

Reinterpreting the Legal Ruling on Marriage of Intersex Individuals in Light of Dynamic Jurisprudence and Comparative Law: A Case Study of Iran and England

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The phenomenon of congenital gender diversity or “intersex” as a biological reality has consistently created complex challenges for legal systems worldwide. This study aims to conduct a precise and comprehensive examination of how two legal systems—Iran (based on Ja’fari Shi’a jurisprudence) and England (based on common law)—address one of the most sensitive of these challenges, namely marriage. The findings indicate that Iran, prioritizing the preservation of public order and compliance with Sharia rulings, deems the marriage of the *khunthā mushkil* (an individual with indeterminate or non-distinguishable sexual characteristics) invalid due to the absence of the essential condition of “sexual difference.” For the *khunthā zāhir* (an intersex person with more readily identifiable sex characteristics), Iran also imposes restrictive conditions. In contrast, England, emphasizing “the right to self-determination” and “human rights,” by enacting laws such as the Gender Recognition Act (2004) and the Marriage (Same Sex Couples) Act (2013), has established a relatively comprehensive legal framework to recognize acquired gender identity and permit the marriage of such individuals. Using a descriptive-analytical method, this article explains these fundamental differences and proposes legal development strategies aligned with Islamic values while addressing the real-life needs of intersex individuals in Iran.

Keywords: *intersex individuals, marriage, family law, Ja’fari Shi’a jurisprudence, comparative law, English law, gender identity.*

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1. Introduction

Human sexual development diversity is a phenomenon in which some individuals are born with chromosomal, hormonal, or anatomical characteristics that do not conform strictly to binary male or female definitions. In Iranian jurisprudential and legal literature, the term *khunthā* has traditionally been used to refer to such individuals (Ja’fari Langaroudi, 1999). The question of marriage for these individuals has become one of the most complex issues in family law due

to its multidimensional nature—legal, religious, medical, psychological, and social.

According to reports from the United Nations, approximately 1.7% of the global population is born with intersex variations, underscoring the prevalence of this phenomenon (United Nations, 2019). These data reveal that the issue is not marginal and requires serious legal attention. In Iran, despite a rich jurisprudential heritage on the subject of *khunthā*, no codified and comprehensive legal protections exist for the rights of



these individuals, leading to multiple challenges in judicial practice (Beh Pajoo, 2021; Mousavi Bojnourdi, 2016).

Within Iran's legal system, rooted in Islamic jurisprudence, rulings regarding *khunthā* are primarily based on traditional juristic classifications and the determination of predominant sex characteristics. Although Islamic law provides resources to address such cases, the absence of clear statutory regulations leaves significant ambiguity in practice. In contrast, the common law system of England, emphasizing human rights and modern medical perspectives, has enacted laws to recognize gender identity and facilitate marriage for intersex individuals (Harper, 2020; Parliament U. K., 2004).

This study aims to conduct a comparative analysis of the conditions for the marriage of intersex persons in Iran and England by addressing the following questions: What are the jurisprudential and philosophical foundations of each legal system? What mechanisms exist for determining and altering legal gender? What are the legal consequences of marriage before and after gender recognition? And, finally, how can Iran's legal system enhance protection of intersex individuals' rights while remaining consistent with its own religious and cultural values?

2. Theoretical Foundations and Conceptual Framework

2.1. The Concept of *Khunthā* in Jurisprudence and Law

In Islamic jurisprudence, *khunthā* refers to an individual who possesses characteristics of both sexes. Al-Hilli defines *khunthā* as "a person who has both male and female sexual organs" (Hilli, 1998). Jurists classify *khunthā* into two main categories: *khunthā zāhir* (clear/interpretable) and *khunthā mushkil* (indeterminate). *Khunthā zāhir* refers to a person whose sex can be determined by the predominance of certain physical signs; this type is further divided into *khunthā dhakar* (male-dominant traits) and *khunthā unthā* (female-dominant traits). By contrast, *khunthā mushkil* describes a person whose sexual characteristics are so ambiguous that their sex cannot be definitively determined (Ja'fari Langaroudi, 1999).

In contemporary medical science, the term *intersex* is used as the equivalent of *khunthā*. The World Health

Organization defines intersex individuals as "persons born with sex characteristics—including chromosomes, gonads, or genitals—that do not fit typical definitions for male or female bodies" (World Health Organization, 2015).

Comparative legal systems adopt varying approaches to the definition of intersex. In common law jurisdictions, the legal recognition of intersex status is more strongly influenced by medical and psychological criteria (Greenberg, 2017). From a psychological standpoint, gender identity is understood to have multiple dimensions—biological, psychological, and social—which may not always align (American Psychological Association, 2015). This multidimensional view can guide the development of legal frameworks for intersex individuals.

2.2. Philosophical Underpinnings of the Two Legal Systems

A) Iranian Legal System

Iran's approach to intersex issues is shaped by several overarching principles:

1. **Preservation of lineage and public family order** — The primary philosophy of marriage in Islam is establishing the family and ensuring the continuation of lineage (Katouzian, 1999).
2. **Gender essentialism** — Traditional Islamic jurisprudence tends to view sex as a fixed and unchangeable attribute (Mousavi Bojnourdi, 2016).
3. **Precautionary rulings** — Due to the sensitivity of the issue and the potential for lineage confusion, fiqh generally applies caution when dealing with intersex cases (Fazli, 2019).

B) English Legal System

England's legal approach is founded on different philosophical bases:

1. **Human rights and dignity** — The centrality of individual rights and the entitlement of each person to determine their gender identity (Amnesty International, 2021; Human Rights Watch, 2020).
2. **Personal autonomy** — Emphasis on the individual's right to self-determination and lifestyle choice (Harper, 2020).
3. **Secular legislative framework** — The separation of religion and lawmaking enables

adaptation of legislation to evolving medical and psychological knowledge (Council of Europe, 2015).

2.3. *Mechanisms for Gender Determination and Legal Recognition: A Legislative Comparison*

Iran:

The process of determining and changing legal gender in Iran is fragmented and primarily relies on judicial rulings and the Iranian Legal Medicine Organization. According to the “Regulations of the Legal Medicine Organization on Gender Reassignment” (adopted in 2007), applicants must undergo multiple psychiatric and medical evaluations to establish the “necessity” of gender reassignment. This process is lengthy, costly, and lacks transparent and standardized criteria (Beh Pajooch, 2021).

England:

The Gender Recognition Act (2004) provides a clear and well-structured framework for legal gender recognition (Parliament U. K., 2004). Applicants must apply to the Gender Recognition Panel, and the main conditions include:

- Being at least 18 years old,
- Living in the acquired gender for at least two years,
- Intending to continue living in the acquired gender permanently,
- Providing medical and psychological reports.

A key feature of the English system is that undergoing gender-affirming surgery is **not** a legal prerequisite. This modern understanding acknowledges that gender identity is not solely dependent on external physical appearance (Harper, 2020).

2.4. *Legal Status of Intersex Children and the Role of Parents*

Iran:

When a newborn is delivered with ambiguous genitalia, decisions about the child’s gender assignment are typically made by the parents in consultation with physicians. Such early and often hasty decisions, without considering the child’s future identity development, can lead to severe identity conflicts and psychological harm in adulthood. There is no codified legislation in Iran that protects the rights of these children or mandates

delaying irreversible decisions until the child reaches an age at which they can express their own gender identity (Beh Pajooch, 2021; Mousavi Bojnourdi, 2016).

England:

A more cautious and child-centered approach is observed. The emphasis is on deferring non-essential and irreversible medical interventions—such as cosmetic surgeries—until the child is mature enough to participate in decisions about their gender identity. This approach aligns closely with international human rights standards, particularly the Convention on the Rights of the Child and European human rights frameworks (Council of Europe, 2015).

3. *Analysis of the Iranian Legal Context: Between Fiqh, Statutory Law, and Social Realities*

3.1. *Khunthā Zāhir: Marriage with a Potential Right of Annulment*

Although the marriage of a *khunthā zāhir* (an intersex individual whose predominant sex characteristics are identifiable) is considered valid, it is always subject to the potential exercise of the right of rescission (*khyār takhalluf al-sharʿ*). This right of annulment can jeopardize marital stability. For instance, if a wife discovers after marriage that her husband is intersex, even if it has no adverse effect on their marital life, she retains the legal right to annul the marriage. This reflects the Iranian legal system’s assumption that “naturalness” of sex is an implied essential term in every marriage contract (Katouzian, 1999).

This right of rescission is based on Article 1122 of the Iranian Civil Code, which grants either spouse the right to annul the marriage upon discovering certain “defects.” In Iranian judicial practice, intersex status is often regarded as a valid cause for rescission. For example, in a case before the Tehran Family Court, the wife requested annulment of the marriage under Article 1122 due to her husband’s intersex status; the court, relying on the forensic medical expert’s report, granted the annulment (Tehran Family Court Judgment No. 9209970221400375). Such cases underscore the urgent need for clear and specialized legislation in this field (Safaei, 1999).

3.2. *Khunthā Mushkil: Legal Deadlock and Divergent Jurisprudential Views*

The prevailing classical fiqh stance declares the marriage of a *khunthā mushkil* (an intersex person with indeterminate sex characteristics) absolutely void, effectively denying these individuals the right to form a family. This rigid prohibition seems to conflict with the Islamic principle of “no undue hardship” (*lā ḥaraj fī al-dīn*), derived from the Qur’anic verse “God has not placed upon you any hardship in religion” (Qur’an, al-Ḥajj: 78) (Mousavi Bojnourdi, 2016).

Although the dominant view among jurists maintains nullity, some contemporary scholars and legal theorists have proposed modern solutions by invoking principles such as *iḥtirār* (necessity) or rationalist rules in cases of legislative silence. For example, some recommend adopting a precautionary approach: instead of nullity, allowing dissolution by divorce to preserve at least certain financial rights of the wife (e.g., *mahr* and maintenance during the waiting period) (Ansari, 1999). A few emerging opinions, influenced by psychological and social gender identity, have argued for recognizing marriage validity based on lived gender experience rather than strict biological sex (Fazli, 2019). However, these minority perspectives have not yet influenced Iranian judicial rulings, which remain aligned with the dominant traditional view.

Ultimately, the invalidity of *khunthā mushkil* marriages stems directly from the non-fulfillment of a fundamental requirement of marriage validity—the necessity of sexual difference between spouses—derived from fiqh interpretations and embedded within the Civil Code (Mousavi Bojnourdi, 2016).

3.3. *Legal Effects of Gender Transition After Marriage*

If one spouse undergoes gender transition after the conclusion of marriage, the marriage becomes void from the moment the sexual difference requirement is no longer met. For example, if a wife transitions to male after marriage, the existing marriage contract becomes void since two men cannot be married under Iranian law (Safaei, 1999).

In such cases, the legal consequences for issues such as *mahr* (dowry), the waiting period (*‘idda*), and maintenance are determined by specific civil and fiqh rules. This automatic nullity is anchored in the

fundamental requirement of sexual difference between spouses as interpreted by Islamic jurisprudence and incorporated into the Iranian Civil Code (Katouzian, 1999; Mousavi Bojnourdi, 2016).

4. Analysis of the Legal Status in England: Transition from Biology to Self-Determination

4.1. *Paradigm Shift: From Chromosomes to Identity and New Case Law*

The **Gender Recognition Act 2004** brought about a fundamental paradigm shift in England (Parliament U. K., 2004). Before its enactment, as in the well-known case of *Corbett v. Corbett* (1970), legal sex for marriage was determined solely based on biological factors at birth, such as chromosomes, gonads, and genitalia. The new Act recognized an individual’s **subjective gender identity** as the primary legal criterion.

This shift is reflected in emerging judicial practice. For example, in *R (on the application of MB) v. The Registrar General for England and Wales* [2020] EWHC 2388 (Admin), the court acknowledged the right of a non-binary individual to have their gender identity recognized. However, the claim was ultimately unsuccessful due to the explicit limitations of the 2004 Act, which only recognizes male and female categories (Harper, 2020). This case illustrates the growing social and judicial pressure to expand legal recognition to non-binary identities, an ongoing debate that is shaping the future of English gender law (FRA, 2020).

The legal developments in England have been strongly influenced by international frameworks. The **European Convention on Human Rights (ECHR)** and the jurisprudence of the **European Court of Human Rights (ECtHR)** have been decisive in reshaping domestic law (Council of Europe, 2015). Reports by **Amnesty International** also show that England’s progressive approach to protecting the rights of individuals with gender diversity has become a model for other European nations (Amnesty International, 2021).

4.2. *Impact of Supranational Law: The Role of the European Convention on Human Rights*

The pressure from international bodies, especially the ECtHR, played a crucial role in England’s adoption of progressive gender legislation. Landmark cases such as *Goodwin v. United Kingdom* (2002) compelled legal

reform: the ECtHR held that the UK's refusal to recognize the acquired gender of a transgender person violated Article 8 (right to respect for private and family life) and Article 12 (right to marry) of the ECHR. This judgment directly forced the British government to introduce the Gender Recognition Act 2004 ([Parliament U. K., 2004](#)).

Table 1

Legal Approaches to Marriage of Intersex Persons

Comparison Criteria		Iran (Ja'fari Shi'a Jurisprudence)	England (Common Law)
Philosophical Foundations		Preservation of lineage, public order rooted in Sharia, gender essentialism	Human rights, personal autonomy, secularism, dynamic identity
Overall Approach		Precautionary, restrictive, classification-based (<i>zāhir/mushkil</i>)	Freedom-oriented, empowering, identity-based
Marriage of <i>Khunthā Mushkil</i>		Null and void (due to lack of confirmed sexual difference)	Possible after legal gender recognition
Marriage of <i>Khunthā Zāhir</i>		Valid but with right of rescission for the uninformed spouse	Valid according to recognized or acquired gender
Mechanism for Determination/Recognition	Gender	Judicial-medical, fragmented, non-transparent	Statutory, clear, individual application to Gender Recognition Panel
Surgical Requirement		Practically required for recognition	Not mandatory
Effect of Post-Marriage Transition	Gender	Automatic annulment (contract void from transition date)	Continuity of marriage possible
Rights of Intersex Children		Largely overlooked; decisions left to parents and doctors	Child-centered; emphasis on delaying non-essential surgery until maturity
Influence of International Instruments		Minimal	Strong (especially ECHR and ECtHR jurisprudence)
Legal Security for Intersex Individuals		Low (due to absence of clear statutes)	High (due to comprehensive legal framework)

In comparative analysis, it becomes clear that the sources of legal authority significantly influence each system's approach. England's framework is shaped by European human rights law and transnational advocacy ([Amnesty International, 2021](#); [Carpenter, 2018](#)), while Iran's system is deeply rooted in Islamic jurisprudence and largely follows the doctrinal reasoning of traditional fiqh ([Mousavi Bojnourdi, 2016](#)).

It is worth noting that other Muslim-majority countries, such as Malaysia and Indonesia, face similar challenges and are exploring faith-based legal mechanisms to address intersex issues ([Human Rights Watch, 2020](#)). Comparative studies with these jurisdictions could provide Iran with practical models for harmonizing Islamic principles with the protection of individual rights.

5. Conclusion

The comparison between the two legal systems clearly shows a profound gap between the traditional, fixed-

4.3. Civil Partnerships and Marriage

Before the Marriage (Same Sex Couples) Act 2013, individuals who had transitioned could only form a civil partnership with their partner. Today, the recognition of same-sex marriage allows individuals, regardless of their gender history, to marry without losing legal recognition of their relationship ([Harper, 2020](#); [K., 2013](#)).

identity approach of Iran and the modern, fluid-identity approach of England. Iran emphasizes "precaution" and the "preservation of traditional structures," which results in the exclusion of a segment of citizens from full legal protection. England, by recognizing the "mutability of identity" and the "right to self-determination," seeks to ensure fundamental rights. England's strength lies in its legal clarity and transparency, while Iran's strength is its attention to the philosophical and bioethical dimensions of family formation. However, the presence of diverse opinions even within Iran's classical jurisprudence suggests there is room for modernization and flexibility within the existing value framework.

To bridge this gap, Iran can also draw upon the experiences of other countries. For example, some Muslim-majority nations such as Malaysia and Indonesia have managed to adopt modern approaches to the rights of individuals with gender diversity while preserving Islamic frameworks. These experiences can provide valuable insights for Iran's legal system.

Considering Iran's jurisprudential foundations and social values, the following recommendations could improve the current legal status:

1. Drafting a comprehensive law to protect the rights of individuals with congenital gender diversity: Such a law should clearly define terms, set out marriage eligibility, outline the gender transition process, address family rights, and establish anti-discrimination protections.
2. Establishing a specialized medical-legal commission: A permanent interdisciplinary body composed of jurists knowledgeable in both Islamic law and medicine, legal experts, endocrinologists, geneticists, and psychiatrists should provide unified advisory opinions to the courts.
3. Dynamic jurisprudential reinterpretation: Encourage renewed *ijtihad* (juristic reasoning) to revisit classical concepts such as *dhukūriyyah* and *unūthiyyah* (male/female classification) in light of modern scientific findings. For example, psychological and social gender identity could be recognized alongside physical indicators.
4. Prioritizing children's rights: Enact legislation prohibiting non-essential and irreversible surgeries on intersex infants and children until they are old enough to give informed consent regarding their own gender identity.
5. Education and cultural awareness: Integrate content on gender diversity into the curricula of law, medical, and theological faculties to foster a more informed and scientific perspective.

In summary, Iran's legal system, without resorting to mere imitation of Western models, can take significant steps to protect this group of citizens by leveraging the flexibility of dynamic jurisprudence while maintaining its commitment to justice and the principle of removing undue hardship.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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