

Transgender And Sex Exploration In The Light Of Islamic Law

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Abstract

The Holy Quran is explicit that mankind has been divinely created from a male and a female i.e. O Mankind! We created you from a male and a female (Al-Hujurat: 13) It also states that mankind is divided into the two sexes of male and female (such as: "...and from the two of them, He spread forth multitudes of men and women" (Al-Nisa: 1) and "And the male is not like the female..." (Al-e-Imran: 36). The two sexes are equally human and equally noble and there is no spiritual superiority of either gender over the other, and both have equal access to divine blessings, grace, forgiveness, and Paradise etc.

There are simply too many verses in the Holy Quran that refer to the two sexes for us to deny a fundamental gender binary, and there is no reference whatsoever in the Holy Quran to anything other than this. It is an undeniable reality that numerous Islamic legal and social rulings differ between males and females. The contemporary distinction between biological sex and psychological or cultural gender might have some elements of truth to it (e.g. it is correct that some aspects of traditional gender roles are culture based). However, to claim that "gender" in its entirety is a cultural construct bearing no essential relationship to biological sex is simply incorrect.

This study focuses on some basic scientific and Islamic teachings and fundamentals that may give a right pathway towards this important and social issue.

Key Words: Male, Female, Islamic Law, Quran, Hadith, Gender, Sex, Specie.

Biological Male

“Male is the sex of an organism that produces the gamete (sex cell) known as sperm, which fuses with the larger female gamete, or ovum, in the process of fertilization”.¹

Biological Female

“Female is the sex of an organism that produces the large non-motile ova (egg cells), the type of gamete (sex cell) that fuses with the male gamete during sexual reproduction”.²

Genetic determination

“The sex of most mammals, including humans, is genetically determined by the XY sex-determination system where males have X and Y (as opposed to X and X) sex chromosomes. During reproduction, the male contributes either an X sperm or a Y sperm, while the female always contributes an X egg. A Y sperm and an X egg produce a male, while an X sperm and an X egg produce a female”.³

Heterosexual

“A male and a female feel attracted to members and the opposite (second) sex/gender form, and usually cooperate to produce an offspring involving the fusion of a sperm- and an egg cell”.⁴

Homosexual

“Individuals of the same sex form are more attracted to each other than to members of the other sex. Homosexuality occurs in many animal species”.⁵

Biological Sex

According to Arnold Dee Loof:

“Thus with respect to biological sex, one is either male or female. Individuals that have the two types of gonads, either occurring together or alternating, are called hermaphrodites”.⁶

Biological Gender

According to Arnold Dee Loof:

“There is no generally accepted definition of gender, because the concept itself is not static but dynamic. According to Weed the meaning of gender depends on who uses the word,

in what context, and for what ends. A few examples of definitions as used in medicine or in the humanities, in particular in sociology are:

1. Gender: the behavioral, cultural, or psychological traits typically associated with one sex.
2. Gender: is a constitutive element of social relationships based upon perceived differences between the sexes and gender is a primary way of signifying relationships of power.
3. Gender: is the range of characteristics pertaining to, and differentiating between masculinity and femininity. Depending on the context, these characteristics may include biological sex (i.e. the state of being male, female or an intersex variation which may complicate sex assignment), sex-based social structures (including gender roles and other social roles), or gender identity.
4. Since 2011, the FDA started using sex as the biological classification and gender as a person's self-presentation as male or female, or how a person is responded to by social institutions based on the individual's gender presentation.
5. To my knowledge, no specific definition of gender emerged from basic studies in animal physiology and development.”⁷

Difference between Sex and Gender

Sex and gender are often used interchangeably, despite having different meanings:

“**Sex** refers to a set of biological attributes in humans and animals. It is primarily associated with physical and physiological features including chromosomes, gene expression, hormone levels and function, and reproductive/sexual anatomy. Sex is usually categorized as female or male but there is variation in the biological attributes that comprise sex and how those attributes are expressed.

Gender refers to the socially constructed roles, behaviors, expressions and identities of girls, women, boys, men, and gender diverse people. It influences how people perceive themselves and each other, how they act and interact, and the distribution of power and resources in society. Gender

identity is not confined to a binary (girl/woman, boy/man) nor is it static; it exists along a continuum and can change over time. There is considerable diversity in how individuals and groups understand, experience and express gender through the roles they take on, the expectations placed on them, relations with others and the complex ways that gender is institutionalized in society”.⁸

Intersex

“Intersex is the term that a person may use when they have both male and female sex characteristics. These characteristics include genitalia, hormones, chromosomes, and reproductive organs”.⁹

Transgender

“A transgender (often abbreviated as Trans) person is someone whose gender identity or gender expression does not correspond with their sex assigned at birth”.¹⁰

Difference between Intersex and Transgender

“The concepts of **transgender** and **intersex** are easy to confuse, but these terms refer to very different identities. To review, transgender people experience a social process of gender change, while intersex people have biological characteristics that do not fit with the dominant sex/gender system. One term refers to social gender (transgender) and one term refers to biological sex (intersex). While transgender people challenge our binary (man/woman) ideas of gender, intersex people challenge our binary (male/female) ideas of biological sex. Gender theorists, such as Judith Butler and Gayle Rubin, have challenged the very notion that there is an underlying **sex** to a person, arguing that sex, too, is socially constructed”.¹¹

Quran teachings

Above mentioned scientific researches regard the sexes or species explanation also recognized by Quran as:

Species classification

Allama Qurtubi (671AH) said:

(رجالا كثيرا ونساء)¹² حصر ذريتهما في نوعين، فاقتضى أن الخنثى ليس بنوع، لكن له حقيقة تردده إلى هذين النوعين وهي الأدمية فيلحق بأحدهما من اعتبار نقص الأعضاء وزيادتها.¹³

Allah limited their (Adam and Eva may peace be upon them) offspring into two types, so He required that the hermaphrodite is not a species, but it has a reality that refers it to these two types, which is the human being, so he joins one of them considering the lack of organs and their increase.

So this Ayah clearly said that there are only two species Male and Female and beside them no one can claim his own separate specie.

Inheritable status

Allama Qurtubi also mentioned:

ومن هذا الباب استدل العلماء على ميراث الخنثى المشكل إذا تساوت فيه علامات النساء والرجال من اللحية والتدي والمبال بنقص الأعضاء فإن نقصت أضلاعه عن أضلاع المرأة أعطي نصيب رجل.¹⁴

From this section, the scholars inferred the inheritance of the hermaphrodite which is problematic if the signs of women and men are equal in terms of beards, breasts and openings, and those concerned with the lack of organs. If his ribs are less than the ribs of a woman, he will be given the share of a man.

Change the creation of Allah

(ولأمرنهم فليغيرن خلق الله)¹⁵ ... قيل: هذا المنهي عنه إنما هو فيما يكون باقيا، لأنه من باب تغيير خلق الله تعالى، فأما مالا يكون باقيا كالكحل والتزوين به للنساء فقد أجاز العلماء ذلك مالك وغيره، وكرهه مالك للرجال. وأجاز مالك أيضا أن تشي المرأة يديها بالحناء. وروي عن عمر إنكار ذلك وقال: إما أن تخضب يديها كلها وإما أن تدع، وأنكر مالك هذه الرواية عن عمر، ... ويروى عن النبي صلى الله عليه وسلم أنه قال لعائشة [رضي الله عنها]: (إنه لا ينبغي أن تكوني بغير قلادة إما بخيط وإما بسير. وقال أنس: يستحب للمرأة أن تعلق في عنقها في الصلاة ولو سيرا. قال أبو جعفر الطبري: في حديث ابن مسعود دليل على أنه لا يجوز تغيير شي من خلقها الذي خلقها الله عليه بزيادة أو نقصان، التماس الحسن لزوج أو غيره، سواء فلجت أسنانها أو وشرتها، أو كان لها سن زائدة فأزالتها أو أسنان طوال فقطعت أطرافها. وكذا لا يجوز لها حلق لحية أو شارب أو عنقفة إن نبتت لها، لأن كل ذلك تغيير خلق الله. قال عياض: ويأتي على ما ذكره أن من خلق بأصبع زائدة أو عضو زائد لا يجوز له قطعه ولا نزعه، لأنه من تغيير خلق الله تعالى، إلا أن تكون هذه الزوائد تولمه فلا بأس بنزعها عند أبي جعفر وغيره.¹⁶

“(And I (Satan) will command them so they will change the creation of Allah) ... Then it was said: This forbidden is only in what remains, because it is a matter of changing the creation of God Almighty. And those which are temporary like kohl and ladies makeup products are permitted by scholars like Imam Malik (RA) and others. And Imam Malik (RA) also dislikes it (Kohl and Makeup) for men. And Imam Malik (RA) also permitted for women to apply henna on their hands. While Hazrat Umar (RA) denied it and said: Either she dyes all of her hands or she leaves, but Imam Malik (RA) denied this narration from Hazrat Umar (RA), ... And it is narrated from the Prophet (peace be upon him) that He said to Aisha (RA) : “You should not be without a necklace, either with a thread.” Anas (RA) said. It is desirable for a woman to hang around her neck during prayer, even of a thread. Imam Abu Jaafar al-Tabari (RA) said: In the hadith of Ibn Masoud (RA) there is evidence that it is not permissible to change anything of her character that Allah created for him by adding or decreasing, by seeking goodness for a husband or someone else, whether her teeth or skin are clenched. Or she had an extra tooth and removed it, or long teeth were cut off. Likewise, it is not permissible for her to shave a beard or a mustache or a headband if it grows for her, because all of that is changing Allah’s creation. Qadhi Iyadh (RA) said: It comes to what he mentioned that whoever is created with an extra finger or an extra organ is not permissible for him to cut it or remove it, because it is part of changing the creation of Allah Almighty, unless these appendages hurt him, then there is nothing wrong with removing them according to Abu Jaafar (RA) and others”.

Hadith teachings

Here we find some Hadiths regarding Transgender people and Hermaphrodites that also show some of their basic rights in a society and people behavior with them.

Hadith regarding Transgender people

عن ابن عباس رضي الله عنهما قال: لعن رسول الله صلى الله عليه وسلم
المتشبهين من الرجال بالنساء، والمتشبهات من النساء بالرجال.¹⁷

“Hazrat Ibn Abbas (RA) said: that Prophet (peace be upon him) cursed to people who mediating (help) men to resemble women and women to resemble men”.

عن أبي هريرة، قال: لعن رسول الله صلى الله عليه وسلم الرجل يلبس لبسة المرأة، والمرأة تلبس لبسة الرجل.¹⁸

“Hazrat Abu Hurairah said that Prophet (peace be upon him) cursed men who dress up women’s clothing and women who dress up men’s clothing”.

Hadith regarding Hermaphrodites

عن ابن عباس، قال: لعن النبي صلى الله عليه وسلم المُخَنَّثِينَ من الرجال، والمُتَرَجَّلَاتِ من النساء، وقال: أخرجوهم من بيوتكم قال: فَأَخْرَجَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَلَانًا، وَأَخْرَجَ عُمَرُ فَلَانًا.¹⁹

“Hazrat Ibn Abbas (RA) said: that the prophet (peace be upon him) cursed a man who resemble women and women who resemble men. The prophet said: “Get them out of your house”. Ibn Abbas said: The prophet (peace be upon him) got a man out and Umar (RA) got a woman out”.

Hadith regarding about their basic rights

عن أبي هريرة رضي الله عنه: أن النبي صلى الله عليه وسلم أتى بمخنث قد خضب يده ورجليه بالحناء، فقال النبي صلى الله عليه وسلم: ما بال هذا؟! فقيل: يا رسول الله! يتشبه بالنساء، فأمر به فنفى إلى النقيع، فقالوا: يا رسول الله! ألا نقتله؟ فقال: إني نهيت عن قتل المصلين.²⁰ ، وأورد أبو داود هذه الترجمة: باب في الحكم في المخنثين ، والمخنثون: هم الذين يتشبهون بالنساء، وإذا كان ذلك خلقة في الإنسان فلا دخل له فيه، وإذا كان تصنعاً وتشبهاً وليس خلقة فيه فهذا هو المحرم الذي يؤخذ عليه الإنسان، أما إذا كان إنسان جبله الله على أن يكون صوته مثل صوت النساء وحركاته مثل حركات النساء فهذا شيء لا دخل له فيه، وهذا ليس من كسبه، ولكنه صفة له، ولكن الممنوع والمحرم هو الذي يكون من كسبه وفعله وتصرفه، وهذا من جنس حركات المختار وحركات المرتعش، فحركات المرتعش ليست من كسبه، وهذا شيء ليس إليه بل الله تعالى جعله كذلك.²¹

“Hazrat Abu Hurairah (RA) said: One day an effeminate who coloured his hands and feet with henna brought to Prophet (peace be upon Him). So, the prophet asked them: “What is wrong with this?” They answered: “O Rasulallah (peace be upon Him), this guy resembled women”. So He (peace be upon Him) commanded about him to exiled to the place called Naqi’. They asked Rasulallah (peace be upon Him): “O Rasulallah (peace be upon Him), why do we not just kill

him?” He (peace be upon Him) answered: “I was forbidden to kill one who prayed. And Imam Abu-Dawood (RA) included this translation to a chapter on ruling on effeminate, and **effeminate**: They are those who imitate women, and if that is his natural character, then he has nothing to do with it. But if this condition is made by himself not naturally, then it should be Haram (forbidden) and should be asked. Whereas if a person has been ordained by Allah to have his voice like the voice of women and his movements like the movements of women, then this is something that has nothing to do with him, and this is not from his earning. But it is an attribute of him, but what is Haram (forbidden) is that thing which is from his earning, his actions and his behavior, and this is from the type of the movements of the chosen one and the movements of the trembling, so the movements of the trembling are not from his earning, and this is something not to him, but Allah Almighty made it like that”.

Hanafi school of thought

المخنث عندنا أنه إذا كان مخنثاً في الردى من الأفعال فهو كغيره من الرجال بل من الفساق ينحى عن النساء وأما من كان في أعضائه لين وفي لسانه تكسر بأصل الخلقة ولا يشتهي النساء ولا يكون مخنثاً في الردى من الأفعال فقد رخص بعض مشايخنا في ترك مثله مع النساء.²²

“The effeminate among us (Hanafiyyah) is that if the person is effeminate in bad deeds, then he is like other men, rather he is an immoral person who is deferred from women. Whereas whose limbs are soft, and his tongue is broken by the principle of character, and does not desire women, and is not effeminate in bad deeds, then some of our Elder (Mashaiekh) have permitted him to leave the like of him with women”.

Maliki school of thought

وإنما المخنث شدة التأنيث في الخلقة حتى يشبه المرأة في اللين والكلام والنظر والنعمة، وفي العقل والفعل، وسواء كانت فيه عاهة الفاحشة أو لم تكن. وأصل التخنث: التكرس واللين، فإذا كان كما وصفنا لك، ولم يكن له في النساء أرب، وكان ضعيف العقل لا يفطن لأموار النساء أبه، فحينئذ يكون من غير أولي الإربة الذين أبيح لهم الدخول على النساء.²³

“An Effeminate is so feminine in character that he resembles a woman in softness, speech, look, tone, intellect and action,

whether or not he has an obscene defect. The origin of intersexuality is: fragility and softness, so if it is as we described to you, and he has attraction towards women, and he is weak-minded and does not understand the affairs of women foolishly, then he is of them whose are undesirable of women and should be permitted to enter upon women”.

Shafai school of thought

من يتخلق بأخلاق النساء في حركة أو هيئة فيجرم على الرجال والنساء فإن كان ذلك خلقة فلا إثم.²⁴

“An Effeminate whoever imitates the morals of women in a movement or a body, then he is forbidden to men and women, and if that is a natural attitude, so there is no sin”.

Hambali school of thought

المخنث الذي لا شهوة له، فحكمه حكم ذي المحرم في النظر... فإن كان المخنث ذا شهوة ويعرف أمر النساء، فحكمه حكم غيره.²⁵

“An Effeminate who has no desire, then his ruling is the same as the ruling on the one who is not forbidden to look ... But if the effeminate has lust and knows about women, then his ruling is the ruling of other (forbidden) men”.

Latest Fatwa about Transgender and Sex exploration

Regarding this issue a Latest Fatwa was release by the Majma-u-Fiqhil Islami (The Council of the Islamic Fiqh) under the Foundation of Rabitat-ul-Alamil Islami (Council of the Muslim World League) in its session, The eleventh session held in Makkah Al-Mukarramah from Sunday 13 Rajab 1409 AH corresponding to February 19, 1989 AD to Sunday Rajab 20, 1409 AH corresponding to 26 February 1989 AD considered the issue of converting a male into a female and vice versa so according to them:

وبعد البحث والمناقشة بين أعضائه قرر ما يلي:
أولاً: الذكر الذي كملت أعضائه ذكورته، والأنثى التي كملت أعضائها أنوثتها، لا يحل تحويل أحدهما إلى النوع الآخر، ومحاولة التحويل جريمة يستحق فاعلها العقوبة؛ لأنه تغييٍ لخلق الله.²⁶

“After research and discussion among its members, the following was decided:

First: The male whose masculine parts are complete, and the female whose feminine parts are complete. It is not permissible to convert one of them to the other type, and

attempting to convert is a worthy crime the perpetrator of the punishment; because he changed Allah's creation”.

ثانياً: أما من اجتمع في أعضائه علامات النساء والرجال فينظر فيه إلى الغالب من حاله؛ فإن غلبت عليه الذكورة جاز علاجه طبيياً بما يزيل الاشتباه في ذكورته، ومن غلبت عليه علامات الأنوثة جاز علاجه طبيياً بما يزيل الاشتباه في أنوثته، سواء أكان العلاج بالجراحة أو بالهرمونات؛ لأن هذا مرض والعلاج يقصد به الشفاء منه، وليس تغييراً لخلق الله عز وجل.²⁷

Second: As for the one who has both the signs of women and men, so look at him mostly from his condition; if he is overcome by masculinity, it is permissible to treat him medically, that removes the suspicion of his masculinity, and whoever has signs of femininity is permissible treating him medically in a way that removes the suspicion of his femininity, whether the treatment is surgery or with hormones; Because this is a disease and the treatment is intended to cure it, and not change the creation of Allah Almighty.

Consequences

1. Allah Al-Mighty told us in the Quran 1400+ years ago whereas science discover it later on that there are only two basic species of human being Male and Female.
2. All the other and newly discovered genders should be consider under the above mentioned two basic species.
3. Intersex people have biological characteristics that do not fit with the dominant sex/gender system. This term refers to biological sex (intersex).
4. Transgender people experience a social process of gender change. This term refers to social gender (transgender).
5. Islam also gives them some basic rights to live in the society i.e.:
 - The Holy Quran discussed their heritable status as mentioned above.
 - Prophet (Peace be upon Him) addressed that: They also have right to live the lives safely.
 - No one is permitted to kill them unlawfully.
6. Islam forbidden the transgender rule because it is the base of many social evils of which the west practice this rule and now want to banned it.
7. Whereas Islam permitted to explore the sex, if someone really feels that he or she has the opposite sex signs, but in that case all of these issues must be observed and done under proper medical specialists.

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