a form it did not previously possess (Ma’loof, 1988: 563). The term *sex* in linguistic usage refers to a category that encompasses multiple types. For example, *animality* as a category includes humans and horses. Similarly, *sex* can denote a type of a particular object; for instance, a camel is a type within the category of animals (Ibid.: 106).

b) Jurisprudential concept of sex reassignment:

Islamic jurists have not provided an explicit definition of sex reassignment, likely due to the apparent clarity of this term in common understanding. In this perspective, sex reassignment refers to the conventional and commonly understood meaning of the term, namely the transformation of a male into a female or a female into a male. Some jurists have only mentioned male-to-female conversion in their definitions, without explicitly addressing female-to-male reassignment, although it appears to have been implicitly included (Madani Tabrizi, 1997 AH: 43). Conversely, other jurists consider sex reassignment to encompass both male-to-female and female-to-male transformations. However, they have not provided specific rulings regarding the reassignment of intersex individuals to either male or female (Sanei, 1998: 92; Makarem Shirazi, 1998: 618). Overall, the term *sex reassignment* is understood in the conventional sense as the conversion of a male into a female or a female into a male, which is also the meaning implied in jurisprudential discussions.

c) Medical concept of sex reassignment:

In medical terminology, sex reassignment does not differ significantly from its lexical or commonly understood meaning. It refers to the process of modifying or reconstructing the genitalia so that an individual’s sex is changed from female to male or from male to female. This term also applies to the medical correction of intersex or hermaphroditic individuals, aligning their physical characteristics with either the male or female category. In general, sex reassignment refers to any physical transformation or correction of an individual’s sex (Kariminia, 2010: 43).

2. The Concept of Intersex

The term *intersex* (*khunsa* in Arabic) linguistically derives from the root *khanatha*, meaning softness or fragility (Ibn Manzur, 1302 AH: under *khanatha*). This term is applied when a man speaks, walks, or dresses in a feminine manner. From the same root, a Hadith of the Prophet Muhammad (PBUH) states: “*May Allah curse the effeminate men among the males and the masculine women among the females*” (Shawkani, 1973: 6/193).

In jurisprudential terminology, intersex individuals are categorized into two types: physical intersex and psychological intersex:

a) Physical Intersex

Physical intersex refers to an individual whose body exhibits sexual characteristics of both male and female sexes. In some cases, one set of characteristics may predominate over the other; however, if neither predominates, the individual is classified as a *problematic intersex*. In certain instances, the person may have

only a single genital organ, but it is covered by additional skin or tissue. Through surgical intervention and removal of this covering, the individual's true sexual identity can be determined. In cases where an intersex individual possesses both male and female genitalia, physicians typically remove one set entirely and reinforce the other to allow for normal development, enabling the individual to continue life according to the assigned sex (Davoud Nojavan, Year 3, Issue 9, 2009: 156).

In cases where an individual has a single genital organ that is obscured by a covering, the surgical procedure does not constitute sex reassignment; rather, it is a discovery of the hidden anatomical reality. In precise terms, such interventions fall under *sex correction* rather than *sex reassignment*. For intersex individuals whose sex (male or female) has been determined through jurisprudential indicators (and not classified as problematic intersex), surgery performed in accordance with medical standards and under specialist supervision is permissible. In such cases, the individual can, based on expert medical diagnosis, be assigned to the sex that best aligns with the natural structure of their body.

This perspective is based on the views of scholars who maintain that if, in a physical intersex individual, one set of sexual characteristics predominates, the person is required to follow the Sharia rulings associated with that predominant sex (Imam Khomeini, 1987: 2/627). Physical intersex individuals whose male and female genital organs are combined to varying degrees, causing physical and psychological difficulties, may, according to medical experts, undergo surgery to align their physical sex with the sex most compatible with their condition. Such procedures are considered as revealing the true sexual identity rather than as sex reassignment (Mohammad Kenani: 285; Hasmadi, n.d.: 53).

The permissibility of such procedures may also be justified through an alternative reasoning. For example, Professor Momen Qomi argues: *"There is no evidence for the prohibition of these surgical interventions, since the individual prior to surgery belonged to one of the two categories, male or female, and was subject to the rulings of that sex. However, after surgery, the previous category no longer applies; thus, the jurisprudential rulings relevant to that prior status do not apply either. The new category applies, and consequently, the rulings associated with the new status also apply, without generating any legal problem for the individual"* (Momen Qomi, 1996: 94).

b) Psychological Intersex

This category includes individuals who, physically, possess the complete characteristics of either the male or female sex, but whose psychological gender identity does not correspond to their biological sex. In some cases, an individual may have incomplete sexual characteristics; for example, a woman who exhibits all outward female traits but does not menstruate at puberty, and is subsequently found by medical examination to lack a uterus. Contemporary jurists hold two main perspectives regarding such cases:

First Perspective:

A group of Shia and Sunni jurists considers sex reassignment permissible for these individuals, as it is essentially regarded as *sex correction*, and the treatment of psychological disorders is no less important than the treatment of physical illness. The Almighty states: *"And whoever saves a life, it is as though he has saved the lives of all mankind"* (Al-Ma'idah: 32). Moreover, masculinity and femininity are natural conditions; therefore, transforming one into the other does not constitute a violation of nature. Additionally, there is no textual prohibition against performing sex reassignment surgery, and the principle *"people have authority over their property and their selves"* supports the permissibility of such procedures for these individuals. Among the proponents of this view is Imam Khomeini, a prominent Shia jurist. Other scholars, such as

Sheikh Faisal Mawlawi of the Sunni tradition, have also permitted such interventions when medical professionals determine that they are necessary for the treatment of individuals with gender identity disorders (Khomeini, 1987: 2/626; Al-Imami, 2021 AH: 31).

However, this reasoning is subject to debate, as the aforementioned principle does not automatically justify sex reassignment. As some jurists have noted, individuals' authority over themselves and their property is only legitimate if their actions are rational and consistent with established norms. Therefore, this principle applies specifically to individuals with congenital sexual incongruities or intersex conditions, rather than to cases based solely on psychological inclination (Hakim, n.d.: 10/17; Nojavan, 2009: 160).

Second Perspective:

This view is held by the majority of contemporary Sunni jurists and is virtually uncontested, with very few dissenters. According to this perspective, which reflects the opinion of the Sunni scholarly majority, sex reassignment is prohibited and impermissible because it contradicts the objectives of Sharia, its general rules, and its overarching principles (Al-Imami: 32).

If an individual suffers from gender identity disorder due to psychological factors (psychological intersex) without any correlation to physical genitalia, any medical intervention to alter the genital organs in accordance with the individual's personal inclinations or psychological orientation constitutes an interference with divine creation. In such cases, psychological desires cannot serve as a legitimate justification for sex reassignment. Undoubtedly, such surgeries represent an intrusion upon God's will in determining the sex of His creations. Voluntary alteration of sex in these instances is a futile and senseless act (Abdel-Halim, 489).

Regardless of the terminology used for these procedures—whether “sex reassignment surgery,” “gender conversion,” “sexual transformation,” “male-to-female or female-to-male conversion,” or any other phrase implying the transformation of one sex into another—none of these interventions fall within the framework of therapeutic legitimacy. There exists no valid medical or jurisprudential justification for performing them. The condition for legitimacy requires a Sharia-sanctioned necessity, which is absent in such cases. These surgeries do not even fall under genuine intersex conditions (i.e., ambiguous biological sex); rather, they constitute interventions that alter healthy genital organs and modify God's creation. Such actions represent rebellion against the natural disposition (*fitrah*) with which God has created humans (Abdel-Aziz Mutawalli, 3867).

c) Ordinary Individuals

Ordinary individuals are those whose physical sexual characteristics are in harmony and alignment with their psychological sexual inclinations. The question arises: can such individuals undergo *sex reassignment*, and would it be considered permissible?

Sex reassignment for ordinary individuals, whose physical and psychological sexes are congruent, is impermissible for three main reasons:

1. **Preservation of Health:** Maintaining health is obligatory, and intentionally placing one's health at risk without a rational justification is not permissible.

2. **Medical Justification:** From a medical standpoint, surgery is only permissible for the treatment of disease. In these cases, sex reassignment lacks medical justification and would expose the physician to legal liability.
3. **Rational and Social Utility:** Such procedures lack legitimate rational benefit and conflict with societal interests; therefore, from a jurisprudential perspective, they are also invalid (Shahidi, 1996: 1/302).

Dr. Ahmad Kenani and Sheikh Yusuf Qaradawi hold that sex reassignment is not permissible for ordinary individuals who have no medical necessity and whose male or female genitalia are naturally complete and functional. Such interventions are considered instances of *alteration of God's creation (taghyir fi khalq Allah)* (Mohammad Kenani, 2023 AH: 284–285; Qaradawi, 2028 AH: 155; Makkah Jurisprudential Assembly, 13 Rajab 1409 AH).

Section Two: Jurisprudential Perspectives on Sex Reassignment

Regarding the permissibility or impermissibility of sex reassignment, three main theoretical positions have been proposed. Jurisprudential opinions from scholars and religious authorities on this matter are generally categorized into three groups: **absolute permissibility**, **absolute prohibition**, and **conditional permissibility**.

1. Absolute Permissibility

The first explicit stance in this regard dates back to 1963 CE (1342 SH), when Imam Khomeini, as a pioneer in this jurisprudential discussion, expressed his view as follows: *"It appears that changing sex from male to female through surgical intervention, as well as changing from female to male, is not inherently forbidden"* (Imam Khomeini, 1990 AH: 2/622).

This statement, framed in absolute terms, became the basis for the reasoning of many contemporary jurists who advocate for the absolute permissibility of sex reassignment. Notable among these authorities are Grand Ayatollah Khamenei (Supreme Leader of the Islamic Republic of Iran), Grand Ayatollah Sistani (prominent authority in Iraq), Muhammad Asif Mohseni (late authority in Afghanistan), Muhammad Hussein Fadlallah (late authority in Lebanon), Kharrazi, and others (Ramazan-zadeh, 2010 SH: 20).

These eminent jurists hold that sex reassignment, in itself, does not carry inherent religious prohibition and may be performed in accordance with medical and jurisprudential standards without objection. However, this perspective does not negate the necessity of observing other relevant rulings and conditions

Reasons Cited by Advocates of Absolute Permissibility of Sex Reassignment

1. Reference to the Principle of *Ibahah* (Intrinsic Permissibility of Acts):

According to the principle of *ibahah* in Islamic jurisprudence, all acts and behaviors are inherently permissible unless there is explicit evidence from the Qur'an or authentic Sunnah indicating their prohibition. For example, the prohibition of acts such as adultery or sodomy is based on clear Qur'anic texts. In the case of sex reassignment, there is no explicit text from the Qur'an or authentic traditions that indicates its prohibition. Therefore, this act falls under the scope of the principle of *ibahah* and is, at first glance, considered permissible (Khomeini, 1987 SH: 2/626; Kharrazi, 2000 SH: 241).

However, this argument is open to debate. While it is true that no specific prohibition has been established by the Lawgiver, if an individual undertakes sex reassignment without a significant physical or psychological necessity, the act may not only lack legitimate benefit but could also expose the person to severe psychological and emotional crises.

Reference to the Jurisprudential Principle of *Tasallut* (People's Authority over Their Property and Selves)

The second argument presented by proponents of absolute permissibility is based on the well-known jurisprudential principle of *tasallut*, which grants individuals the right to dispose of their property and rights. Some jurists have extended this principle to include bodily autonomy as well. They argue that just as individuals have the right to engage in any legitimate transactions with their property, they similarly possess the right to make decisions regarding their own bodies. On this basis, sex reassignment is considered one of the manifestations of this right (Hakim, n.d.: 10/17; Momen, 1995 AH: 216).

However, this argument is open to critical scrutiny. Even if the principle of *tasallut* is accepted, it does not justify the absolute permissibility of sex reassignment, because the principle does not allow individuals to undertake any action on themselves or their property without limitation. Rather, it permits only rational and socially customary acts. Therefore, for an individual whose psychological gender aligns with their physical characteristics, sex reassignment is considered irrational and unconventional from a reasoned perspective. Consequently, based on this argument, absolute permissibility for sex reassignment cannot be established (Khoei, n.d.: 1/102).

No Change in Divine Creation

Opponents of sex reassignment often argue that the procedure constitutes a change in God's creation. However, this argument is incomplete and untenable. If one were to accept that any alteration of God's creations is inherently prohibited, this logic would render most human daily activities impermissible. In everyday life, we constantly witness transformations in creation—for instance, converting wheat into flour, then into dough, and finally into bread, as well as numerous natural and industrial processes—all of which involve altering the original form of creations. If these changes were considered a violation of God's creation, we would have to deem all such activities forbidden, which is clearly unreasonable.

Moreover, sex reassignment does not alter the human essence; it only modifies certain outward characteristics and functions, while the individual's identity and humanity remain intact. The only consequence of this change is the application of jurisprudential rules and duties corresponding to the newly assigned sex, without compromising the person's essential humanity. Therefore, the argument that sex reassignment is prohibited based on the notion of changing divine creation is weak and lacks solid logical foundation (Scientific-Jurisprudential Quarterly of Islamic Law and Legal Principles, 3rd Year, No. 7, Spring 2011: 122).

Absolute Prohibition

Most Islamic jurists, particularly within the Sunni schools of thought—where there is near-unanimous agreement—consider sex reassignment to be impermissible and prohibited. Among Shia scholars, eminent figures such as Ayatollah Madani Tabrizi, Ayatollah Khoei, and Ayatollah Golpayegani also support the absolute prohibition of this practice.

First Reason: The primary argument of this group is based on the jurisprudential principle of *La Darar wa La Dirar* (No Harm and No Reciprocal Harm), which holds that causing harm to the body—either by oneself or by others—is prohibited. According to these scholars, sex reassignment necessitates the destruction or removal of healthy body parts, such as genitalia, which constitutes clear harm. They argue, based on this principle, that because sex reassignment results in the destruction of bodily members, it is therefore an impermissible and unlawful act (Madani Tabrizi, n.d.: 1/49).

Second Reason: The second argument advanced by this group is the impossibility of altering divine creation. They contend that human sex, as part of the wise system of creation, is determined from the moment of conception to birth according to divine will, and the distinct characteristics of each sex reflect God's power. Therefore, no one—even with the most advanced medical technologies—can truly change the innate sex of a person. What occurs through surgery or medical intervention is merely a superficial alteration that does not affect the individual's essential nature. These scholars emphasize that such interference in the natural order is beyond human capacity and violates the divine wisdom inherent in creation (Madani Tabrizi, n.d.: 49–50).

Critical Note: It should be noted that the restriction on sex reassignment does not necessarily apply to individuals whose physical characteristics and psychological orientation are fully aligned. As some jurists argue, citing Quranic verses, God has created humans as male or female. In cases where a person exhibits characteristics of both sexes, one feature is considered essential while the other is superfluous. This interpretation suggests that absolute prohibition of sex reassignment may not be applicable in cases of gender incongruence, and such cases may warrant further consideration (Tabatabai, 1992 AH: 2/643)

Third Reason: Removal of Body Parts

Another argument supporting the absolute prohibition of sex reassignment is that the permissibility of such a procedure would necessitate the lawful removal or destruction of certain body parts. In sex reassignment surgery, existing genital organs are often removed to make way for artificial organs corresponding to the opposite sex. However, Islamic jurisprudence strictly prohibits the destruction or removal of one's own body parts or those of another person. Consequently, sex reassignment is considered an impermissible and unlawful act (Madani Tabrizi, n.d.: 1/49).

Fourth Reason: Contradiction with Public Interest and Social Order

Even with the most advanced surgical and medical interventions, a true change in an individual's innate sex cannot be achieved. When feminine characteristics are removed surgically or masculine features are introduced through hormonal treatments, these modifications are purely superficial and do not alter the person's essential nature. Similarly, when a man acquires feminine features through medical interventions, he does not, in essence, become a woman. Scholars of this view argue that a real transformation from male to female or vice versa is impossible and beyond human capacity, as innate sex is immutable and an integral part of God's wise creation.

From a legal perspective, some jurists contend that civil status laws—including the determination of sex—are designed not only to protect individual interests but also to uphold the public good. Just as individuals cannot arbitrarily change their nationality or legal status, sex reassignment may conflict with societal interests (Diyani, 2001: 11; Katouzian, 1993: 1/175).

It should be noted, however, that this argument against permissibility applies primarily if sex reassignment is carried out unconditionally for anyone who desires it. If sex reassignment is performed under specific medical or jurisprudential conditions, it does not necessarily conflict with public interest or societal welfare (Nojavan, 2009: 164)

Fifth Reason: Reference to the Qur'anic Verse (Surah An-Nisa, 4:119)

The most significant argument of those who oppose sex reassignment refers to verse 119 of Surah An-Nisa, in which Satan says:

"And I will surely mislead them, and I will arouse desires in them, and I will command them, so they will slit the ears of cattle, and I will command them so that they will change Allah's creation." (An-Nisa: 119)

Jurists, based on various interpretations of the concept of "changing Allah's creation" in this verse, have reached two main viewpoints.

The first viewpoint, which considers sex reassignment forbidden, asserts that the verse refers to physical and material alterations in God's creation. In *Tafsir al-Jami' al-Bayan*, Al-Tabari attributes this understanding to Ibn Abbas, Anas ibn Malik, Ikrimah, Shahr ibn Hawshab, Abu Salih, Hasan, and Abdullah (Tabari, 1405 SH: 182). Among Shi'a jurists, figures such as Jawad Tabrizi and Sheikh Hadi Najafi, as well as others, also consider sex reassignment as a manifestation of changing Allah's creation (Hosseini, 1420 AH: 439).

Dr. Ahmad Kan'ani and Sheikh Yusuf al-Qaradawi argue that ordinary individuals, who have no necessity and possess naturally complete male or female genitalia, are not permitted to undergo sex reassignment. They consider such acts as examples of altering God's creation (Muhammad Kan'ani, 1402 AH: 284–285; Qaradawi, 1409 AH: 155; Islamic Fiqh Assembly of Makkah, 13 Rajab 1409 AH). This group believes that sex reassignment falls under the prohibited changes mentioned in the verse.

Sex Reassignment as Contrary to Human Nature

The presence of male and female in living beings is essential for mating, reproduction, and species survival. Allah created men and women to complement each other and fulfill the roles for which they were created. For these reasons, Islamic law prohibits sex reassignment as it is considered contrary to human nature.

However, exceptions are recognized, such as intersex individuals whose male and female genitalia are combined to varying degrees, causing physical and psychological disorders. In such cases, according to medical specialists, performing surgery to assign the individual to the sex that is more compatible with their condition is permissible (Muhammad Kan'ani: 285).

Conditional Permissibility

The permissibility of any action, as explicitly stated in Article 215 of civil law, is contingent upon the existence of a legitimate rational benefit. Consequently, sex reassignment is considered permissible only if the applicant has a sexual or gender-related problem and a specialist physician determines that sex reassignment is beneficial for resolving this issue.

It may be argued that if the permissibility of sex reassignment is conditional, then its legitimacy becomes self-evident, based on the principle "*necessities permit the prohibited*" and the hadith that any prohibited act

under conditions of necessity becomes lawful and permissible. However, this claim arises from a misunderstanding of the subject and the conditions surrounding sex reassignment.

First, the aforementioned principle applies in cases where a legal prohibition exists and the individual is placed in a state of necessity; the principle then lifts the prohibition. After the state of necessity ends, the original prohibitions regain their validity. In contrast, regarding individuals who meet the conditions for sex reassignment under the conditional permissibility framework, there is no inherent prohibition that needs to be lifted.

Second, the issue at hand extends beyond emergency conditions, because an individual may qualify for sex reassignment without being in a state of necessity. Therefore, in recommendations and regulations concerning sex reassignment, the procedure is considered not merely as a therapeutic measure, but as a recommended right for those meeting the required conditions (Nojavan, *Jurisprudential and Legal Foundations of Sex Reassignment*, pp. 164–165)

Section Three: Jurisprudential Effects of Sex Reassignment on Inheritance from the Perspective of the Two Schools of Thought

This section examines the role of sex reassignment in marriage and inheritance, as marriage is one of the primary determinants of inheritance. To analyze the impact of sex reassignment on inheritance between spouses, it is first necessary to address the concept of marriage and then the role of sex reassignment in inheritance rulings.

1. The Role of Sex Reassignment in Marriage

In Islam, marriage is fundamentally established between two individuals of opposite sexes (male and female). Therefore, if sex reassignment disrupts this balance, the previous marriage becomes invalid. In other words, if sex reassignment occurs after marriage, the prior marital bond is annulled, as marriage between two males or two females is prohibited and impermissible in Islamic law.

However, an individual who has undergone sex reassignment may marry a person of their new opposite sex. For instance, a man who has transitioned to a woman may marry another man, and a woman who has transitioned to a man may marry another woman. In such cases, neither the legal status of divorce nor annulment (*fasakh*) applies; rather, *infisakh* (automatic dissolution of the marriage contract) occurs, and there is no prescribed waiting period (*iddah*). (Kariminia, 1375 SH: 76; Kharazi, 1379 SH: 130).

Sex reassignment of one spouse has multiple legal and jurisprudential consequences, with the issue of marital status being one of the most significant. Among contemporary Sunni and Shiite jurists, two main perspectives exist regarding this matter:

1. Sunni Jurists' Perspective:

From the perspective of Sunni jurists, sex reassignment can be analyzed in three scenarios:

1. **Unmarried Individuals:** If a single person undergoes sex reassignment, marriage with others becomes impermissible.

2. **Married Individuals:** If a married man undergoes sex reassignment, the marital contract is automatically annulled upon completion of the procedure, as such an act is considered impermissible under Islamic law. (Asma, n.d.: 331, 333; Islamic Fiqh Council, 2023: p. 80)
3. **Married Individuals with Children:** In the case of a married individual with a spouse and children, Sunni jurists, invoking the principle of *"akhf adh-dhararayn"* (choosing the lesser of two harms), and considering family welfare and the importance of child upbringing, do not deem the marital contract void. Their reasoning is that the individual's essential identity has not changed, and their intrinsic nature remains intact. In such cases, preserving the marital bond and maintaining the marriage contract is considered the primary and preferred solution, as it aligns with family interests and ensures the continuity of children's upbringing. This ruling is grounded in social and familial considerations and is consistent with the principle of *"aham-o-muhim"* (priority of greater importance) in Islamic jurisprudence.

2. Ja'fari (Imamiyyah) Jurists' Perspective:

According to Ja'fari jurists, three general scenarios can be considered regarding sex reassignment:

Scenario One: Sex Reassignment of One Spouse
If only one spouse undergoes sex reassignment, the marriage is rendered void. For instance, an individual who originally possessed predominantly male or female traits at the time of marriage (such as an intersex person) may, over time, undergo physical changes and surgery resulting in a transition to the opposite sex. In this case, since the difference in sex between the spouses is a condition for the validity of the marriage both at the time of the contract and throughout marital life, the removal of this condition renders the marriage invalid. (Safaei & Emami, 1374 SH: 1/145)

Imam Khomeini's Ruling:

Imam Khomeini explicitly stated: *"If a man marries a woman and subsequently the woman undergoes sex reassignment and becomes a man, the marriage is annulled from the time of the change. Similarly, if a woman marries a man and the man undergoes sex reassignment and becomes a woman, the marital contract is annulled from the time of the change."* (Khomeini, *Tahrir al-Wasilah*: 2/626).

Ayatollah Khamenei, in response to the question regarding the ruling on a prior marriage if one spouse undergoes sex reassignment, affirmed: *"The marriage is annulled from the time of sex reassignment."* (Khamenei, 1375 SH: 627).

Scenario Two: Non-Simultaneous (Sequential) Sex Reassignment

If the spouses undergo sex reassignment sequentially and not simultaneously, jurists hold that the marriage becomes void. In other words, upon the sex reassignment of one spouse (e.g., a man becoming a woman), the marriage is invalidated due to the loss of the essential condition of opposite sexes. Subsequently, if the other spouse undergoes sex reassignment, the marital relationship is not automatically reinstated; a new marriage contract must be executed for the marital bond to exist.

Scenario Three: Simultaneous (Concurrent) Sex Reassignment

In this case, there are two main perspectives among jurists:

1. View of Annulment

This group holds that the essence of marriage is based on the relationship between a man and a woman. With simultaneous sex reassignment, this relationship is disrupted. They argue that marriage is a specific normative relationship between two opposite sexes, and when this condition changes, the foundation of the marital bond ceases to exist. (Momen Qomi: 1/98)

2. View of Continuation of Marriage

According to this jurisprudential view, the marital contract remains valid even after the spouses undergo simultaneous sex reassignment. The analysis of this position is based on several key points:

- First, the essence of marriage in Islam is defined through the reciprocal marital relationship rather than the physical characteristics of the spouses. Therefore, even after simultaneous sex reassignment, the normative marital relationship persists.
- In this scenario, only the legal roles and religious duties of the spouses are reversed; the individual who previously held the position of the wife (zawjah) now assumes the role of the husband (zawj) with corresponding marital responsibilities, and vice versa.

Imam Khomeini, while acknowledging the principle of continuity of the marriage contract, emphasized exercising caution and recommended renewing the contract. He also stated that the spouses are not permitted to enter into a new marriage with each other without a formal divorce, as the previous marital bond remains valid. (Khomeini: 2/631)

Ayatollah Khamenei similarly noted: *"It is not improbable that the marriage continues, and renewing the contract is the precautionary measure."* (Khamenei, 1375 SH: 627)

In jurisprudential discussions regarding inheritance shares of the father and mother, the determination is linked to the time of conception. However, Imam Khomeini recommended a voluntary reconciliation between the parties as a precautionary measure. As noted, the second possibility—considering the effect of sex reassignment on inheritance shares—appears stronger and more acceptable.

The primary criterion for determining inheritance shares is the current legal sex of the individual. This means that any person who undergoes sex reassignment assumes the inheritance rights corresponding to their new sex. For example, if a brother undergoes sex reassignment, he receives the inheritance share of a sister, and vice versa. In all these cases, the determining factor is the legal sex of the heir at the time of the decedent's death. (Kalantari Ebrahimi, 1390 SH: 53)

Summary

Regarding the issue of sex reassignment among spouses, three scenarios can be considered:

First: In the case of sex reassignment by one spouse or non-simultaneous reassignment, the majority of jurists hold that the marriage contract is annulled. Consequently, all matters related to inheritance between the spouses are also nullified.

Second: In the case of simultaneous sex reassignment, there are two jurisprudential views:

1. **View of Annulment:** This perspective maintains that the marital relationship is entirely terminated, and, accordingly, inheritance rights are nullified.

2. **View of Continuation:** This view holds that the marital relationship continues. However, the precautionary opinion, emphasized by many jurists, recommends renewing the marriage contract. If the contract is renewed, inheritance rights are fully preserved. Without renewing the contract, if the marital relationship continues, inheritance rulings also remain in effect

3) The Role of Sex Reassignment in Inheritance

a) The View of Sunni Jurists

As previously mentioned, sex reassignment constitutes merely an external change and does not alter the essential nature of the individual. On this basis, sex reassignment does not affect inheritance matters, as each person's share of inheritance is determined according to the sex assigned at birth (Rabeh, 2022: 37).

Some jurists also maintain that sex reassignment has no impact on Sharia rulings, since this action is considered solely a formal change and does not result in any alteration of legal obligations. From this perspective, a male (even after sex reassignment) retains the rights and duties of men, and a female (even after sex reassignment) retains the rights and duties of women (Abdulrahman, 2022: 997).

Consequently, from a Sharia standpoint, sex reassignment does not affect an individual's legal status, and rulings related to inheritance, marriage, and other jurisprudential matters are applied according to the person's original sex

b) The View of Ja'fari Jurists

In examining the issue of inheritance in cases of sex reassignment, two fundamental scenarios arise: first, the question of how much inheritance a child who has undergone sex reassignment receives from their parents, and whether their current sex or previous sex is the determining factor; and second, the question of how much inheritance a parent who has undergone sex reassignment receives from their child, and which sex is considered valid.

1. Inheritance of a Child Who Has Undergone Sex Reassignment from Their Parents

In matters of inheritance for a child who has undergone sex reassignment, the determining criterion is the individual's current sex at the time of the testator's death. Accordingly, if one of the parents dies, the current male child inherits twice the share of the current female child. This rule applies to all classes of heirs. Therefore, if a daughter has been reassigned as a male, he inherits twice the share of a female, and if a son has been reassigned as a female, she inherits half the share of a male.

The rationale for this ruling is that Sharia evidence considers the sex of the individual at the time of the testator's death as the relevant criterion. This principle is explicitly stated in the Qur'an, Surah An-Nisa, verse 11: *"Allah instructs you concerning your children: for the male, what is equal to the share of two females."*

It is important to note that among jurists, there is no disagreement on this point. All scholars who have examined the issue of sex reassignment agree that the individual's current sex at the time of the testator's death is the standard for determining the inheritance share (Momen, 1415 AH, Vol. 1, p. 116). Regarding the general right of such individuals to inherit from their parents, there is unanimous agreement among Ja'fari jurists that the child's current sex after reassignment serves as the basis for inheritance, not their previous sex.

Inheritance of Parents Who Have Undergone Sex Reassignment from Their Child

Regarding the inheritance of parents who have undergone sex reassignment from their child, two jurisprudential views have been presented:

1. The Theory of Non-Inheritance: According to this view, parents who have undergone sex reassignment do not inherit at all from their child, and the inheritance relationship between them is entirely severed.

2. The Theory of Inheritance Based on the New Sex: According to this opinion, parents who have undergone sex reassignment inherit from their child according to their current sex (Momen: p. 115). The first view is considered less probable, as sex reassignment is not regarded as an obstacle to inheritance.

Under the second view, which allows parents who have undergone sex reassignment to inherit, a key question arises: What is the basis for this inheritance? Is it based on the role in procreation, or on kinship and familial priority?

Imam Khomeini (may Allah sanctify his soul) addressed this issue by posing a fundamental problem: *“Regarding a father or mother who has undergone sex reassignment, the difficulty lies in that the individual is neither the current father nor the current mother. Does this person inherit due to the role in conception, or due to kinship and familial priority? There is doubt in this matter, but the precautionary opinion is that they inherit, and the basis for inheritance is the role in conception. It is recommended that the parties amicably reconcile in such cases.”* (Khomeini, *Tahrir al-Wasilah*: 2/564)

Momen Qomi, from a different perspective, maintains: *“These individuals inherit from their child according to their current designation—whether they are presently considered a father or a mother.”* (Momen Qomi: 2/101)

Conclusion

Regarding physically intersex individuals, who possess dual sexual characteristics, there is a consensus among both Sunni and Ja’fari (Imamiyya) jurists that sex reassignment is permissible. This permissibility is not considered “sex change” in the precise jurisprudential or medical sense, but rather as a process of discovering and confirming the individual’s true sexual identity. In such cases, all Sharia rulings, including those related to marriage and inheritance, are applied based on the actual sex determined through medical assessment.

In contrast, for ordinary individuals who have no physical or psychological disorder and seek sex reassignment purely for personal motives, such as sexual desire or imitation of others, Islamic jurists—both from Sunni and Ja’fari schools—do not consider this practice permissible. From a medical perspective as well, sex reassignment is not recommended for such individuals, since performing it without medical or psychological necessity constitutes a change in God’s creation.

In the jurisprudential examination of sex reassignment for psychosexually intersex individuals (those whose external genitalia are clearly male or female but whose psychological inclinations do not align with their physical sex), three main perspectives emerge:

1. **The theory of absolute permissibility**
2. **The theory of absolute prohibition**
3. **The theory of conditional permissibility**

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Among these, the theory of conditional permissibility enjoys greater acceptance among jurists. According to this view, surgical sex reassignment for psychosexually intersex individuals is only permissible when a trusted and competent specialist (as an expert) determines that the individual has a stable psychological inclination toward either male or female sex.

This ruling is based on two main grounds:

- First, following the practice of rational authorities in addressing human suffering to the greatest extent possible;
- Second, the existence of prophetic traditions that encourage patients to consult physicians.

Based on this perspective, a psychosexually intersex individual, after sex reassignment, is subject in Sharia to the rulings associated with their new sex, including those pertaining to marriage and inheritance.

However, from the Sunni jurists' standpoint, the inheritance of such an individual does not change, since they generally do not permit sex reassignment for psychosexually intersex persons and believe that the true sex of these individuals cannot be altered merely through external changes

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