



Gender Beyond Binary: Inheritance Rights of Third Gender in Islamic Law – Sri Lankan Legal Recognition and Reform

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Abstract

This study addresses the question of how Islamic inheritance law accommodates individuals whose gender identity falls outside the male-female binary. It begins by situating the issue within *Ilm al-Fara'id*, a discipline traditionally premised on gendered share allocations prescribed in the Qur'an. The research positions itself in the doctrinal debates of Islamic jurisprudence (*fiqh*), focusing on the classical treatment of *khunthā* (intersex) and *mukhannath* (effeminate male) and the principle of awarding the “lesser share” in cases of indeterminate identity (*khunthā mushkil*). Methodologically, the article employs doctrinal analysis of *fiqh* texts alongside comparative legal examination across Muslim-majority jurisdictions, including Iran, Egypt, Syria, Iraq, Kuwait, Oman, and Bangladesh. The comparison reveals diverse approaches ranging from conditional recognition following surgery to the formal acknowledgement of “third gender” status. The Sri Lankan context receives particular attention, where the Muslim Intestate Succession Ordinance (MISO) enforces classical *fiqh* rules, while Article 16(1) of the Constitution shields personal laws from equality-based challenges, resulting in systemic discrimination. The study argues that the Women Empowerment Act (2024), though bypassing MISO guidelines, does not resolve underlying structural barriers. The findings suggest that both legal reform—especially amendments to MISO—and broader societal transformation are necessary to ensure inheritance justice for third-gender Muslims.



[Kajian ini menyoroti pertanyaan mengenai bagaimana hukum waris Islam mengakomodasi individu yang identitas gendernya berada di luar kategori biner laki-laki dan perempuan. Permasalahan ditempatkan dalam kerangka 'Ilm al-Farā'id, suatu disiplin hukum Islam yang secara tradisional berlandaskan pada pembagian warisan menurut jenis kelamin sebagaimana ditetapkan dalam al-Qur'an. Penelitian ini memosisikan diri dalam diskursus yurisprudensi Islam (fiqh), dengan menekankan pembahasan klasik mengenai khunthā (interseks) dan mukhannath (laki-laki yang berperilaku menyerupai perempuan), serta penerapan prinsip "bagian yang lebih kecil" (lesser share) pada kasus identitas yang tidak dapat ditentukan (khunthā mushkil). Secara metodologis, penelitian ini menggunakan analisis doktrinal terhadap sumber-sumber fiqh dan komparasi hukum di beberapa negara Muslim seperti Iran, Mesir, Suriah, Irak, Kuwait, Oman, dan Bangladesh. Perbandingan tersebut menunjukkan variasi pendekatan, mulai dari pengakuan bersyarat setelah operasi hingga pengakuan formal atas status "gender ketiga". Konteks Sri Lanka mendapatkan perhatian khusus, di mana Ordonansi Waris Muslim (MISO) menerapkan aturan fiqh klasik, sementara Pasal 16(1) Konstitusi menutup ruang gugatan atas dasar kesetaraan, sehingga melanggengkan diskriminasi sistemik. Penelitian ini berargumen bahwa meskipun Undang-Undang Pemberdayaan Perempuan (2024) mampu menyingkirkan pedoman MISO, hambatan struktural tetap ada. Temuan mengindikasikan perlunya reformasi hukum—khususnya amandemen MISO—serta perubahan sosial yang lebih luas demi menjamin keadilan waris bagi Muslim gender ketiga.]

Keywords: Gender Beyond Binary, Islamic Law of Inheritance, Third Gender, LGBTQ+, Intersex and Effeminate Male

Introduction

In Islamic Law, *Ilm al-Fara'id*, also known as *Mirath*, encompasses all the fundamental principles of inheritance law. This system is thoroughly detailed through principles derived from the Holy Qur'an (Wills 2025). The Prophet Muhammad (PBUH) emphasised that the knowledge of inheritance represents half of the entire body of knowledge known as *ilm* (Saujan et al. 2022). This guarantees the equitable distribution of established shares among legal heirs (Zubair et al. 2014). These regulations represent a substantial divergence from pre-Islamic Arabian customs, which frequently disinherit children and women in favour of individuals demonstrating military capabilities (Razak 2014; Assaad et al. 2022). The emergence of Islam brought about significant reforms by altering this customary practice. By establishing these inheritance rules, Islam ensures

that women receive a share of inheritances, thereby addressing their previous exclusion from these rights.

The system's operations predominantly highlight the distinct roles of men and women, which is evident in contemporary societies. Gender significantly influences the division of inheritance in numerous legal decisions concerning succession laws (Sikandar, Haneef, and Zahir 2016). According to Islamic law, as specified in the Qur'an, males are entitled to receive twice the inheritance share of female relatives in certain familial contexts (Quran 4:11). This framework provides clarity and helps prevent disputes by explicitly defining inheritance rights for all parties under various circumstances (Ramli et al. 2024).

Within this framework, activities primarily adhere to a strict male-female binary, a pattern that is nearly universal today (Taqiyuddin, Millah, and Luthfi 2023). In many legal decisions, particularly those closely related to inheritance laws, the distribution of shares is explicitly based on the heir's gender (Sikandar, Haneef, and Zahir 2016). The Quran details how inheritance is divided among male and female relatives, stating that in some family situations, such as when children inherit from their parents, a male receives twice as much as a female (Quran 4:11). This arrangement offers clarity and helps avoid conflicts by outlining the entitlements of all parties involved under certain conditions (Ramli et al., 2024).

Unexpectedly, challenges arise for people whose biological sex or gender identity does not fit into male or female categories. These people are often called the "third gender", and they have different identities and experiences (Ramli et al. 2024). The existence of people outside the male-female classification is not new in the complex history of Islamic law (Sikandar, Haneef, and Zahir 2016). Traditional Islamic law, called Fiqh, often discusses intersex individuals, known as effeminate males or *Mukhannath*, in various legal contexts (Uddin 2017).

God's noble creation encompasses both human beings and third-gender individuals who deserve human recognition. However, they are often unjustly denied certain rights, duties, and responsibilities, particularly inheritance rights (Hidayati 2023). Society frequently excludes them from inheritance plans, arguing that third-gender individuals, identified by their ambiguous sexual morphology, do not conform to traditional succession norms (Razak 2014). Beyond inheritance, their basic rights remain largely unrecognised, leading to marginalisation in the social, cultural, religious, professional, and political spheres. Familial and marital rights are severely denied, resulting in the loss of basic entitlements and essential needs, such as ancestral property rights (Ahmed et al. 2024). Islamic scholars have developed rules based on Hadith and Qiyas, even though the Qur'an identifies humanity as consisting of two genders: "O mankind. We created you from male and female indeed" (Qur'an: 49:13).

The application of Islamic inheritance law to modern third-gender individuals leads to legal ambiguities (Ramli et al. 2024; Mohsin 2023). This study examines how Islamic law addresses the legal status and inheritance rights of third-gender individuals. It examines *Ilm al-Fara'id* and *Fiqh* principles, including interpretations of *Khuntha* and *Mukhannath* identification and gender identity judgements. This research compares third-gender inheritance procedures in Iran, Egypt, Syria, Iraq, Kuwait, Oman, and Bangladesh with legislative texts and court rulings, while also considering Sri Lanka's circumstances, given its multiple legal systems and conflicts within its Muslim community.

Method

This study is qualitative, analytical, and comparative. Initially, it conducted a conceptual analysis of gender in classical Islamic jurisprudence through an in-depth study of *fiqh* to understand how individuals were traditionally classified. Key terms (*Khuntha* and *Mukhannath*) and juristic methods for determining gender (such as the 'lesser share' principle for *Khuntha Mushkil*) are analysed using doctrinal analysis of Islamic law sources and classical commentaries.

The study then conducts a comparative legal analysis of third-gender individuals' status and inheritance systems in Muslim-majority countries, including Iran, Egypt, Syria, Iraq, Kuwait, Oman, and Bangladesh, examining legislative texts, judicial decisions, and current fatwas. Finally, this study examines the Sri Lankan context, focusing on the relationship between Muslim personal law (MISO applying classical *fiqh* rules), constitutional conservatism, and LGBTQ+ rights. The findings are synthesised to identify practical inheritance issues faced by third-gender Muslims in Sri Lanka, highlighting the need for *Ijtihad* to ensure justice and human dignity.

Islamic Jurisprudence on Gender Identity: From Classical Discourses to Contemporary Debates

Traditional gender norms limit gender to binary categories, while society recognises a 'third gender' as an identity beyond male and female classifications. (Lindqvist et al. 2021; Diamond 2002; Sellphd 2004). Through *fiqh*, people have developed methods to identify nonstandard gender identities. Muhammad Bilal's (2023) interpretation of *Khuntha* and *Mukhannath* offers essential insights for examining non-binary inheritance laws in both historical and modern contexts.

This legal framework aimed to apply gender-based legal standards to transgender and intersex individuals by categorising them within male-female legal categories, not within a separate gender category. Such an approach illustrates both the adaptability and limitations of classical *fiqh*, which sought to

maintain the coherence of a binary legal system while grappling with the realities of human diversity.

Khuntha (Intersex)

Classical Islamic jurisprudence explicitly acknowledges individuals born with ambiguous sexual characteristics, known as *Khuntha* (Bilal 2023). The term '*Khuntha*,' originating from roots implying softness or bending (Whitaker 2016), technically refers to a person who cannot be clearly classified as male or female at birth, often due to having physical traits of both sexes or the lack of distinct genitalia (Uddin 2017; Bilal 2023). Ibn Qudamah defined *Khuntha* as "a person with both male and female organs or with an opening in place of a sexual organ from which he urinates" (Öztürk-Pinar 2020). This condition is understood as a biological or physiological ambiguity that is frequently associated with congenital impairment (Bilal 2023).

To address the need to apply gender-specific laws (on prayer, dress codes, and inheritance), jurists have developed a system to classify *Khuntha* individuals (Bilal 2023). The primary classification distinguished between *Khuntha Ghayr Mushkil* (non-ambiguous or discernible *Khuntha*, also called *Khuntha Wadhih*) and *Khuntha Mushkil* (ambiguous or indeterminate *Khuntha*) (Uddin 2017).

For *Khuntha Ghayr Mushkil*, the goal was to determine the predominant sex based on the noticeable signs (Badrol, Awang, and Haneef 2018). According to prophetic tradition, the organ used for urination is the most important indicator. If an individual primarily or initially urinated from a male organ, they were legally considered male; if from a female organ, they were considered female (Badrol et al. 2018; Uddin 2017; Bilal 2023). Jurists such as Abu Hanifa expanded on this, considering the sequence of urination from both organs. If determination during infancy is not possible, jurists recommend waiting until puberty to observe secondary sex characteristics (Sikandar et al. 2016). Indicators of maleness included developing a beard, having a deep voice, ejaculating semen, or showing a sexual inclination towards women (Sikandar et al. 2016; Badrol et al. 2018). Indicators of femaleness include developing breasts, menstruation, pregnancy, lactation, or sexual inclination towards men (Soler et al. 2014). Some jurists even considered factors, such as the number of ribs, although this was debated.

If, after observing all these signs, the gender remained indeterminate, the individual was classified as *Khuntha Mushkil* (Elmetwally, Suhairi and Bakar 2019). This led to the application of specific legal rules designed to accommodate ambiguity, particularly in areas such as inheritance, as will be discussed later. The perception among schools of thought was to categorise the *Khuntha* as male or female when feasible, incorporating them into the existing binary legal framework, rather than creating a separate category.

Mukhannath (Effeminate Male)

In classical *Fiqh*, *Mukhannath* was differentiated from *Khuntha*, whose ambiguity was biological, as a male showing traits linked to women (Abdul Majid et al. 2020). These traits can be evident in behaviour, posture, voice softness, limb languidness, or style of dress and adornment. Early lexicographers have debated the etymology of this term. Some, such as *al-Khalīl ibn Aḥmad*, associate it with *Khuntha*, indicating a fundamental link to gender ambiguity. Others, such as *Abū 'Ubayd*, traced it to *khanatha* ("to fold back the mouth of a waterskin for drinking"), suggesting softness, delicacy, or languidness (Mehrdad Alipour 2025). This latter interpretation, which emphasises behaviour over biology, gained traction in early Islamic scholarship. A significant distinction arose within *Fiqh* between the two *Mukhannath* types. *Mukhannath khalqi* refers to a male whose effeminate traits were seen as innate, part of his natural disposition (*khilqah*) (Qureshi and Pakeeza 2023). The *Mukhannath bil-'amd* or *takhannuth* refers to one who deliberately imitates women's behaviour, speech, or dress. This distinction greatly influences legal and moral judgements (Qureshi and Pakeeza 2023). While innate effeminacy (*khalqi*) was often viewed as more tolerant and potentially seen as beyond the individual's control, deliberate imitation (*bil-'amd*) was generally condemned as a transgression and possibly a sin (*fisq*) (Bilal 2023).

Hadith literature reflects this nuance; there are accounts of the Prophet Muhammad interacting with *Mukhannathun*, sometimes tolerating their presence (e.g., servants in women's quarters, based on the assumption that they lacked sexual desire towards women), but also instances of cursing and banishing those who deliberately imitated women or disclosed private details about women that could provoke inappropriate interest. Condemnation seems to be directed at the act of intentional imitation or disruptive behavior, rather than innate characteristics alone (Rowson 1991). In the past, *Mukhannathun* was connected to different social roles, such as music and entertainment, and some gained fame as musicians or court jesters, especially during Umayyad and Abbasid times (Almarai and Persichetti 2023). In later mediaeval times, the term *Mukhannath* also became associated with receptive partners in same-sex sexual practices. It is crucial to distinguish classical *Mukhannath* from the contemporary term *Mukhannith*, which typically refers to transgender women seeking medical transition. The classical *Mukhannath* was legally considered male, and the primary legal concerns revolved around regulating their social interactions, particularly with women, and discouraging intentional imitation of the opposite sex.

Contemporary View on 'Third Gender' Identities

Translating classical terms such as *Khuntha* and *Mukhannath* into the varied range of modern identities often labelled as the 'third gender' poses significant difficulties. *Khuntha* is most closely associated with current medical interpretations of intersex conditions or Disorders of Sex Development (DSD), highlighting biological ambiguity (Kim and Kim 2012; Grinspon, Bergadá, and Rey 2020). *Mukhannath*, which pertains to gender expression and behaviour in biological males, is more challenging to fit into contemporary categories (Majid et al. 2020; Almarai and Persichetti 2023). Depending on the context and interpretation, it might intersect with notions of effeminacy, homosexuality, or certain transgender identities; however, it does not fully capture the spectrum of non-binary or trans experiences acknowledged today. Classical jurists discussing *Mukhannath* mainly focused on behaviour and appearance within a male legal framework, rather than an internal gender identity separate from biological sex. In South Asia, the term '*Hijra*' refers to a unique sociocultural group often seen as a 'third gender' (Al-Mamun et al. 2022). Although sometimes linguistically or conceptually linked to *Khuntha* or *Mukhannath*, *Hijra* identity has developed distinctly within its own cultural setting (Rahaman 2020). Notably, countries such as Bangladesh, Pakistan, India, and Nepal have legally recognised *Hijras* as a third gender category (Rubel and Anderson 2024), a status different from classical *Fiqh*. This underscores the significant regional differences in how Muslim societies perceive gender diversity. Contemporary Islamic scholarship and Muslim communities worldwide are engaged in ongoing discussions on the recognition and rights of individuals whose identities do not fit the traditional binary. These debates are increasingly shaped by modern medical science (particularly concerning DSD and gender dysphoria), international human rights discourse emphasising equality and non-discrimination, and advocacy by LGBTQ+ movements (Peroni 2024). The challenge lies in reconciling deeply entrenched legal traditions with an evolving understanding of gender and demand for equal rights.

Fiqh Perspectives on Inheritance for *Khuntha* and *Mukhannath*

Classical Islamic jurisprudence (*fiqh*) developed specific methods to determine the inheritance shares of individuals identified as *khuntha* (intersex) and, by extension, *mukhannath* (effeminate males) based on their perceived or determined gender status within the binary framework.

Inheritance for Khuntha Wadhih (Determinate Intersex)

The primary approach of classical jurists was to resolve the ambiguity of *Khuntha*'s gender whenever possible. If, through the methods previously described (urination patterns, secondary sexual characteristics at puberty) (Badrol, Awang, and Haneef 2018; Uddin 2017; Muhammad Bilal 2023), an

individual could be classified as predominantly male or female, they were termed *Khuntha Wadhih* (discernible) or *Ghayr Mushkil* (non-ambiguous) (Muhammad Bilal 2023; Öztürk-Pinar 2020).

Once a determination was reached, an individual's inheritance rights were dictated by the standard *Fara'id* rules relevant to their identified gender. For example, if classified as male, the person would inherit as a son (receiving twice the share of a daughter if sisters were present), a brother (possibly receiving the residue), or according to other male heir categories (Abdulrahman 2020; Suhail 2022).

On the other hand, if classified as female, the individual would inherit as a daughter (receiving half the share of a son if brothers were present, or a fixed share such as 1/2 if a single daughter, or sharing 2/3 if multiple daughters and no sons), as a sister, or according to other female heir categories (Hakim 2023; Abizar and Amin 2021). The legal process involves meticulous observation and evaluation based on the biological and physiological signs acknowledged by classical *fiqh*.

Inheritance for Khuntha Mushkil: The 'Lesser Share'

A more intricate legal situation emerged when the signs were conflicting, absent, or insufficient to determine the predominant sex. Such individuals were categorized as *Khuntha Mushkil* (ambiguous or indeterminate hermaphrodites). Because inheritance shares often rely on gender, jurists from various schools of law (*madhahib*) formulated specific rules for distributing the estate in these cases, generally guided by the principle of *ihtiyat* (precaution), to prevent potentially granting an heir more than their rightful share due to uncertainty (Hakim 2023; Abizar and Amin 2021).

However, applying this precautionary principle led to differing conclusions among the major schools: Imam Abu Hanifa and his notable student Imam Muhammad suggested that the *Khuntha Mushkil* should receive the smaller of the two possible shares calculated, one assuming the individual is male and the other assuming the individual is female (Hakim 2023; Abizar and Amin 2021).

For instance, if a person dies leaving a son and a *Khuntha Mushkil* child: if the *Khuntha* were male (a second son), each would receive 1/2; if the *Khuntha* were female (a daughter), the son would receive 2/3 and the daughter 1/3 (Hakim 2023; Abizar and Amin 2021; Abdulrahman 2020; Suhail 2022). Since 1/3 is less than 1/2, the *Khuntha Mushkil* would receive the daughter's share of 1/3 (Abdulrahman 2020; Suhail 2022). This "lesser share" approach was reportedly the common view among the Prophet's companions (*Sahabah*) and became influential in the legal codes of some modern Muslim states, such as Egypt, Syria, and Kuwait.

Jurists from the Maliki and Hanbali schools, along with other prominent early scholars such as Abu Yusuf (a disciple of Abu Hanifa), *Al-Sha'bi*, *Ibn Abbas*,

Ibn Abi Laila, and al-Thauri, proposed an alternative solution. They argued that *Khuntha Mushkil* should receive a share that reflects the ambiguity of their gender, specifically half of what they would inherit as a male plus half of what they would inherit as a female (Amelia, Zaleha, and Mahdy 2017). In the earlier example, where the deceased leaves behind a son and a *Khuntha Mushkil* child, the proportion of males is 1/2, and that of females is 1/3. From this viewpoint, *Khuntha Mushkil* receives $(21 \times 21) + (21 \times 31) = 41 + 61 = 125$ of the estate (Abdulrahman 2020). This method considers both possibilities, instead of resorting to the minimum value.

The *Shāfi'i* school adopts a more cautious position, emphasising certainty. If the potential inheritance share was the same whether the *Khuntha Mushkil* was seen as male or female, that share would be given to (Mehrddad Alipour 2025; Zabidi 2021). However, if the share varied based on gender, the *Shāfi'i* perspective generally held that the inheritance portion for the *Khuntha Mushkil* should be withheld until their gender can be clearly determined (e.g., through later development or medical insight, if possible) (Alipour 2025; Zabidi 2021). Alternatively, the distribution could proceed based on a consensus (*ṣulh*) reached among all heirs, including the *Khuntha Mushkil*, regarding the acceptable share of inheritance.

Another option is granting the minimum agreed-upon share pending clarification (Abdulrahman 2020). This approach reflects a strong reluctance to distribute properties based on speculation when gender is uncertain.

One analysis mentions a view attributed to the majority of jurists where the *Khuntha Mushkil* receives a combined share reflecting both possibilities, calculated as potentially half the male share plus half the female share, leading to a result similar to the Maliki/Hanbali view in some examples. These varying rulings demonstrate sophisticated legal reasoning aimed at achieving justice and certainty within the constraints of ambiguous situations. The "lesser share" principle was a significant approach, particularly within the Hanafi school, but it was not the only one employed in classical *fiqh*.

Inheritance Considerations for Mukhannath

These sources focused heavily on the inheritance rules for *Khuntha*, likely because their biological ambiguity directly impacted the application of gendered inheritance laws. Discussions regarding Mukhannath's inheritance rights are notably less detailed in the context of *Fara'id*.

Given that classical *Fiqh* generally considers *Mukhannath* to be biologically male, despite their effeminate behaviour or appearance, the logical legal conclusion is that their inheritance rights would follow the rules applicable to males (Abdulrahman 2020). They would inherit sons, brothers, uncles, etc.,

according to their specific relationship with the deceased, receiving the shares designated for male heirs in the *Fara'id* system.

The reviewed materials do not indicate that *Mukhannath* status, particularly the innate (*khalqi*) type, served as a legal ground for disinheritance under Islamic law (Alipour 2025; Zabidi 2021). Legal discussions have primarily focused on regulating social behaviour, attire, and interactions, particularly regarding the prohibition of deliberate imitation (*tashabbuh*) of the opposite gender and the potential for social disruption.

Although social stigma and prejudice against *Mukhannathun* were prevalent and may have created practical obstacles to their inheritance, the formal legal position based on their recognised biological sex as men seems to have been inherited accordingly. The lack of extensive *Fiqh* debate specifically about their inheritance might indicate that it was seen as a less contentious legal issue than the *Khuntha Mushkil*, whose classification of inheritance was uncertain.

Contemporary Fatwas and Evolving Debates

Advancements in modern medicine and changing social norms have led contemporary Islamic scholars and juristic bodies to revisit issues of gender variance, often issuing fatwas (legal opinions) on sex reassignment surgery (SRS) and its implications, including inheritance (Alipour 2017). There is a broad consensus among contemporary jurists regarding corrective surgery for *Khuntha* (intersex individuals). Such procedures are generally considered therapeutic interventions aimed at clarifying or affirming the dominant biological sex, aligning an individual's physical traits, and resolving ambiguities.

This is often viewed as a form of treatment (*'ilāj*) rather than as an impermissible alteration of God's creation (*taghyir khalq Allah*).

The permissibility of SRS for transgender individuals (those experiencing gender dysphoria without classical intersex characteristics) is debated more within the Islamic jurisprudence (Ali Dabash 2023). Many traditionalist Sunni scholars tend to view it as *taghyir khalq Allah* and are thus generally impermissible, except in cases of extreme necessity (Muhsin et al. 2024; Ali Dabash 2023).

However, significant fatalities have occurred, allowing SRS for transgender individuals under specific conditions. Ayatollah Khomeini's fatwas in Iran (dating back to 1964 and reaffirmed post-revolution) are particularly notable, permitting SRS based on medical and psychological assessment, viewing it as aligning the body with the individual's true gender identity (Olowo 2023; O'Dell 2020).

Some Sunni authorities, including scholars at Al-Azhar in Egypt (though historically more restrictive), have issued opinions permitting SRS under strict medical and psychological criteria (Zeeshan 2024), often distinguishing it from

mere imitation. These permissive fatwas often relied on principles such as necessity (*darūrah*), removal of harm (*raf' al-haraj*), and the idea that surgery corrects a mismatch rather than altering creation.

Where SRS is permitted and legally recognised, resulting in a change in official gender markers (e.g., on identity documents), the general implication is that the individual's recognised rights and obligations, including inheritance, should align with their affirmed gender. In such cases, a transgender woman would inherit according to the rules for females, and a transgender man would inherit according to the rules for males.

This represents a significant shift from applying the classical *Khuntha Mushkil* rules (such as the 'lesser share') to transgender individuals who have undergone a legally recognised transition. These developments indicate an ongoing evolution in Islamic legal thought, grappling with the intersection of traditional *fiqh*, modern medicine, and the contemporary understanding of gender identity.

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This represents a significant departure from applying the classical *Khuntha Mushkil* rules (like the 'lesser share') to transgender individuals who have undergone a legally recognised transition. These developments signify an ongoing evolution in Islamic legal thought, grappling with the intersection of traditional *fiqh*, modern medicine, and the contemporary understanding of gender identity. The debate continues with calls for further *ijtihad* (independent legal reasoning) based on *maqasid al-Shar'iah*, such as justice, human dignity, and the prevention of *harm*, to address the rights and status of transgender and other third-gender individuals more comprehensively and compassionately.

Legal Status and Inheritance Rights in Selected Jurisdictions

The ongoing discussion emphasises the need for further *ijtihad* (independent legal reasoning), grounded in the overarching goals of *Shar'iah* (*maqasid al-Shar'iah*), such as justice, human dignity, and harm prevention, to address the rights and status of transgender and other third-gender individuals more thoroughly and compassionately.

The application of Islamic law on the inheritance rights of third-gender individuals varies significantly across Muslim countries. National legal systems interact with different interpretations of *Shar'iah*, local traditions, and political

environments, leading to diverse approaches to legal recognition and inheritance.

Iran: Legalization of Gender Transition and Its Impact on Inheritance

Iran stands out for its relatively early legal acceptance of sex reassignment surgery (SRS), heavily influenced by the fatwas issued by *Ayatollah Khomeini*, starting in 1964 and reaffirmed after the 1979 Islamic Revolution. These rules allow SRS for individuals whose physical sex does not align with their psychological gender, covering both intersex (*Khuntha*) cases and transgender individuals with gender dysphoria (GDs). After successful SRS and approval from medical and judicial authorities, including the Family Court, individuals can gain legal recognition for their affirmed gender and update their official documents. However, non-binary identities are not legally acknowledged, and the process requires parental consent and involves invasive procedures.

Iran's inheritance laws are based on the *Ja'fari* school of *Shi'a Fiqh*, as outlined in the Civil Code. General principles apply, such as daughters receiving half the share of sons and specific shares of spouses and parents. Notably, for those who have undergone a legally recognized gender transition, their inheritance rights are determined by their affirmed legal gender. Article 939 of the Civil Code specifically addresses intersex individuals (*Khuntha*), and states that their inheritance is based on predominant sexual characteristics.

Khomeini's fatwas serve as the foundational legal precedent. Family Courts are designated as venues for processing applications for legal gender recognition after surgery. Despite the legal framework allowing for transition, transgender Iranians face significant challenges. Deep-rooted social stigma, widespread discrimination in employment and housing, family rejection, and the risks of physical and verbal abuse are common issues. The state and society often view transgender identity as a mental disorder. Access to quality, affordable, gender-affirming healthcare, including surgery and hormone therapy, is limited, and procedures can be dangerous because of inadequately trained practitioners. Many transgender individuals feel compelled to hide their post-transition history, relocate, and adhere strictly to gender norms to avoid harassment.

Egypt: Restrictive Legal Framework and Social Barriers to Gender Recognition

Egypt lacks specific legislation recognizing transgender identities or regulating SRS. While corrective surgery for intersex individuals (*Khuntha*) is generally considered permissible under *Shar'iah* as 'sex correction,' SRS for transgender individuals ('sex change') faces significant obstacles in Thailand. Religious authorities, particularly Al-Azhar, have historically maintained a restrictive view, often considering it contrary to *Shar'iah*, unless strict medical necessity (often interpreted as intersexuality) is demonstrated.

Accessing SRS requires approval from a review committee within the Medical Syndicate, established in 2003, which includes religious representation and is reportedly often dysfunctional and meets irregularly. Consequently, obtaining legal sex recognition post-surgery is very challenging, often necessitating protracted court battles with inconsistent outcomes.

Inheritance follows Islamic *Shar'iah* principles codified in laws, such as Wills Law No. 71 of 1946 and Law No. 77 of 1943. The prevailing norm of male heirs receiving twice the share of female heirs is applicable here. In cases of unresolved gender ambiguity (*Khuntha Mushkil*), the Hanafi principle of awarding the 'lesser share' is likely the default, given its widespread application in Egyptian personal status law. If an individual achieves legal gender recognition (a rare occurrence), their inheritance theoretically aligns with their affirmed gender. However, the primary challenge lies in obtaining such recognition. Coptic Christians occasionally apply their own inheritance rules through mutual agreement.

Judicial decisions concerning transgender rights have been inconsistent. Certain rulings explicitly adhere to restrictive interpretations of *Shari'ah*, distinguishing between permissible 'correction' for intersex individuals and impermissible 'change' for transgender individuals, often categorising the latter as a psychiatric issue that does not warrant surgical intervention. The 2016 "Noraan" case serves as an example of this method, in which legal recognition was denied based on *Shari'ah* principles and perceived societal norms. Although there are positive precedents, they remain inconsistent. Courts have increasingly supported women's general inheritance rights against male relatives' attempts to deny their shares.

Transgender Egyptians face intense social stigma, discrimination, and a heightened risk of arbitrary arrest and harassment under broadly interpreted morality laws that criminalise 'debauchery' or 'public indecency'. Access to safe and legal gender-affirming health care is extremely limited, forcing many individuals to turn to dangerous underground procedures or self-medication. Family rejection, economic hardship, and a lack of support systems are prevalent issues. The "chromosome trap" narrative, which emphasizes immutable biological sex, heavily influences medical policy and public discourse, creating significant barriers to care.

Syria: Constitutional Equality Undermined by Discriminatory Personal Status Law

The reviewed materials show no specific Syrian laws recognising third-gender identities or regulating the SRS. The Personal Status Law, updated by Law No. 4 of 2019, governs marriage, divorce, and inheritance according to *the Shar'iah* principles. Although the 2012 Constitution guarantees equality regardless of sex

(Article 33), its practical application is severely undermined by discriminatory laws and ongoing conflicts.

Inheritance for Muslims is governed by the Sharia principles, as defined in the Personal Status Law, which generally results in female heirs receiving smaller shares than male heirs. There is no mention of specific provisions for third-gender or intersex individuals; therefore, classical *fiqh* interpretations, likely the Hanafi 'lesser share' rule for *Khuntha Mushkil*, would presumably apply in cases of ambiguity. Catholics have equal inheritance rights, regardless of gender.

Iraq: Sectarian Legal Fragmentation and Hostile Environment for Gender Minorities

Iraq does not legally recognize a third-gender identity. Furthermore, recent legislative developments pose significant threats to the industry. Amendments to the Personal Status Law (PSL) enacted in early 2025 allow couples to opt out of the relatively progressive 1959 PSL, permitting them to be governed by sectarian codes (Shia *Ja'afari* or *Sunni*) concerning marriage, divorce, and inheritance. This development is seen as institutionalising sectarianism and potentially reversing advancements in women's rights. Additionally, the 2024 law explicitly criminalised same-sex relations, promoted homosexuality, and performed gender-affirming surgery.

Previously unified under the 1959 PSL, inheritance can now be governed by either the PSL or specific Shia or Sunni jurisprudence depending on the couple's choice at marriage. This fragmentation poses the risk of introducing more discriminatory inheritance practices, as certain interpretations within sectarian schools (e.g., *Ja'afari*) might further disadvantage women compared to the 1959 law (e.g., regarding real estate inheritance). There are no explicit rules for third-gender inheritance, suggesting that traditional *Fiqh* principles from the selected sect would likely govern ambiguous cases (*Khuntha*). The main legal issue is the debate over recent PSL amendments and 2024 anti-LGBTQ+ legislation in the country. No specific instances of third-gender inheritance were observed. Recent legal reforms have faced strong criticism from human rights organisations and civil society, being seen as a major setback for women's rights, secular governance, and equality. The clear criminalisation of same-sex relationships and gender-affirming care creates a hostile legal and social climate for LGBTQ+ individuals, including transgender people.

Kuwait: Partial Decriminalisation without Legal Recognition

Kuwait does not legally acknowledge third-gender identities. However, a significant positive change occurred in February 2022 when the Constitutional Court overturned Article 198 of the Penal Code, which criminalized "imitating

the opposite sex." The court found the law unconstitutional because of its ambiguity and infringement on guarantees of personal freedom. While this removes a major tool used to harass transgender individuals, it does not equate to the legal recognition of transgender identity.

Here, inheritance is governed by Islamic law (*Sunni* tradition). Although the specific school followed is not explicitly mentioned for all matters, the Hanafi 'lesser share' rule for *Khuntha Mushkil* is noted as being applicable in Kuwait. The general *Shar'iah* principles, including different shares for male and female heirs, are applicable. The Civil Code also includes provisions regarding financial guardianship for minors inheriting property, setting the age of the majority at 21, and following patriarchal lines for appointing guardians (father, then paternal grandfather).

The 2022 Constitutional Court decision to nullify Article 198 is the most significant recent precedent for transgender rights. Before this, individuals such as Maha al-Mutairi had been arrested and convicted under this article solely because of their transgender identity. No specific inheritance cases involving third gender individuals were found. Despite the decriminalization of "imitation," transgender individuals in Kuwait are likely to continue facing social stigma and discrimination. Their lack of explicit legal recognition and protection renders them vulnerable. The issues highlighted concerning patriarchal guardianship laws also point to broader gender inequalities within the legal system that affect property management.

Oman: Formal Equality in Law, Substantive Inequality in Practice

Oman does not legally recognize third-gender identities. The Basic Law prohibits gender-based discrimination (Article 17); however, its enforcement is limited, particularly as personal status issues are governed by Sharia Law, which allows for gender distinctions. Homosexuality is criminalized, and Oman enforces restrictive "chromosome trap" policies, similar to those in Egypt, to deny transgender individuals' access to gender-affirming healthcare services. The Personal Status Law regulates inheritance according to the Sharia principles, typically resulting in unequal shares for male and female heirs. Specific provisions addressing third-gender or intersex inheritance are not mentioned in the sources, suggesting reliance on classical *fiqh* interpretations (e.g., rules for *Khuntha*). No specific court case related to third-gender inheritance rights was found. Legal reform in 2008 equalized the value of male and female testimony in general legal matters; however, its application in personal status cases remains unclear.

Women face systemic discrimination in their personal status, limited access to justice, and significant under-representation within the legal profession. Restrictions on civil liberties, including freedom of assembly and association,

impede advocacy efforts for rights, such as gender equality. Transgender individuals encounter substantial legal and medical barriers due to restrictive policies and a lack of recognition.

Bangladesh: Formal Recognition of Hijras as Third Gender amid Legal Gaps

In Bangladesh, a notable development occurred in November 2013 when the government officially recognised the *Hijra* community as a 'third gender' through a cabinet decision. This recognition allows *Hijras* to identify themselves in official documents, including voter registrations and national ID cards. In Bangladesh, inheritance is governed by personal laws of various religious communities. For Muslims, this involves the application of classical Fiqh rules. Juristic opinions in the context of Bangladesh adhere to the standard approach for *Khuntha*: attempting to determine the dominant sex based on signs (such as urination); if the individual is *Khuntha Mushkil* (indeterminate), the Hanafi principle of granting the 'lesser share' is applied. Hindu personal law (Dayabhaga School, prevalent in Bangladesh) traditionally excludes *Hijras* from inheritance. Despite the formal recognition of the 'Third Gender' status, a significant legal gap persists, as the existing personal inheritance laws have not been amended to explicitly incorporate or provide for this category of people. Consequently, *Hijras* are often barred from inheriting family properties. In 2020, the government announced its intention to draft legislation based on Sharia law and the Constitution to secure inheritance rights for transgender individuals.

The legal recognition of *Hijras* was achieved through government policy, potentially influenced by earlier court rulings in neighbouring countries such as Pakistan. Despite legal recognition, the *Hijra* community in Bangladesh faces extreme marginalisation. Pervasive social stigma, discrimination, family rejection (often from a young age), poverty, violence, and a lack of access to education, healthcare, housing, and formal employment are widespread. Many *Hijras* were compelled to engage in begging and sex work. Fear of violence and lack of family support render it practically impossible for many to return home or claim potential inheritance rights. The lack of societal awareness and acceptance, coupled with ambiguity in inheritance law, remains a major obstacle.

This comparative analysis highlights a lack of uniformity across jurisdictions. Legal recognition, where present, often depends on specific interpretations of Islamic law (such as Khomeini's fatwas in Iran) or distinct sociocultural categories (such as *Hijra* in Bangladesh). However, even with formal recognition, a significant gap persists between law and practice, primarily because of entrenched social stigma, discrimination, and inadequate implementation mechanisms. The pathologization of transgender identities in medical and legal discourse further complicates access to rights in many countries.

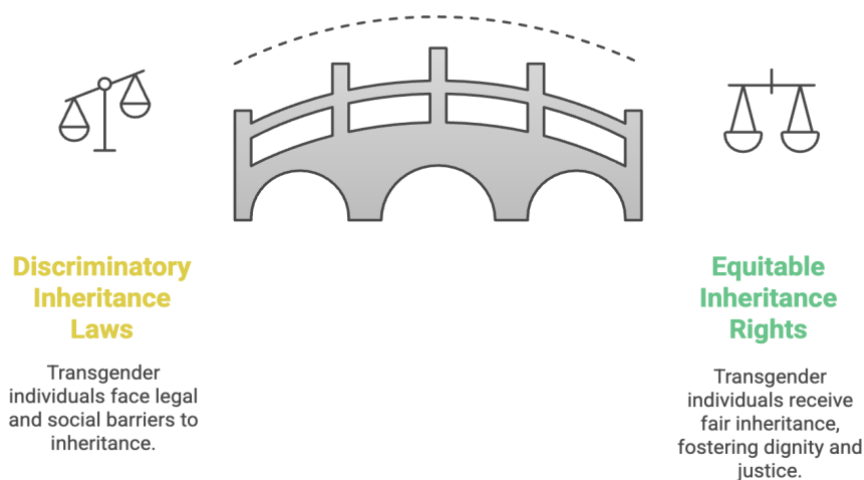
Inheritance Rights of Third-Gender Individuals in Sri Lanka

Sri Lanka presents a distinctive context for analysing the inheritance rights of third-gender individuals within its Muslim community, characterised by legal pluralism, constitutional complexities, and specific sociocultural dynamics.

Sri Lanka operates under a system of legal pluralism, where distinct personal laws (Muslim Personal Law) govern family matters for various communities alongside general law, which is derived from Roman-Dutch and English common law. In the Muslim community, family law matters, including marriage and divorce, are governed primarily by the Muslim Marriage and Divorce Act (MMDA) of 1951. Notably, intestate succession (inheritance without a will) for Muslims is governed by the Muslim Intestate Succession Ordinance (MISO) No. 10, 1931.

Section 2 of MISO explicitly states that the applicable law for the intestacy of a deceased Muslim (domiciled in Sri Lanka or owning immovable property there) "shall be the Muslim law governing the sect to which such deceased Muslim belonged." This provision directly incorporates the classical *Fiqh* rules of inheritance, including any specific provisions related to *Khuntha*, according to the relevant school of thought (for example, Shafi'i and Hanafi) followed by family members. Unlike some other personal laws in Sri Lanka (such as Kandyan law), Muslims generally cannot opt out of the MMDA or MISO to be governed by the general law for marriage or inheritance.

Figure 1
From discriminatory inheritance laws to equitable rights
Advancing Transgender Inheritance Rights through Legal Reform and Social Acceptance



Source: Researcher's illustration based on field data (2025).

The application of Muslim personal law occurs within a constitutional framework that presents reform challenges. Article 12 of the Sri Lankan Constitution guarantees equality and non-discrimination before the law. However, Article 16(1) contains a saving clause which states that "all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter." This clause effectively shields pre-existing laws such as the MMDA and MISO from being invalidated by courts solely on the grounds that they conflict with fundamental rights, including the right to equality. Consequently, addressing the potentially discriminatory aspects of Muslim personal law, including those affecting women and third-gender individuals, typically requires legislative rather than constitutional challenges.

While recent legislative initiatives aim to promote gender equality more broadly, such as the Women Empowerment Act of 2024 and amendments to the Land Development Ordinance concerning land inheritance, their direct impact on the specific provisions of the MISO regarding third-gender inheritance within the Muslim community is not specified in the available sources and is likely limited by the operation of personal laws and Article 16(1).

Judicial Interpretations and Relevant Case Law

An examination of Sri Lankan case law reveals a paucity of direct legal precedents concerning the inheritance rights of third-gender individuals under the Muslim Intestate Succession Ordinance (MISO). However, certain legal considerations merit further investigation. In the case of *Azhar House v. Mohamed Ghouse* (1986) deliberated on whether a child adopted under the general Adoption of Children Ordinance could inherit from their adoptive Muslim parents under MISO. The Court of Appeals' majority decision affirmed the validity of such adoption for inheritance purposes, suggesting that general legislation may, under specific circumstances, interact with or modify the application of Muslim law principles, particularly those not deemed fundamental or entrenched customs in Sri Lanka. Although this case focuses on adoption rather than gender identity, it illustrates the potential complexity and interaction between different legal frameworks within Sri Lanka's pluralistic legal system.

Another relevant legal aspect is the status of consensual same-sex sexual conduct under the Sri Lanka Penal Code. Sections 365 ("carnal intercourse against the order of nature") and 365A ("gross indecency") are colonial-era provisions amended in 1995 to be gender-neutral that criminalize such acts. Although prosecutions for private, consensual acts between adults are reportedly infrequent, these laws significantly contribute to the stigmatization of lesbian, gay, bisexual, and transgender (LGBT) individuals, and provide a pretext for

police harassment, extortion, and arbitrary detention. Recent government statements have indicated a move towards decriminalization or non-enforcement, and police guidelines were issued in 2023 to respect LGBT rights and cease harassment of transgender persons; however, the laws technically remain. This adverse legal environment inevitably affects the lives and abilities of third-gender Muslims to assert their rights, including inheritance.

Challenges and Realities within the Sri Lankan Muslim Community

Beyond the formal legal framework, third-gender Muslims in Sri Lanka face significant practical challenges rooted in their social attitudes and systemic barriers. The broader LGBT community experiences societal conservatism, discrimination in housing and employment, harassment, threats, hate speech (particularly online), and family pressure, including attempts at conversion therapy or traditional 'cures'.

The study suggests that individuals within Tamil and Muslim communities may face heightened difficulties because these communities are perceived as particularly conservative regarding gender and sexuality norms. This cultural context likely exacerbates the challenges faced by third-gender Muslims in seeking acceptance or asserting their legal rights.

Practical hurdles for transgender individuals include difficulties in legally changing gender markers in official identity documents, which can impede access to various services and rights. They may also face discrimination in accessing healthcare and educational services. Despite the recent guidelines, police harassment remains a concern.

These overlapping issues create formidable barriers for claiming inheritance rights. Even if classical *Fiqh*, as applied through MISO, provides theoretical rules for *Khuntha* inheritance, factors such as intense social stigma, potential family rejection, fear of legal repercussions under outdated penal laws, a lack of clear legal pathways for recognising contemporary third-gender identities beyond *Khuntha*, and general discrimination make it highly improbable that many third-gender Muslims can practically access these rights.

The ongoing and often contentious debate surrounding reforms of the MMDA further exemplifies the complexities of amending Muslim personal law in Sri Lanka. These discussions, primarily centered on issues such as child marriage, women's divorce rights, and the role of Quazi courts, underscore the profound divisions within the community and the political sensitivity associated with any modifications to personal law. Achieving a consensus on reforms related to the potentially more controversial issue of third-gender inheritance rights would likely encounter similar, if not greater, challenges. Furthermore, events such as the post-Easter Sunday bombings in 2019 led to increased scrutiny and discriminatory practices against the Muslim community, including the

enforcement of dress codes, reflecting broader societal tensions that can affect minority rights.

In summary, while the MISO directs the application of classical Fiqh rules, which include provisions for *Khuntha*, the realization of inheritance rights for third-gender Muslims in Sri Lanka is significantly hindered by the constitutional protection of personal laws, persistence of discriminatory penal codes, strong sociocultural conservatism, and practical difficulties faced by the LGBT community in accessing legal recognition and protection.

Conclusion

This examination of the inheritance rights of third-gender individuals under Islamic law reveals a complex landscape marked by the tension between legal traditions and contemporary realities. Islamic inheritance law, *Ilm al-Fara'id*, is rooted in Quranic texts that specify shares for heirs within the male-female binary. Classical Islamic jurisprudence (*Fiqh*) acknowledged gender ambiguity, developing rules for the *Khuntha* (intersex), particularly the *Khuntha Mushkil* (indeterminate), with approaches across schools of thought (*Madhahib*), including the 'lesser share' principle for precautionary justice. The status of *Mukhannath* (effeminate male) was addressed, although *fiqh* discussions focused on regulating social conduct rather than inheritance deviations.

Contemporary 'third gender' identities, including transgender and culturally specific categories such as *Hijra*, challenge the applicability of classical frameworks. Responses across the majority of jurisdictions varied widely. Iran permits SRS under certain conditions and aligns inheritance rights with affirmed legal gender. Bangladesh recognises *Hijras* as 'Third Gender' but struggles with inheritance law integration. Nations like Egypt, Iraq, Syria, Kuwait, and Oman show restrictive stances, lack legislation, or rely on contested religious interpretations that marginalise third-gender individuals. Sri Lanka's case is complicated by legal pluralism and constitutional provisions protecting personal laws from equality challenges alongside social barriers in the Muslim community.

This analysis identifies critical challenges in addressing third-gender rights within Islamic legal and societal frameworks. Legally, reconciling rigid interpretations of *Fara'id* with contemporary gender identities presents significant obstacles, requiring *ijtihad* to transcend outdated classifications such as *Khuntha*. Socially, stigma, familial rejection, and discrimination in education, employment, and health care impede access to rights. Ambiguous legislation, weak enforcement, and medicalisation policies that pathologise transgender identities further complicate the situation. Progress pathways include the scholarly reinterpretation of Islamic principles through justice (*adl*) and dignity (*karāmah*), legislative reforms, judicial interventions, and campaigns to combat

prejudice. However, meaningful change requires aligning legal innovations with grassroots advocacy to shift cultural attitudes and to ensure practical equity.

In conclusion, the legal discourse on third-gender inheritance rights in Islamic law reflects the interplay between religious traditions, legal interpretation, medical knowledge, human rights, and sociocultural change. While classical *Fiqh* addresses gender ambiguity, contemporary challenges require nuanced engagement to bridge legal theory and the lived experiences of marginalised communities, pursuing justice and inclusion.

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