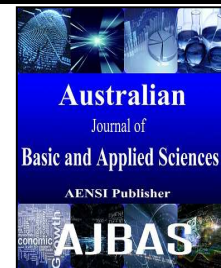




ISSN:1991-8178

Australian Journal of Basic and Applied Sciences

Journal home page: www.ajbasweb.com



Simplify inheritance rights in Islamic law Hermaphrodite right to inheritance and Married (khuntha)

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ARTICLE INFO

Article history:

Received 10 January 2016

Accepted 15 February 2016

Available online 28 February 2016

Keywords:

ABSTRACT

Background:The Quran states that it is Allah who gives male children to whom He will and it is Allah who gives female children to whom He will. But there is one more kind of human beings and that is Khuntha .Quran does not speak about their rights of inheritance. So Jurists derive some rules about their right of inheritance with the help of sunnah and Qiyas(1) .As there is gap between religion and society, our society does not protect them and does not give their rights. So there is need to protect them and make them strong financially so they also can get their rights, respect, honor and care from society. It is an attempt to protect and secure them and give them a way to .The Islamic Inheritance Law(faraaid),The I live like other humans.**Conclusion** Manifestation of comprehensive inheritance management in Islam ,professor Mohd Ridzuan Awang, Islamic law (shariah) Dep, university kabangsaan Malaysia

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To Cite This Article: Amani Ali Ph.d, Metwally Ali, Ph,D Hanif Suhairi Ph.D., Simplify inheritance rights in Islamic law Hermaphrodite right to inheritance and Married (khuntha). *Aust. J. Basic & Appl. Sci.*, 10(7): 104-110, 2016

INTRODUCTION

I would like to take this opportunity to pay my humble attitude of Almighty ALLAH, Lord of all creation, of our lives and of everything in this universe and His Holly Prophet Muhammad (PBUH) whose blessing enabled us to perceive and to pursuit higher ideas of life, who has given me the courage insight and knowledge to complete this assignment.

The aim of this research is to emphasize that communication is the most important tool in supporting the individual's experience. Not only can good communication help the individual and their careers at a particularly frightening and confusing time, but it can also ensure that the team who are caring for the person are doing just that – working as a team with all the information they.

In Islamic fiqh (jurisprudence), the one who has both male and female reproductive organs is called a khuntha, or hermaphrodite. With regards to Islamic law, all measures will be taken to determine the gender of the hermaphrodite. Once the gender is determined, it will be treated as that gender for all shar`i ahkaam (legal rulings), including inheritance.

Certain signs need to be analyzed to determine the sex of the hermaphrodite, the first of which is the organ it uses to urinate. If it uses the male organ, he

will be classified as a male; if it uses the female organ, she will be classified as a female. If the hermaphrodite urinates from both the male and female organs, then the first one to release urine will determine the gender. These signs should be analyzed at or immediately after birth to ascertain the sex of the hermaphrodite.

If these signs were not analyzed as a newborn, the sex can still be ascertained later, when more signs appear. These are outlined below.

The hermaphrodite will be classified as a male if any of the following occurs:

He has sexual relations with his male reproductive organ.

He experiences nocturnal discharge like men.

He is inclined to women.

He grows facial hair.

His testimony of his inner self.

The hermaphrodite will be classified as a female if any of the following occurs:

She has sexual relations with her female reproductive organ.

She becomes pregnant.

She experiences menstruation.

She experiences the growth of breasts like women.

She lactates.

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All these signs should be looked out for when determining the gender of a hermaphrodite. If the hermaphrodite is classified as a male, he will inherit as a male in all cases. The the hermaphrodite is classified as a female, she will inherit as a female in all cases.

However, if none or all of these signs occur (which is extremely rare), then the hermaphrodite will not be assigned a gender. It will be termed a khuntha mushkil (indeterminate hermaphrodite.)

Special laws will apply to a khuntha mushkil, but with regards to inheritance the khuntha mushkil will always inherit the lesser of the male or female share. In other words, the khuntha mushkil will be envisioned as a male and as a female in all inheritance scenarios. In whichever of the two cases it gets less inheritance, it will be treated as that gender and receive that share.

Alternative Names:

Disorders of sex development; DSD; Pseudo hermaphroditism; Hermaphroditism; Hermaphroditeneed at their disposal. This Chapter suggests considering communication from the perspective of the patient or service user. How would you like to be spoken to? What information do you think you need? Practitioners work in a wide variety of settings and the demands made upon them can be immense.

The hermaphrodite is one whose sexual identity is unclear, whether male or female. So if he dies while (the hermaphrodite is) still a minor, then he reaches maturity and he is of indeterminate sex, he will be given half the share of a male and half the share of a female, or if (he has) not (reached maturity), he will be given the share of whichever is more obvious and it will be deferred until he reaches maturity, so that hopefully, his case will become clear.

her-maph-ro-dite : a person or animal having both male and female sex organs or other sexual characteristics, either abnormally or (in the case of some organisms) as the natural condition.

Hermaphrodite in prospective islam : as was mentioned by Ulamaa , especially in inheritance them as a problem in his inheritance problem. He is does not know the condition you is male or female. And they are four types:

The first type. To have two male and a female sexual organs . Urinating means all of them. We do not know is it male or female.

Type II. To have one exit out of it all the urine and feces, and no sexual organs of the male and female.

Type III. To have masterminded an independent and out of the urine of non-Faraj male nor female before in the form of sweat a lot.

Type IV. don't have Faraj or any sexual organs , but they vomiting, what to eat and drink, a eating and drinking remains in the stomach as he pleases

God until the body absorbs what it needs from it and then vomiting the rest .

There is also the Hermaphrodite is not a problem, as if it were a male and Faraj FEMALE but urinating from the female vulva and he got the period , this is a female in the rest of the provisions relating to Sharia from legacy and other such provisions. As if the male and a female sexual organs but he urinates from the male not urinating from the female leopard we consider male and build on our judgments.

The previous four type are seen in the case after reaching.

Classical Islamic law in terms of assigning legal rules, inter alia, explicitly recognizes four genders among human beings, namely male, female, hermaphrodite, and effeminate male. In this context, the body of rules that regulate male and female behaviors is regarded as normative. Hermaphrodite upon birth are left in limbo until they can be absorbed into any one of the binary gender system upon puberty or else

Secrets of the Family Does Not Want To Share with the Community:

X The Question who kill the family whenever one asked about baby sex (Male or female) .however for all parents it's not only question for baby its about baby life .people and Community cannot let people decide for themselves .the parent protect their baby identity by using interplay name .

The Most Important Skill Although communication has a specific chapter, the theme of communicating effectively is uniquely woven in and amongst everything within this Guide, underpinning all of the ideas and recommendations.

Support groups are very important for families dealing with intersex.

Different support groups may differ in their thoughts regarding this very sensitive topic. Look for one that supports your thoughts and feelings on the topic, and the individual conditions. The prognosis depends on the specific cause of intersex. With understanding, support, and appropriate treatment, overall outlook is excellent.

3.1. When to Contact a Medical Professional
When your child starts genitalia and sexual development, discuss this with your health care provider.

“Communication is the most important human skill... up to three quarters of our waking time involves reading, writing, talking and listening... 40% of that time is spent in listening yet we are never really taught how to listen. “so parents have to learn how to start Communication to solve this problem Question of this Research :

1. How the hermaphrodite got the Inheritance?
2. How to convince the parents to their child's need for the openness and to face of society?

3. Is that a big defect or misfortune ashamed of them to have hermaphrodite ?

4. How have an operation and be equipped with some of the features and organs of the opposite sex and get Marriage ?

3.2. Intersex and Identity: The Contested Self
And for a real example Woman lived as a man for 41 years because parents didn't tell her she was born a hermaphrodite A woman with both male and female sex organs lived as a man for over 40 years because her parents didn't tell her she was born a hermaphrodite for two decades.

Caroline Kinsey has lived almost all her life as a man as her parents hid her intersex medical condition from her until she was 19. She underwent surgery as an infant and was brought up as Carl John Baker. But after years of mockery at school and assuming that 'everybody's body looked like hers', her parents finally revealed the truth about her condition when she was 19.

After a short, failed marriage to a woman and a period suffering depression, Caroline decided to dress as a woman two years ago and now wants to take on a permanent 'female persona'.

She revealed her condition was kept from her 'for as long as possible' by her parents on medical advice and because her mother and father 'didn't know any better'.

She said: 'From being young I have always known I was different. I could never quite put my finger on why.' A doctor told my mother they should deny me my first birthright, the chance to be a woman, in favor of my second birthright, being a man, 'The doctor said it would be easier to hide my female genitalia than the male one, so knowing no different that is what they did. 'They were also advised to keep my secret from me and the rest of the world for as long as possible.'

Caroline was born in Bull Hill Hospital, Darwen, Lancashire, in 1968 to Monica and Rudolph Baker. But, after her delivery, their good news was shattered when a nurse said their new baby daughter also had male genitalia. Caroline was brought up as Carl John Baker in the family home, in Darwen. In 1970, she and her younger brother Martin were taken into care after social workers discovered they had been left alone at the family home. She added: 'I had a really feminine sounding voice, but I was never told I was different to anyone else and I assumed everybody's body looked like mine.'

3.3. Hermaphrodite from Islamic perspective

in 1983 the Conference of Rulers in Malaysia decided that a ban of 'sex change operations' should be imposed on all Muslims, except for hermaphrodites. Also, 'cross-dressing' was prohibited. (Teh) In 1988 Al Azhar, the highest Sunni Islamic authority in Egypt, gave a religious (legal) decision (fatwa) regarding surgical treatment of intersexual stating that 'it is permissible to perform the operation in order to reveal what was

hidden of male or female organs. Indeed, it is obligatory to do so with the reason that it must be considered a treatment'. However, in Iran a decision by Ayatullah Imam Khomeini (within the context of Shi'a Islam) allowed for the sex reassignment surgery for transsexual

4. Reports of Khuntha from Hadith and Sunnah ISLAMIC jurisprudence provides only some detail on the treatment of persons who combine the characteristics of both sexes: transgenders and hermaphrodites (khuntha), and men with innate effeminate tendencies (mukhannath). Issues of concern over their inheritance rights, qualification as witnesses, and rules of female privacy (sitr) are discussed. I shall review some of these, but then also pose the larger question of fairness over the stigma and prejudice that such persons face in our midst. Some of these were highlighted in a New Straits Times editorial (Dec 20), and several interviews and responses given by religious leaders and others on the subject.

Both khuntha and mukhannath are qualified to be witnesses if they are upright ('adl) and do not actively exhibit or exaggerate their masculine or feminine tendencies, but not so if they do, as that would undermine their rectitude. Yet the leading schools of Islamic law have differed due to a renowned hadith proclaiming that "Muslims are upright in relationship to one another", which means that people are presumed to be upright unless proven otherwise. Innate tendencies beyond a person's control do not disqualify a witness -- as is understood from the Quranic verse that "every soul is accountable for its own (deliberate) deeds" (52:21, also 14:21 and 74:38).

Hadith also indicate that the mukhannath and herma-phrodite are treated like other men with regard to rules of privacy (sitr), especially of women in the household. The Prophet

Muhammad discouraged the entry of mukhannath with no known desire for women into his household. : It is lawful for a man, if his son dies while he is still alive and leaves behind children, to bequeath something to them, as long as it is less than a third of the estate, even if their uncles objected to that, because a man has the right to dispose of a third of his wealth after his death as he wishes. So if his grandsons do not inherit from him, it is preferred that he bequeath to them the inheritance of their father, whether it be a third, or less, according to his judgement. But if he does not do so, there is nothing for them, unless their uncles permit it. Ibn Jibreen

All of this is to be further moderated by the principle that "God makes no soul responsible for what is beyond its capacity" (2:233).

Prophet Muhammad also said that "people are God's children and the most beloved of them to God is the most compassionate of them to His children". There is acknowledgement in the Quran also of "men who have no wives with women", side by side with

minors and elderly persons with whom women can behave more freely within the home environment (24:31 and 24:60).

The fiqh discourse on transgenders draws a certain distinction between two categories of persons, namely the khuntha and the mukhannath. The former is a male person who resembles a female in speech, movement and appearance due to an inherent condition that is beyond his ability to control, and there is, therefore, no sin, shame or blame attached to it.

Juristic discourse concerning the khuntha is almost entirely focused on their rights in respect of privacy, clothing, burial ceremonies, inheritance rights and others. This is a language not of denial but affirmation that such persons do exist among us and that society should allow space for them to lead a life of dignity.

The mukhannath is, on the other hand, a person who conceals his masculinity and much of his feminine behaviour is deemed to be of his own making. There is blame attached to this and the case is treated differently to that of the khuntha.

To differentiate one from the other may admittedly not be self-evident, in which case scientific evidence plays a crucial role, although the fiqh tradition, too, has moved beyond simplistic categories to discern shades of differences between them.

Fiqh and science both confirm that sexual orientation is latent within each individual, emerging in complex interactions between one's biological make-up and early childhood. Current research is pushing slowly but steadily towards the conclusion that sexual orientation is largely inherent.

Khuntha is further divided into two types: easy to discern (khuntha ghayr mushkil), as opposed to khuntha mushkil, whose condition is difficult to determine.

The former is a person who exhibits both masculine and feminine traits, but one of these is predominant. This is basically a man with feminine tendencies, or a woman with masculine tendencies, and it is possible to determine the application of fiqh rules pertaining to their rights.

In short sentences of Islamic legitimacy without using medicine intervention:

The khunsa mushkil, or transgender in the full sense, is a person who may have both male and female sexual organs, or has neither but whose urinary tract ends with an aperture. If the former, an attempt is made to determine the manner of urination. If this proves reliable, and natural inclinations, whether towards men or women, also fail to provide a clue, the case is treated as one of indeterminable hermaphrodite.

Jurists and schools of law have differed as to details in the application of fiqh rules pertaining, for example, to inheritance, by taking an average of two separate distributions for a male and a female

respectively, or the lower of the two, depending on which school of fiqh one follows, to be assigned to the hermaphrodite.

Some of these questions can now be better determined perhaps in light of advances in science, in which case the rules of ijtiḥād would suggest recourse to scientific evidence, general guidelines of the Quran and Hadith, as well as the enlightened aspirations and insights of our society and our quest to finding more refined answers.

* Published with kind permission of the International Institute of Advanced Islamic Studies (IAIS) Malaysia. Also published in New Straits Times, Thursday 11 August 2011. (<http://www.nst.com.my/nst/articles/16kamalia/Article/#ixzz1UggvhmD1>). (www.hashimkamali.com or www.iais.org.my).

Sexual orientation and behavior:

Sexual orientation and behavior are independent from gender identity; since both are often mentioned together or even confused, some relevant topics are mentioned here. Sexual identity has been described as a component of an individual's identity that reflects their sexual self-concept. The integration of the respective identity components (e.g. moral, religious, ethnic, occupational) into a greater overall identity is essential to the process of developing the multi-dimensional construct of identity

Sexual identity can change throughout an individual's life, and may or may not align with biological sex, sexual behavior or actual sexual orientation. For example, gay, lesbian, and bisexual people may not openly identify as such in a homophobic/heterosexist setting or in areas whose record on LGBT rights is poor. In a 1990 study by the Social Organization of Sexuality, only 16% of women and 36% of men who reported some level of same-sex attraction had a homosexual or bisexual identity.

Sexual identity is more closely related to sexual behavior than sexual orientation is. The same survey found that 96% of women and 87% of men with a homosexual or bisexual identity had engaged in sexual activity with someone of the same sex, as contrasted to 32% of women and 43% of men who had same-sex attractions. Upon reviewing the results, the organization commented: "Development of self-identification as homosexual or gay is a psychological and socially complex state, something which, in this society, is achieved only over time, often with considerable personal struggle and self-doubt, not to mention social discomfort."

Transgenders and justice in islam:

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Jurists and schools of law have differed as to details in the application of fiqh rules pertaining, for example, to inheritance, by taking an average of two separate distributions for a male and a female respectively, or the lower of the two, depending on which school of fiqh one follows, to be assigned to the hermaphrodite.

Some of these questions can now be better determined perhaps in light of advances in science, in which case the rules of ijtihad would suggest recourse to scientific evidence, general guidelines of the Quran and Hadith, as well as the enlightened aspirations and insights of our society and our quest to finding more refined answers.

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Fiqh and science both confirm that sexual orientation is latent within each individual, emerging in complex interactions between one's biological make-up and early childhood. Current research is pushing slowly but steadily towards the conclusion that sexual orientation is largely inherent.

Ruling on marrying a man who is intersex or impotent, and the difference between them:

The majority of fuqaha' are of the view that with regard to the intersex individual before puberty, if he urinates from a penis, then he is a boy; if he urinates like a girl, then this person is female.

After puberty, the matter is to be decided by one of the following signs:

If he grows a beard, ejaculates, impregnates a woman or has intercourse with a woman, then he is a man. The same applies if he demonstrates courage and fighting skills, and stands up to the enemy; this is proof of his masculinity, as was mentioned by as-Suyuti, quotes from al-Isnawi.

If this individual grows breasts that produce milk, or menstruates, or it is possible to have intercourse with them, then this person is a woman. If this individual gives birth, then she is definitely female, and this factor is to be given precedence over all indications to the contrary.

With regard to sexual orientation, it is to be taken into consideration when the characteristics discussed above are unclear. If this person is sexually attracted to men, then she is a woman; if he is sexually attracted to women, then he is a man. If he says that he is sexually attracted to both or neither, then the matter is ambiguous. As-Suyooti said: When the word khuntha (intersex) is used in fiqh, what is meant is the ambiguous intersex individual. The ambiguous intersex individual is one who shows no clear indications of being either male or female, and does not know whether he is a man or a woman, or he has characteristics of both genders.

This ambiguity is of two types: one that has the anatomy of both genders, where other defining characteristics are present in equal measure, and one who does not have the anatomy of either; rather he has a hole (through which he urinates).

If he is sexually attracted to females, then he is a man; if sexually attracted to men, then she is female.

The one who is sexually impotent is the man who possesses male genitalia but for some reason – whether connected to illness or some psychological, physical or other reason – is not able to have sex, in which case he will never have intercourse or pleasure, or produce children. Such individuals are of two types: those in which there is no certainty as to

his gender, and those in which the gender is known. One of the factors to be taken into consideration is sexual orientation.

Thus it is clear that not everyone who is impotent is intersex. He may be impotent because of sickness that has nothing to do with effeminate. Or a person may be intersex but is able to have sex and so on.

As for one who has weak desire or is even impotent, marriage to him is valid, but he must disclose his condition before marriage. If he discloses it, marriage to him is valid for a woman who thinks that she can live with him on that basis, such as if she also has no desire for men. But in the case of the young woman who wants to get married and have a sexual relationship, as other women like her do, we do not advise her to go ahead with it, because she may think that she can be patient in this situation, then find out that she cannot be patient, and she may think of doing something haraam – Allah forbid – to make up for what she has missed out on.

With regard to marriage to a man who is impotent, there is no shar'i impediment to doing so, but it is essential to tell the truth to the one whom he wants to marry, otherwise he is sinning and she has the right to annul the marriage, because sexual pleasure and producing offspring are two of the most important purposes of marriage, and the right to them belongs to both spouses.

In al-Mawsoo'ah al-Fiqhiyyah (31/16) it says:

Impotence is a problem that could give the wife the right to demand separation from her husband, after giving the husband one year (to see if things change) according to the majority of fuqaha'.

Some of the Hanbalis, including Abu Bakr and al-Majd (the grandfather of Ibn Taymiyyah) favoured the view that she has a right to immediate annulment of the marriage.

Whatever the case, what we advise you to do is not to go ahead with this risk and cause trouble for yourself by accepting marriage to someone like this.

If you are a problematic hermaphrodite (or what is called in Arabic Khuntha Musykil), then it is allowed to undergo an operation to change into a male or a female according to the view which the doctors consider to befit your characteristics after making the required physical examinations. If your condition has a clear gender (either male or female), then fear Allaah The Almighty and be patient.

As for marriage, if your condition has a clear gender from the beginning or after undergoing a sex change operation with its conditions, then there is no harm in marrying. That is because you are no longer a problematic hermaphrodite. The one who is not allowed to marry, according to most of the scholars, is the problematic hermaphrodite since he/she is treated according to the rulings which are safest.

There is another opinion that he/she is allowed to marry. Al-'Izz ibn 'Abdus-Salaam may Allaah have mercy upon him said: "Marriage of a

problematic hermaphrodite is invalid to ward off the evil of a woman marrying a woman or a man marrying a man. However, Ash-Shaafi'i may Allaah have mercy upon him was quoted to have said that marrying him/her is lawful. In his book Al-Umm, he said: "If he/she is problematic, he/she is allowed to marry according to the gender he/she wishes. However, if he/she married according to one gender, he/she would not be allowed to marry again according to the other gender. He/she can inherit and be inherited according to where he/she urinates from (i.e. from the penis or from the vaginal area)." [End quote]

As for your statement "What gender will I be in Jannah? Will I be male or female?", then this can only be asked by the one whose condition remained problematic. However, if someone is problematic to us, he/she is not so to the Lord of the worlds Who created him/her. Some scholars of Tafseer (interpretation of Quran) said regarding the saying of Allaah The Almighty (which means): {And [by] He who created the male and female.}[Quran 92:3]: "Allaah The Almighty never created anything of living creatures except it should be a male or female. As for the hermaphrodite, even if his/her condition is problematic for us, it is not so for Allaah The Almighty, i.e. it is known whether he/she is male or female." Allaah Knows best

Conclusion:

Our society is much far from the true essence of our religion Islam now days. More over very few from us follow the teachings of Islam.

As we don't keep hermaphrodites in our homes and don't give them their share of inheritance..

We send them in hijra communities to become burden for our society. Hermaphrodite who is not mushkil, its share of inheritance is much clear and determined, but not for the khuntha mushkil, So in my humble opinion hermaphrodites should be given two shares according the opinion of majority jurists, one share as male and one share as female. So they can live better and become helpful part of our society not the burden. And scientific research must take few steps more to get confirm that khuntha mushkil is considered as male or female. So its inheritance would be more clear and determined.

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