114670 - Can Intersex Marry in Islam?

the question

A man who is impotent wants to propose to me, and he says that he is “intersex”. To be honest, I do not understand what this means. Should I accept him or not? Please note that I had an accident when I was a child, and I do not know whether I am a virgin or not.

Summary of answer

If it is not known whether the intersex is male or female, it is not permissible for him to get married. If it becomes clear that he is male, then marriage to him is valid. As for one who has weak desire or is even impotent, marriage to him is valid, but he must disclose his condition before marriage.

Detailed answer

Praise be to Allah.

Meaning of intersex in Islam

- The word Khuntha (translated here as “intersex”) applies to a person who cannot be easily characterized as male or female, or the one who has both male and female anatomy. The word is derived from a root referring to softness, gentleness and tenderness.

In Shar`i terminology, word Khuntha refers to one who has the anatomy of both male and female, or one who has neither, and has a hole through which he urinates.

- The word Mukhannath (“effeminate”) refers to a person who behaves like a woman in gentleness, speech, appearance, movements and so on.

Types of effeminate people

Effeminate people are of two types.

1. Those who are created that way; there is no sin on them.
2. Those who were not created that way; rather they choose to imitate women in their movements and speech. This is the type which is cursed in an authentic hadith..

The mukhannath or effeminate man is one who is obviously male, unlike the Khuntha (intersex).

- Intersex people may be divided into two categories, ambiguous and unambiguous.

1. The unambiguous intersex individual is one who shows clear indications of being either male or female, so it is known that this person is a man or a woman. There is no ambiguity involved here; rather this is a man who has something extra that was created in him, or a woman who has something extra that was created in her. With regard to matters of inheritance and other shar'i rulings, such an individual is treated in accordance with what he or she appears to be.
2. 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).

- The majority of jurists 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, quoting 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-Suyuti said: When the word Khuntha (intersex) is used in fiqh, what is meant is the ambiguous intersex individual. (End quote from *Al-Mawsu`ah Al-Fiqhiyyah*, 20/21-23)

Types of ambiguous intersex individual

The Khuntha or ambiguous intersex individual has both male and female anatomy. 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. If he is sexually attracted to females, then he is a man; if sexually attracted to men, then she is female.

Who is an impotent in Islam?

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.

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 effeminacy. Or a person may be intersex but is able to have sex and so on.

Can an intersex marry?

With regard to marriage of one who is intersex, if it is an unambiguous case, then according to how he or she is classified, he or she may marry someone of the opposite gender. If it is an ambiguous case, then the marriage of such a person cannot be valid, the reason being that he may be male, in which case how can he marry another male, or may be female, in which case how can she marry another female like her? If this individual is sexually attracted to females and claims to be a man, this is a sign that he is most likely male, and vice versa.

Ibn Qudamah (may Allah have mercy on him) said:

“One who is intersex must be either ambiguous or unambiguous. If he is not ambiguous, in the sense that he has male characteristics, then he is a man and comes under the rulings on men; if this person has female characteristics, then she is a woman and comes under the rulings on women. If he is ambiguous, with no signs of being either male or female, then in this case there is a difference of opinion among our companions as to whether he can get married. Al-Khuraqi said that it depends on what he himself says; if he says that he is a man and is naturally sexually attracted to women, then he may marry a woman; if he says that he is a woman and is naturally sexually attracted to men, then she may marry a man, because this is something that we cannot know except on the basis of what the individual says. It is not a claim that affects the rights of another person, so he is to be taken at his word, just as a woman is to be taken at her word with regard to menses and ‘iddah. He may find that he is naturally attracted to one gender or the other; the way that Allah has created living beings is that the male is usually attracted to the female and vice versa. This sexual orientation is a matter that is very private and may not be known to others. As it may be difficult for us (in the case of ambiguity) to see any clear external signs, reference should be made to his hidden feelings and what he himself says about them.” (End quote from *Al-Mughni*, 7/619)

The view that marriage of an ambiguously intersex individual is not valid is the view of the majority of scholars. But in that case, what should he do if he has sexual desire? The answer is that we should tell him: Be patient until Allah changes your condition to something better.

Shaykh Muhammad ibn Salih Al-`Uthaymin (may Allah have mercy on him) said:

“With regard to marriage of an ambiguously intersex individual who has both male and female anatomy – that is, he has a penis like a male and a vulva like a female, and it is not clear whether he is male or female, such as if he can urinate both like a man and like a woman, and there is no other sign to determine whether he is male or female – in this case marriage is not valid for him, and he should not marry either a woman or a man. He should not marry a female because of the possibility that he may be female, and a female cannot marry another female; nor should he marry a male because of the possibility that he may be male, and a male cannot marry another male. In this case he should remain unmarried until the matter becomes clear; when it becomes clear, if he is male then he may marry a female, and if he is female then she may marry a male. The ruling is that marriage is temporarily forbidden, until the matter becomes clear.” (End quote from *Ash-Sharh Al-Mumti`*, 12/160)

The shaykh (may Allah have mercy on him) also said:

“If he has sexual desire and is currently disallowed to marry according to Shari`ah, then what should he do? We would tell him that the Messenger (blessings and peace of Allah be upon him) said: “Whoever among you can afford it, let him get married, for it is more effective in lowering one’s gaze and guarding one’s chastity. Whoever is not able to do that must fast.” So we would tell him to fast. If he says that he cannot fast, then he can be given some medicine to make things easier for him. This is better than telling him to extract semen in ways that are not permissible.” (End quote from *Ash-Sharh Al-Mumti`*, 12/161)

Can an impotent marry?

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-Mawsu`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 jurists.

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.

The majority quoted as evidence for their opinion the report narrated from ‘Umar (may Allah be pleased with him) who gave an impotent man one year (to see if things changed). A further reason is that what is important for the wife is seeking to be chaste by getting married, and she wants to attain that quality. Missing out on the purpose of a contract gives the right to cancel it, and the scholars are unanimously agreed that there should be the choice of cancelling when selling something in which there is a defect because it may cause financial loss, even if that loss is small. Hence it is more appropriate to have the option of cancelling in the event of missing out on one of the purposes of marriage.” (End quote)

A woman may agree (to marry a man who is impotent) if she has no sexual desire because of sickness or old age. What is wrong with him marrying her so that she can take care of him and keep him company, and he can give her maintenance and protection, and other things that are also purposes of marriage?

Shaykh Ibrahim ibn Muhammad ibn Salim Dawyan Al-Hanbali (may Allah have mercy on him) said:

“Marriage is permissible for one who has no desire, such as one who is impotent or old, because there is no Shar`i impediment to doing so.” (End quote from *Manar As-Sabil*, 2/91)

The one who is impotent is the one who is incapable of having intercourse; he may desire it but he is unable to do it.

The wife loses the right of annulment if she knew about her husband’s sexual weakness, but she decided to stay with him.

Shaykh Muhammad ibn Salih Al-`Uthaymin (may Allah have mercy on him) said:

“If at any time she said, “I accept him even if he is impotent”, then the option of annulment is permanently waived; such a case is that of a woman who agreed to marry an impotent man, then she felt desire as other women do and wanted to annul the marriage. In this case we say: you do not have that option. If she says at that time, “I liked him and was happy with him, but it has been so long and now I don’t want him,” we say to her: you have no option in this matter, because you were too hasty.” (End quote from *Ash-Sharh Al-Mumti`*,, 12/211)

To sum up, in the case of an intersex individual, if it is not known whether he is male or female, it is not permissible for him to get married; if it becomes clear that he is male, then marriage to him is valid, so long as you seek advice in such a case from a trustworthy doctor who specialises in hereditary matters and the like, in order to confirm his gender and the possibility of marrying him.

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 prohibited – Allah forbid – to make up for what she has missed out on.

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.

And Allah knows best.