



RABBI GIDEON

**Machon Puah for Fertility and
Gynecology in Accordance with Halacha**

WEITZMAN

Defining Gender

Last week we saw the complex questions raised by the case of the child who appears to be a girl but is genetically a boy. Rabbi Yaakov Ariel, the Chief Rabbi of Ramat Gan, discussed how we define the child's gender.

The closest halachic definition is the androgynous, the hermaphrodite, who is both female and male. The word androgynous comes from the Greek words andro, meaning male, and gyne, meaning female. The Rambam writes (Hilchot Ishut 2:24) "Whoever has male and female reproductive organs is called androgynous and it is a doubt whether they are male or female, and they have no clear sign whether they are male or female."

This is different from our case where the child appears externally to be female and does not have both male and female

Dr. Eliezer Rosenblum

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052-662-4658

organs. The Torah defines reality by what is observed externally and therefore this child appears to be female, and should be classed halachically as female.

Rabbi Ariel explains that sight is only one of the senses that determines halachic reality, and we take into account the other senses as well. Therefore, if there is something that cannot be seen but can be felt, or smelt, heard or tasted, it still has halachic significance. While this child is seen to be female, we can still feel and perceive the male organs and so the child cannot be defined as female.

Another possibility is the halachic category *tumtum*, derived from the word *atum*, sealed, where the reproductive organs are concealed and the child's gender is unclear. This is not a distinct gender, like the androgynous, but a medical condition that the gender is difficult to determine. The *tumtum* is either male or female but we cannot currently decide which.

Our case is different, and the question is whether we determine gender by how the child appears externally, or by the genetic makeup and internal organs. Rabbi Ariel decided that, based on this, the child must be considered an androgynous but it is permitted to operate and make it male. After the operation the child will

both look male and have male genes and internal organs. We can then regard it as a boy. When it becomes a male, he will be considered halachically as completely male in the eyes of the halacha with regard to all halachic considerations.

If this is the case, if someone was born a woman, are they permitted to be operated on and become a male? Will they then be considered male in the halacha?

More on this next week. ■

The Puah Institute is based in Jerusalem and helps couples from all over the world who are experiencing fertility problems. Offices in Jerusalem, New York, Los Angeles & Paris. Contact (Isr) 02-651-5050 (US) 718-336-0603 www.puahonline.org

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