

Gender in Halachah: A feminist perspective on the challenge of inclusive realism



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To join the post-session discussion or to attend upcoming webinars, email me with Gender as the subject field.

For a comprehensive summary of the statistics in this field, see <https://statsforgender.org/>

Note that this table is about types of biological humans and not about gender identities. Terms like “man”, “woman”, “trans man”, “trans woman” are avoided.

Body type	Mitzvot (obligation)	yichud	marriage	biology	Male?	Femaleness / erva?
male (typical)	male, at 13 (or maturity)	female(s)	to a female	male complete	yes	no
female (typical)	female, at 12 (or maturity)	male	by a male	female complete	no	Yes
saris hamah	male but delayed to age 20 or maybe 35 if not mature	female(s)	to a female, limited	male incomplete	like a boy?	No
aylonit	female but delayed to age 20 or maybe 35 if not mature	male	by a male, limited	female incomplete or XY looks female	assumed no	yes (possibly reduced)
androgynous	male, age 12 (Rambam) or 13 ?safek on yotzei others	female(s), male	to a female	male and female usually incomplete	safek assumed yes	yes but also male
tumtum	male, age 12 (Rambam) or 13 ?safek on yotzei others	unclear	to a female??	neither / hidden	safek	unclear
saris adam	male, at 13	unclear	to a female convert or mamzer	male castrated	like a boy?	no
MTF child on blockers	male, delayed like saris hamah	female(s)? male?		male (immature)	like a boy	yes?
FTM child on blockers	female, delayed like aylonit	male		female (immature)	no	yes? male appearance
MTF adult pre SRS	male	female(s) male?	to a female like saris hamah?	male (incomplete if blockers)	yes	yes
FTM adult pre SRS	female	male	by a male like aylonit?	female (incomplete if blockers)	no	yes? male appearance
MTF adult post SRS	male	none? male?	? like a female? like androgynous? like saris adam? like aylonit?	neither? female incomplete?	safek?	yes?
FTM adult post SRS	female	none? female?	? like a male?, like androgynous? like aylonit? like saris hamah?	neither? male incomplete?	?	no?

Yichud rules commence at age 9 for typical males and at age 3, 5, or 6 for females (no consensus) but no yichud if both are minors.

Presumption that females below a certain age are not an erva for males and therefore are not at risk of seduction / rape from (most) mature males.

GLOSSARY

Sex (male / female): The system by which organisms are classified as male or female, on the basis of reproductive functions and bodily characteristics such as chromosomes and hormones.

Intersex: When someone cannot be classified as clearly biologically male or female. .018% of human beings

Gender: The binary language or concepts of male and female (or masculine and feminine) as assigned to people, things, animals, behaviour, words and anything else, often due to actual links between these and biological sex, but often with no link whatsoever.

Gender presentation: How a person is gendered by others or signals their desire to be gendered, usually by gender-typical appearance or behaviour.

Gender identity: The gender label (if any) assigned by an individual to their sense of self, which may or may not align with their sex gender or with the gender assigned to them by others.

Gender Dysphoria: Unhappiness/unease a person feels (1) due to a mismatch between their sex and their gender identity and/or (2) due to a mismatch between the gender assigned to them by others and their gender identity and/or (3) about their sexed body.

Transgender: When a person rejects their sex gender, asks other people to assign them a different gender, and consistently modifies behaviour and/or appearance to signal this wish.

MTF (male-to-female): a biological male who transitions to female.

FTM (female-to-male): a biological female who transitions to male.

SRS (sex reassignment surgery): Surgery on the genitals to attain the appearance and possibly limited functionality of the opposite sex. Sometimes called **gender reassignment surgery**.

Detransitioner: When a person has been transgender and returns to their sex gender. Such a person may or may not have medically transitioned but if a person detransitions after only a social transition, the term **desister** is sometimes also used.

Gynephilic: when a person is attracted to females

Androphilic: when a person is attracted to males

Essentialism: The view that a characteristic or quality is inherent in a person or object rather than being socially constructed or an interpretation.

Social constructivism: The view that a characteristic or quality is a label applied to a person or object due to social norms or culture.

Erva: when a person's appearance stimulates sexual desire in others.

Mishkav Zachar: The prohibition in the Torah against (penetrative) sex of one male with another male.

Mesolelot: The rabbinic prohibition against sexual activity between females. Note that actual sex between females is halachically impossible.

Safek Zachar: a person who *might* be male (but there is a doubt)

Note: Words like “woman” and “man” and “trans woman” and “trans man” are avoided here to keep the language as ideologically neutral as possible.

Nothing here should be read to deny or erase any person's gender identity as a real and important part of their identity.

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SOURCES

Status / Medicalisation

1. R Eliezer Waldenberg (Tzitz Eliezer) 1967 argued that SRS transforms you to the other sex.
2. Tzitz Eliezer 1997 said that a MTF after SRS is safek androgynous because he worried the change may not be permanent or truly effective.
3. Rabbi Alfred Cohen on the “Tumtum and Androgynous” 1999. Very critical of Tzitz Eliezer’s support for surgery to turn androgynous into females.
<https://www.daat.ac.il/daat/english/journal/cohen-1.htm>
4. *Dor Tahapuchot* – book by Rabbi Iden Ben-Efraim (2004) analysis and criticism of the Tzitz Eliezer.
5. Sarra L. Lev in *Jewish Studies Quarterly* 2010 on the treatment of the saris hamah in Judaism.
<https://www.jstor.org/stable/20798278>
6. Rabbi Dr Zev Farber. [Transgender Individuals in the Orthodox World](#), Morethodoxy 2015. Argues that transition is effective and trans people can even marry.
7. Majority position: No one can change sex really. Lev Aryeh Vol 2 No 49. (Rabbi Aryeh Leib Grossnas d.1996)
8. Rabbi Leonard A. Sharzer MD. [Transgender Jews and Halakhah](#). Teshuvah of the US Conservative movement 2017.
9. Tzvi Sinensky - [Demystifying R. Eliezer Waldenberg on Sex Reassignment Surgery](#) Lehrhaus 2022
10. Ronit Irshai 2017: [The Contemporary Discourse on Sex-Reassignment Surgery in Orthodox Jewish Religious Law, as Reflected in Dor Tahapuchot](#) (A Generation of Perversions)
11. Rabbi Dr. Tzvi Hersh Weinreb: Transgender in the Jewish Community. Lecture in 2016.
<https://www.youtube.com/watch?v=BTylRVBFZok>

Yichud / Marriage / Cross-dressing

12. A saris adam can marry but only to a mamzer or convert. <https://outorah.org/p/6179>
13. Dor Tahapuchot: SRS transexuals cannot have actual sex as their sex organs are artificial, so no yichud rules apply and cross-dressing is permitted
14. According to <https://forward.com/life/391821/judaism-needs-to-be-kinder-to-transgender-people>, in matters of modesty we go according to gender presentation.
15. Ilan Fuchs provides a good source sheet summarizing the textual origins of the laws of yichud.
<https://www.sefaria.org/sheets/206005>
16. [Cross-Dressing in Jewish Law and the Construction of Gender Identity](#) by Ronit Irshai (Bar Ilan University). 2021. The best summary of the topic.

Mitzvot / Capacity

17. [Mishnah Bikkurim Chapter 4](#). Androgynous and Tuntum. Mitzvah obligation like males and disqualified as witnesses.
18. Tosefta Megillah 2:4, Tuntum and androgynous are obligated but cannot be yotzei other men in megillah because there is doubt whether they are men. Women too cannot according to this text. (Note: We do not hold that way.)
19. Rashi (Erchin 3a) disagrees and says women can discharge the obligation of megillah for men. So the same would by presumably apply to the androgynous and tuntum.
20. *She'agat Aryeh* 30 and 31 holds that a tuntum cannot have shatnez in tzitzit. (not how we hold)
21. [Rambam. Laws of Tzitzit Halacha 9](#): On women, tuntum, and androgynous and levels of obligation. Holds that none say the brachah for tzitzit but tuntum and androgynous are obligated. (Note: we do not hold that way.)
22. [Rambam. Laws of Marriage, Chapter 2](#). On the age of mitzvot for typical women and men, and also for aytonit and saris hamah (age 20 if still immature).
23. [Mishnah Bikkurim Chapter 4](#). On the androgynous
24. *Dor Tahapuchot*: Mitzvot adhere to the soul and not the body. If the soul was destined for a female body but is put in a male body then the person is subject to female mitzvot, and vice versa. Kabbalistic idea.
25. Rabbi Yoel Bin Nun's use of the idea of the Isha Chashuvah to allow women to opt into male mitzvot. Summarised by Gil Student in [Torah Musings](#) 2011.
26. Responsa of the US Conservative Movement that women can choose to be obligated in all positive timebound mitzvot (and then become rabbis). 1984. [On the Ordination of Women as Rabbis](#). Joel Roth.
27. Responsa of the US Conservative Movement that all women are obligated in all positive timebound mitzvot (whether they choose this or not). 2014. [Women and Mitzvot](#) by Rabbi Pamela Barmash.
28. Rabbi Dr Zev Farber. [Transgender Individuals in the Orthodox World](#), Morethodoxy 2015. Argues that obligation in mitzvot is according to social gender role not biological sex.