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Rethinking Sex: Intersex and Transgender Politics in Shia Islam

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ROOHOLLAH TALEBI TOOTI, OCT 7 2025

This article explores the complex and often paradoxical engagement of contemporary Shia jurisprudence with non-normative sex and gender identities, focusing on the legal and political trajectories of intersex (*al-khunthā*) and transgender individuals in Iran. It traces the evolution from the classical legal framework, which created a unique, intermediate status for ambiguous bodies, to the modern jurisprudential turn initiated by Ayatollah Khomeini's fatwa legalizing sex reassignment surgery. The paper argues that while Shia fiqh demonstrates a surprising conceptual flexibility in shifting its focus from biological determinism to psychological self-awareness, this modern "progressive" stance paradoxically functions to reinforce a strict male-female binary. By juxtaposing the classical and modern approaches, this piece reveals an unresolved tension within Shia thought between a theological commitment to a divinely ordained binary order (*zawjiyyah*) and the jurisprudential necessity of accommodating the complex realities of human existence. Ultimately, the recognition of transgender identity is framed not merely as a liberal inclusion but as a complex act of biopolitical and theological governance, posing profound questions for the future of gender, sexuality, and religious authority in the Muslim world.

The Islamic Republic of Iran presents a striking paradox to observers of global gender politics. While Iran enforces a strict moral code, famously punishing homosexual acts with severe penalties, it is one of the few countries in the world where sex reassignment surgery (SRS) is not only legal but also partially subsidized by the state, framed as a legitimate medical "treatment." This seemingly contradictory policy is not a recent invention, but rather the product of a long and evolving jurisprudential history within Shia Islam, which has grappled with bodies and identities that defy normative categorization. This article delves into that history, tracing the conceptual path from the classical figure of the intersex person, or *al-khunthā* "transgender" or "transsexual" the of subject contemporary the to ,([?]?[?]?[?]?[?]) individual.

Juxtaposing the classical approach to biological ambiguity with the modern approach to psychological gender identity, this paper argues that Shia jurisprudence contains a powerful, albeit unresolved, tension. On one hand, this tradition is deeply rooted in a theological worldview that emphasizes the principle of "*zawjiyyah*" (pairedness/duality) as the foundation of the created order ("And of all things We created two mates [*zawjayn*]; perhaps you will remember" – Quran 51:49). From this perspective, the male-female binary is not a restrictive social construct but a reflection of a cosmic, divine order. On the other hand, this same jurisprudential tradition has shown a surprising capacity to recognize identities beyond conventional biological markers. Yet, this recognition has often become a tool for reinforcing—rather than dismantling—the very gender binary it seems to challenge. What conceptual tools have enabled this evolution? How can the tension between the theological principle of "*zawjiyyah*" and the existential reality of non-normative bodies and identities be understood? Ultimately, this analysis seeks to understand how a pre-modern legal system has adapted to contemporary challenges of identity and what political consequences this holds for the future of Islam and gender politics.

Long before the emergence of modern gender theory, Shia jurisprudence developed a sophisticated framework to address the reality of intersex bodies. The legal figure of *al-khunthā* refers to an individual whose biological sex is ambiguous. Classical jurists meticulously distinguished between the *khunthā ghayr mushkil* (the non-problematic intersex), who could be assigned to either the male or female sex based on dominant biological signs (such as the

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point of urination), and the far more conceptually challenging *khunthā mushkil* (the problematic intersex), who lacked clear determinants.

For the *khunthā mushkil*, jurists constructed a unique, intermediate legal status. Unable to definitively assign the individual to either sex, they applied the principle of *al-iḥtiyāt* (precaution or prudence), which dictates adopting the more cautious position in matters of religious duty. This resulted in a legal persona that was neither fully male nor fully female but a composite of both. For example, in matters of inheritance, the *khunthā mushkil* would receive a share halfway between that of a man and a woman (Tusi, 1967). In congregational prayer, they were required to stand in a row behind the men but in front of the women. Their modesty requirements (*hijab*) were stricter than a man's but potentially less so than a woman's. (Ansari, 1994)

This created a "third space" in the social and legal fabric. While the system was undeniably patriarchal and binary in its foundations, the figure of the *khunthā mushkil* demonstrates that classical fiqh possessed the conceptual tools to acknowledge and legislate for a reality that did not fit neatly into the male/female dichotomy. It recognized ambiguity and, rather than forcing a resolution, it codified that ambiguity into a distinct social existence. The body was the primary site of inquiry, but when the body failed to provide a clear answer, the law created a unique category instead of erasing the anomaly.

The pivotal moment in the modern history of gender in Shia Islam arrived in the mid-1980s with Ayatollah Ruhollah Khomeini's fatwa explicitly permitting sex reassignment surgery. This ruling represented a profound paradigm shift. Whereas classical jurisprudence focused almost exclusively on physical anatomy to determine sex, Khomeini's decision prioritized an individual's psychological identity or inner sense of self. The legal-theological framing was crucial. The procedure was not conceptualised as a "sex change" (*taghyir al-jins*), which would imply altering God's creation and be deemed sinful (*haram*). Instead, it was framed as a "sex correction" (*taṣḥīḥ al-jins*), a form of medical treatment to align the physical body with the "true" underlying gender. This logic positions a trans person not as someone wishing to become a different gender, but as someone who has been afflicted with a condition where their body is misaligned with their real, God-given gender. The "problem" is located in the flesh, not the soul (Fadlallah, 2009).

This shift had two monumental consequences. First, it moved the locus of gender determination from the external body to the internal psyche. A person's self-awareness and profound sense of being a man or a woman became the decisive factor, superseding ambiguous or even contradictory biological evidence. This opened a space for recognising trans identities entirely independent of intersex conditions. Second, it medicalised gender variance. By defining it as a treatable "disorder," the state and religious establishment created a pathway for legal recognition, but one that was contingent on medical diagnosis and intervention. This turn from biology to psychology was a radical reinterpretation, but as we will see, its political effects were double-edged. (Javaheri, 2022)

The jurisprudential system, both classical and modern, is not merely a descriptive enterprise; it is a "contested arena" where the very definition of sex is negotiated and politically charged. Paradoxically, the seemingly more "progressive" modern framework for transgenderism may operate more rigidly than the classical framework for intersexuality. While the *khunthā mushkil* was allowed to exist in a state of legal ambiguity, the modern trans subject is required to resolve all ambiguity. One must transition fully to the "other side" to be legally recognised.

A key political function of the modern fatwa on transsexuality is its role in reaffirming and defending the gender binary, a system that, from the perspective of many jurists and theologians, is fundamental and desirable. From this viewpoint, the male-female duality is not a contestable social construct but an existential and theological truth rooted in the principle of "zawjīyah" in creation. Accordingly, the goal of jurisprudence is not to dismantle this binary but to manage exceptional cases and restore them to this primary order. The transsexuality fatwa, with its logic of "correction" and "alignment," does precisely this: rather than accommodating a third or fluid status, it reintegrates the individual into one of the two "authentic" positions of man or woman, thereby safeguarding the theological order of creation from the threat of ambiguity.

This approach effectively forecloses the possibility of non-binary, genderqueer, or fluid identities, which find no place

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within this therapeutic-legal framework. In this sense, it is accurate to say that the state's recognition of transsexuality is not necessarily a victory for gender diversity in its modern sense, but rather a strategy for managing and containing deviation from the binary norm. This alliance grants the religious establishment a powerful role in the "biopolitics" of the modern state, using Foucault's term (Foucault, 1990). From a theological perspective, this is not a secular "biopolitics" but a religious "stewardship" or "guardianship" (ri'ayah) over the order of creation, wherein the seminary defines the boundaries of the permissible based on divine principles, and the state, through its medical and legal apparatus, enforces them.

The challenges for this system are mounting. What of non-binary individuals who identify as neither man nor woman? What of trans people who seek social and legal recognition without undergoing surgery? Can a jurisprudence that has pivoted from biology to psychology take the next step and recognize identity claims that transcend the male/female binary altogether? Or does the foundational commitment to the theological principle of "zawjiyyah" render such a step impossible or undesirable? Can the precautionary, in-between status of the "khunthā mushkil" be reimagined as a precedent for recognising non-binary identity? Or will the commitment to the binary, reinforced by the modern "correctional" model, prove too rigid to adapt? The future path of this discourse will be a critical test of the seminary's intellectual vitality and its ability to engage with the evolving global landscape of gender. It should be noted, however, that the acceptance of gender diversity is a debatable matter even in the West. For instance, Donald Trump declared after his presidential victory that only two sexes, male and female, would be officially recognised in America. For this reason, we shouldn't assume that accepting absolute gender diversity is the only desirable ideal.

The journey from *al-khunthā* to the transgender subject reveals a profound continuity and a radical rupture in Shia legal thought. The continuity lies in the willingness of jurists to engage with non-normative bodies and identities. The rupture lies in the shift from a logic of accommodation of ambiguity to a logic of corrective resolution. The unresolved tension lies here: Shia jurisprudence has demonstrated a remarkable ability to see past normative bodies and validate non-normative identities, but this validation has often come at the cost of reinforcing the very binary system it appears to challenge. This duality is itself rooted in a deeper conflict: on one side, a theological worldview founded on "zawjiyyah" that holds the male-female binary as sacred and foundational; and on the other, the complex realities of human existence that do not always fit this framework, compelling jurisprudence toward flexibility and reinterpretation.

The recognition of trans identity in Iran is not a simple story of liberation, but a complex politico-theological act that simultaneously confirms and polices the boundaries of gender. It is an act of inclusion that operates through exclusion, welcoming the binary-compliant trans subject while rendering the non-binary or non-surgical individual invisible and illegitimate. For the seminary, this is more than a theoretical debate; it is an encounter with the forces of global modernity and the shifting self-understanding of human beings. The central challenge is how to balance a commitment to theological principles like "zawjiyyah" with the need to respond to the existential and justice-oriented complexities of the modern human condition. Whether these two legacies—the classical accommodation of ambiguity and the modern prioritization of the psyche—can be reconciled to build a more inclusive jurisprudence, one that can remain faithful to a divine order while also embracing the full spectrum of human identity, remains the vital question. The path forward requires a courageous intellectual engagement with both tradition and transformation, a challenge that will ultimately define the seminary's relevance, authority, and soul in the century to come.

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About the author:

Roohollah Talebi Tooti holds an MA in Islamic Jurisprudence from the University of Tehran and is currently a PhD candidate in Women's Rights in Islam at Tarbiat Modares University. His research areas include the intersection of Islamic jurisprudence and gender studies.