

Intersex Inheritance Law in the Light of Rabbinic Literature

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Abstract

Intersex individuals, defined by ambiguous sexual characteristics that challenge traditional binary gender categories, often face significant societal exclusion and denial of basic rights. This article explores the religious teachings of Judaism regarding inheritance rights for intersex individuals, referred to as *tumtum* (with indeterminate sexual traits) and *androgynous* (having both male and female characteristics), in rabbinic literature. Drawing from foundational texts such as the *Mishnah*, *Talmud*, and *Halakha* rulings, the article examines how Jewish law accommodates intersex individuals within the framework of biblical inheritance laws. The study focuses on how rabbinic authorities have defined intersex individuals' rights about sons and daughters, outlining circumstances where they may inherit like sons and daughters or be excluded entirely. The article underscores these laws' ethical considerations and societal implications by analyzing the nuanced approaches of Jewish teachings. This study sheds light on the interplay between tradition, gender identity, and justice, offering insights into Jewish religious perspectives' inclusive yet complex nature on inheritance.

Keywords: Intersex, androgynous, Judaism, inheritance, tumtum, LGBTQI

Introduction

Inheritance refers to the wealth distributed among a person's heirs after death. This wealth includes property, land, money, houses, and other valuable assets. This transfer of wealth follows specific rules and regulations that vary across religions. For example, the inheritance laws in Islam differ significantly from those in Judaism.

Inheritance holds profound significance socially, economically, and ethically. It is designed to support family members financially, ensuring stability and security. Redistributing wealth helps sustain family members who may face financial challenges, safeguarding the deceased's loved ones against potential hardships.

Moreover, inheritance systems contribute to societal balance by redistributing wealth equitably among family members, preventing its concentration in the hands of a few. Fair and just distribution not only upholds principles of justice but also fosters unity and goodwill within families, reducing tensions and strengthening bonds. Conversely, the absence of fair distribution often leads to disputes and discord within families, underscoring the critical role of well-defined inheritance laws in many religious traditions.

This paper will explore the inheritance laws in Judaism, focusing on the rights and regulations concerning intersex individuals. It will provide a comprehensive understanding of their unique status within the legal framework of Jewish law.

Basic Principles of Inheritance Distribution in Judaism

The core principles of inheritance distribution among Jews are established in the Torah. These principles serve as guidelines to ensure a just distribution of inheritance among all family members. The primary principles of inheritance distribution in Judaism are as follows:

- In Judaism, when a person dies, the first rightful heirs to the estate are his children, with the primary right going to the sons.¹
- According to Jewish inheritance law, there is a difference in inheritance rights between men and women. Sometimes, the presence of a male heir excludes a female from inheritance, and sometimes a woman receives a lesser share than a man. For example, if a person has no children, his estate is passed on to his father, and the mother receives no part of it. In other words, in the presence of the father, the mother is excluded from her son's inheritance.²
- Similarly, a man is entitled to inherit his wife's property, while a wife is not entitled to inherit from her husband's estate. The husband is considered the primary heir to his wife's inheritance. However, if the husband dies, the inheritance passes to his children and other male relatives, with the wife excluded from it.³
- The presence of a son excludes a daughter from inheritance. If a person has sons and daughters, the sons are given preference as the rightful heirs to the estate. The sons must allocate a portion of their inheritance for the daughters' sustenance and livelihood.⁴

- The distribution of inheritance among sons is also such that if a person has five sons, the firstborn is given a double portion. In contrast, the remaining inheritance is divided equally among the other sons. This is because the firstborn has more significant responsibilities,⁵ as mentioned in the Torah:

*"Allot a double portion of all he possesses; since he is the first fruit of his vigor, the birthright is his due."*⁶

- If the estate is limited, the sons will be deprived of inheritance, and whatever estate remains will be divided equally among the daughters for their sustenance and livelihood.⁷
- If a person has passed away and has left no sons, only daughters, then the daughters are entitled to their father's inheritance, as stated in the Torah:

*"Further, speak to the Israelite people as follows: 'If a householder dies without leaving a son, you shall transfer his property to his daughter.'"*⁸

- If a person dies childless, with neither a daughter nor a son, then his brothers are entitled to his inheritance, as commanded in the Torah:

*"If he has no daughter, you shall assign his property to his brothers."*⁹

- If the deceased has neither children nor brothers, then in this case, the inheritance will be divided among the father's brothers.
- If the deceased has no children, no brothers, and no paternal uncles, then the rightful heirs to his inheritance will be his closest relatives, as stated in the Torah:

*"If his father had no brothers, you shall assign his property to his nearest relative in his own clan, who shall inherit it."*¹⁰

In conclusion, the laws of inheritance distribution in Judaism, as derived from the Torah, Talmud, and Mishnah, provide a structured framework for allocating assets among heirs. This ensures that property is distributed fairly among family members in accordance with religious teachings. Consequently, these principles emphasize familial responsibility and the orderly transfer of wealth within the framework of Jewish law.

Table 1 Basic Principles of Inheritance Distribution in Judaism

Principle	Description
Primary Heirs	Sons are the first rightful heirs to the estate.
Gender-Based Rights	Male heirs often exclude female heirs; mothers are excluded in the presence of the father.
Inheritance of Spouses	A husband inherits his wife's property, but a wife does not inherit her husband's estate.
Preference for Sons Over Daughters	Sons inherit the estate and must provide sustenance for daughters.
Double Portion for Firstborn Son	The firstborn son receives a double portion of the inheritance.
Limited Estate Distribution	Sons may be excluded, and the estate is divided equally among daughters for sustenance.
Inheritance for Daughters	If no sons are present, daughters inherit the estate.
Childless Heirs - Brothers	If no children exist, brothers inherit the estate.
Childless Heirs - Father's Brothers	If no children or brothers exist, the estate goes to the father's brothers.
Closest Relatives	If no children, brothers, or uncles exist, the estate is assigned to the nearest relative.

Intersex Individuals in Jewish Law

Jewish religious literature recognizes that intersex individuals have a unique identity, making it challenging to categorize them exclusively as male or female. In classical Jewish texts, such as the Talmud and Mishnah, specific terms are used for intersex individuals as a unique category. Jewish religious literature addresses various aspects of their lives in detail, including worship, property rights, religious observances, marital relationships, and inheritance laws. Also, Jewish scholars have engaged in complex debates about how certain religious obligations apply to *intersex* individuals, acknowledging that they do not fit neatly into the binary male-female classification.

Terms Used for Intersex Individuals in Judaism

In Jewish religious literature, two specific terms, "*Androgynous*" and "*Tumtum*," are used for intersex individuals. These terms come from Hebrew and appear in Jewish legal texts, especially in discussions of inheritance and ritual obligations, where gender determines certain rights and responsibilities.

In Jewish law, ***Androgynous*** refers to a person who possesses both male and female genetic characteristics simultaneously, meaning an individual whose gender cannot be determined because they have both male and female sexual characteristics.¹¹ In some cases, Jewish law applies certain male obligations to an *androgynous* individual. In contrast, female obligations or exemptions are used in others, reflecting the complexities and flexibility within the legal tradition.

In Jewish religious texts, a *Tumtum* is a term used for a person whose sexual characteristics are hidden or ambiguous, meaning it's unclear whether they are male or female.¹² The term comes from Hebrew and appears in Jewish legal texts, especially when discussing obligations and responsibilities. A *tumtum* is often described as someone whose physical attributes do not clearly reveal their gender, which might be due to anatomical factors or incomplete development. If a *tumtum*'s gender is clarified through surgery (as either male or female), they are then identified accordingly, and the laws related to that gender are applied to them.

Table 2 Comparison Chart: Terms for Intersex Individuals in Judaism

Aspect	Androgynous	Tumtum	Similarities
Definition	A person with both male and female sexual characteristics.	A person whose sexual characteristics are hidden or ambiguous.	Both terms describe intersex individuals with indeterminate gender.
Gender Characteristics	Simultaneously possesses male and female genetic traits.	Physical traits do not clearly reveal gender due to anatomical factors or incomplete development.	Both involve physical ambiguity in determining gender.
Treatment in Jewish Law	Male obligations apply in some cases, female exemptions in others.	Laws related to identified gender are applied if clarified through surgery.	Both are addressed in Jewish law with roles and obligations based on gender context or clarification.
Obligations and Rights	Reflect complexities and flexibility within legal tradition.	Gender-specific laws are applied upon clarification; otherwise treated as ambiguous.	Both have legal interpretations dependent on the determination or ambiguity of gender.
Focus in Texts	Discussed in contexts of inheritance and ritual obligations where gender determines rights and responsibilities.	Focused on obligations and responsibilities due to unclear gender until clarified.	Both terms appear in Jewish legal texts, emphasizing rights and duties tied to gender.

Types of Intersex Individuals in Jewish Law

In Jewish law, rabbis have mentioned some categories for *androgynous* and *tumtum*. These categories help determine how religious laws apply to individuals based on their specific physical characteristics. The main four categories are here:

- 1. Predominantly Male Characteristics:** Some *androgynous* individuals possess more male characteristics.¹³ An *androgynous* person with predominantly male traits is classified as male and is bound by the religious obligations and rights that apply to men.¹⁴
- 2. Predominantly Female Characteristics:** Some *androgynous* individuals possess more female characteristics.¹⁵ An *androgynous* person with predominantly female traits is classified as female and is bound by the religious obligations assigned to women.¹⁶
- 3. Both Male and Female Characteristics:** An *androgynous* individual may sometimes exhibit both male and female characteristics.¹⁷ In Jewish law, such individuals are considered a third gender, and specific religious laws that differ from those for men and women apply to them.¹⁸
- 4. Neither Male nor Female Characteristics:** Sometimes, an *androgynous* individual may possess neither male nor female characteristics.¹⁹ Jewish law also provides distinct regulations for individuals separate from those for men and women.

Table 3 Types of Intersex Individuals in Jewish Law

Category	Description	Legal Classification	Religious Obligations
Predominantly Male Characteristics	Androgynous individuals with predominantly male traits.	Classified as male.	Bound by religious obligations and rights that apply to men.
Predominantly Female Characteristics	Androgynous individuals with predominantly female traits.	Classified as female.	Bound by religious obligations assigned to women.
Both Male and Female Characteristics	Androgynous individuals exhibiting both male and female characteristics.	Considered a third gender.	Specific religious laws distinct from those for men and women apply.
Neither Male nor Female Characteristics	Androgynous individuals possessing neither male nor female characteristics.	Separate classification distinct from male or female categories.	Governed by distinct regulations separate from those for men and women.

Inheritance is divided among *androgynous* individuals based on these classifications. If an *androgynous* person is deemed predominantly male, they receive an inheritance share according to the laws for men. Similarly, an *androgynous* individual with predominantly female traits is subject to the inheritance rules for women. For those in the remaining two categories, inheritance laws differ, with unique guidelines applied to each.

Inheritance Laws for Intersex Individuals in Judaism

In Judaism, the inheritance laws for *androgynous* and *tumtum* individuals specify different approaches depending on their characteristics. In some cases, they are treated as males, receiving an inheritance share accordingly, while in others, they are given a share like that of females. Here are briefly described Inheritance Laws for *androgynous* and *tumtum* in the light of Jewish religious teachings:

- The following two principles apply to the distribution of inheritance: If a person has two heirs, one whose right to inherit is inevitable and the other whose right is uncertain, the one with uncertain status will not receive a share of the inheritance.

Similarly, if two people claim inheritance rights and both have uncertain status, the inheritance will be divided equally.²⁰

- These principles also apply to an androgynous or a *tumtum*. If a person dies and leaves behind sons, an androgynous, and a *tumtum*, then the sons inherit the entire estate. The androgynous and *tumtum* are excluded from inheritance in the presence of sons because their status is uncertain, and doubt disqualifies potential heirs from receiving a share.²¹
- If the heirs include daughters, a *tumtum*, and an androgynous, but no son, their inheritance will be divided equally. Without a son, an androgynous or *tumtum* is considered equivalent to a daughter and is given a share in the inheritance.²²
- If a person owns a substantial estate and leaves behind sons, daughters, a *tumtum*, and an androgynous, then the sons will be entitled to the entire inheritance. However, the daughters, *tumtum*, and androgynous, will be given a portion of the estate for their sustenance and livelihood. In other words, while the primary heirs are the sons, they must provide enough resources for the daughters, *tumtum*, and androgynous to meet their basic needs.²³
- If a person has a limited estate and leaves behind sons, daughters, a *tumtum*, and an androgynous, the sons, *tumtum*, and androgynous will be excluded from inheritance. The entire estate will be distributed among the daughters to ensure their support and maintenance.²⁴

Therefore, if a person passes away leaving behind sons, daughters, a *tumtum*, and an androgynous, the following principles will apply:

- If the estate is ample and sons are present, then the sons will be entitled to the entire inheritance, while the *tumtum* and androgynous will be treated similarly to the daughters.
- If the estate is limited and only daughters are present, then the daughters will inherit everything. In this case, the *tumtum* and androgynous will be treated as sons, meaning they will be excluded from inheritance.²⁵
- If a person's heirs include sons, daughters, and a *tumtum*, and the estate is substantial, the sons will inherit the entire estate, treating the *tumtum* as one of the daughters, meaning they will be excluded from the inheritance. Similarly, if the estate is limited, the daughters will exclude the *tumtum* from inheritance, treating them as one of the sons, who in cases of limited inheritance, do not receive a share.²⁶
- If a person passes away and their only heir is a *tumtum*, then the *tumtum* is entitled to the entire inheritance.²⁷
- According to Torah law, a man's firstborn son is entitled to a double portion of the inheritance.²⁸ However, if a person's first child is a *tumtum* (an individual with indeterminate sexual characteristics), they are excluded from this law. Even though the *tumtum* is the firstborn, they are not eligible for a double portion. Similarly, suppose a person's first child is a *tumtum*, and their gender is later determined to be male. In that case, the *tumtum* still does not qualify for the double portion because Rabbi Ami states that the Torah stipulates, "If the firstborn is a son,"²⁹—meaning that the child must be born with clearly defined male characteristics to be entitled to the additional share.³⁰ Since the *tumtum*'s gender was not apparent at birth, they are disqualified.
- Likewise, a *tumtum* whose gender is later clarified as a male cannot deprive the firstborn son of his double portion. For example, if a man has three sons: one firstborn son, a second (younger) son, and a *tumtum*, the firstborn son receives one-third of the total estate as his double portion. The remaining two-thirds are divided equally among the three children, including the *tumtum*.³¹
- If an androgynous (a person with both male and female characteristics) exhibits predominantly female characteristics, their inheritance laws will be the same as those of daughters. This means that in the case of an insufficient estate, they can exclude their brothers from the inheritance.³²

Table 4 Basic Inheritance Laws for Intersex Individuals in Judaism

Aspect	Tumtum	Androgynous	Similarities
General Status	Treated as a distinct category with limited inheritance rights.	It is the same as the <i>tumtum</i> , reflecting a lower status than men or women.	Both are categorized distinctly from male and female heirs.
Firstborn Exclusion	Excluded from the double portion of firstborn inheritance, even if clarified as male.	Not eligible for firstborn rights; treated based on predominant characteristics.	Both are excluded from firstborn inheritance rights.
Share in Substantial Estate	Treated like daughters, receiving sustenance but no inheritance share.	Same as <i>tumtum</i> ; treated similarly to daughters in substantial estates.	Both receive sustenance but no formal inheritance in substantial estates.
Share in Limited Estate	Treated like sons, often excluded from inheritance.	They are treated like daughters, potentially excluding brothers in specific cases.	Both are excluded in certain cases when inheritance is limited.

Aspect	Tumtum	Androgynous	Similarities
Exceptional Ownership	Sole offspring: Entitled to inherit the entire estate.	Predominantly male characteristics, which may be inherited like sons; with female traits, such as daughters.	Both have unique cases allowing broader inheritance under specific conditions.
Rabbinic Interpretation	Rabbi Abaye: Eligible for sustenance but without sustained rights as daughters.	Based on predominant traits, inheritance rights are assigned as male or female.	Interpretation depends on the context and characteristics in both cases.
Exclusion Dynamics	Excluded when inheritance rights prioritize certainty (e.g., in the presence of sons).	As with tumtum, uncertainty in status leads to exclusion when heirs with defined rights exist.	Uncertainty in gender leads to exclusion for both in competitive inheritance scenarios.

Discussion

This article thoroughly examines the inheritance laws concerning intersex individuals as outlined in Jewish religious literature, clarifying their economic status under Jewish law. The religious texts of Judaism (*Mishnah*, *Talmud*, and *Halakha*) not only define inheritance rules for men and women but also provide detailed provisions for intersex individuals. In Jewish law, while inheritance rights are prescribed for intersex individuals (*tumtum* and *androgynous*), it is evident that their share is significantly limited.

For instance, according to Jewish inheritance principles, the eldest son receives a double portion of the estate. However, if the firstborn is a *tumtum* or an *androgynous*, they are not entitled to this double portion. Even in cases where a *tumtum* undergoes surgery to reveal their gender as male or female, they are not granted the rights of the eldest son to receive a double share, even if identified as male post-surgery. This underscores that intersex individuals in Jewish law are not accorded the complete status of men or women but are instead treated as a distinct category with a lower status.

The inheritance granted to *tumtum* and *androgynous* is often the smallest. For example, in cases where the estate is insufficient, and sons receive reduced shares, *tumtum*, and *androgynous* receive the same share as sons. When the estate is very limited, and daughters become the sole inheritors, *tumtum* and *androgynous* are treated similarly to sons and are excluded from inheritance. Conversely, in the presence of sons, daughters are excluded from inheritance and receive only sustenance; in such situations, *tumtum* and *androgynous* are treated as daughters and receive sustenance only, reflecting a tendency to assign them the lower position in inheritance rights.

Moreover, Jewish law generally grants *tumtums* and *androgynous* people only the right to a share in the estate without complete ownership. For instance, Rabbi Abaye holds that a *tumtum* may be considered eligible for sustenance like a daughter, but they are not sustained.³³

In some exceptional cases, Jewish law does provide broader inheritance rights to a *tumtum*. For example, if a *tumtum* is the sole offspring, they are entitled to inherit the entire estate. Similarly, an *androgynous* person with predominantly male characteristics may inherit traits like a son, potentially excluding daughters. Conversely, with predominantly female characteristics, they may inherit like a daughter, potentially excluding sons in cases of limited estate. These scenarios highlight the nuanced and specific nature of Jewish inheritance laws concerning intersex individuals.

Table 5 Comparison of Inheritance Laws for Tumtum and Androgynous

Aspect	Tumtum	Androgynous	Similarity
Uncertain Status	Excluded from inheritance in the presence of sons due to uncertain status.	Like tumtum, uncertain status excludes them from inheritance when sons are present.	Both are treated similarly when uncertain status leads to exclusion.
Role in Substantial Estates	Treated as daughters, they may receive sustenance but no formal inheritance.	Same as tumtum; treated as daughters with similar support provisions.	Both receive sustenance in cases of substantial estates but are not primary heirs.
Role in Limited Estates	Excluded from inheritance if daughters are present, treated as sons in such cases.	They are treated as daughters and may exclude others from inheritance depending on their characteristics.	Differentiated treatment depends on gender characterization; exclusion applies for both in some cases.
Sole Heir Status	Entitled to the entire inheritance if they are the sole heir.	Same as tumtum; inherits entire estate as a sole heir.	Both inherit fully if they are the only heir.
Firstborn Rights	Excluded from receiving a double portion as firstborn, even if later identified as male.	It is not applicable in explicit firstborn contexts but is considered equivalent to daughters.	Gender uncertainty at birth excludes both from firstborn privileges.
Characteristics-Based Rules	Clarified as male or female later; roles are adjusted but not retroactively applied to privileges.	Treated based on predominant characteristics, female traits lead to the exclusion of brothers.	Their later determined or predominant characteristics judge both in specific cases.

This chart captures both similarities and distinctions in how Jewish inheritance laws address the unique cases of *tumtum* and *androgynous* individuals. Their uncertain status results in comparable exclusions and adjustments based on circumstances, but characteristic-specific rules create nuanced differences.

Conclusion

In summary, the following conclusions can be drawn from the details above:

- In Jewish law, inheritance rights have been allocated to intersex individuals (*androgynous* and *tumtum*), granting them a degree of economic autonomy.
- Intersex individuals are given a limited share in inheritance, which, in some instances, differs from the rights afforded to men and women.
- As firstborns, intersex individuals cannot receive a double share of the inheritance, unlike the eldest son, who is entitled to this privilege by being the firstborn.
- When the estate is large, sons can exclude *tumtum* and *androgynous* from inheritance; daughters can exclude them from inheritance when the estate is limited.
- If an *androgynous* exhibits predominantly male or female characteristics, inheritance laws specific to that gender will apply. As a son, they may exclude daughters from an inheritance, and as a daughter, they may, in certain cases, exclude sons from inheritance.

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