

# **Transgender / Intersex ordination in the Theravada Vinaya**

**Legalities and moral issues**

Ayya Yeshe Chödrön Bhikṣunī

Ven. Vimala Bhikkhunī

October 18, 2020

# Contents

<b>1</b>	<b>Summary</b>	<b>3</b>
<b>2</b>	<b>Definitions</b>	<b>4</b>
2.1	Modern definitions . . . . .	4
2.1.1	Intersex . . . . .	4
2.1.2	Hermaphrodite . . . . .	4
2.1.3	Transgender . . . . .	5
2.2	Scriptural definitions . . . . .	5
2.2.1	Paṇḍaka . . . . .	5
2.2.2	Ubhatobyañjanaka . . . . .	6
2.2.3	Other references . . . . .	6
2.3	A note on translation and interpretation . . . . .	7
<b>3</b>	<b>Word frequency</b>	<b>9</b>
3.1	Pali canon and commentaries . . . . .	9
3.2	Sanskrit Buddhist and Vedic canon . . . . .	10
3.3	Tibetan canon and commentaries . . . . .	10
<b>4</b>	<b>Analysis of the terms in the context of ordination</b>	<b>12</b>
4.1	Paṇḍaka . . . . .	12
4.2	Ubhatobyañjanaka . . . . .	12

# 1 Summary

The legality of Bhikkhunī ordination in the Theravada and Tibetan lineages of Buddhism has been a hotly debated issue for many years. Thanks to the efforts and research of many monastics and academics, the first full Theravada ordination was held in Perth in October 2010 (Sujato [2009], Anālayo [2013]). Although still not widely recognized in several traditional Theravada countries, recognition is growing and the number of Bhikkhunīs is slowly increasing.

There is however another group of people that has been marginalized and excluded from ordination, a group which we will refer to here with the Pāli term used in the Theravada Vinaya: *ubhatobyañjanaka*. There have been various translations and interpretations of this term with the consequence that intersex people and transgenders have been barred from ordination.

In this paper, we will look at the various interpretations and translations as well as modern definitions of the terms intersex and transgender, which differ from the usage at the time of the Buddha and thereafter. We will also look at the influence of other groups that existed after the Buddha passed away, most notably the Jains.

## 2 Definitions

### 2.1 Modern definitions

#### 2.1.1 Intersex

The definition of the term "intersex" according to the of the High Commissioner for Human Rights [2015] is as follows:

Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.

Intersex is an umbrella term used to describe a wide range of natural bodily variations. In some cases, intersex traits are visible at birth while in others, they are not apparent until puberty. Some chromosomal intersex variations may not be physically apparent at all.

Intersex can be divided into 4 categories according to the of Medicine:

46, XX intersex	female internal organs and chromosomes external genitals appear male
46, XY intersex	male internal organs and chromosomes external genitals appear female or ambiguous
True gonadal intersex	both ovarian and testicular tissue external genitals ambiguous or appear female or male
Complex or undetermined intersex	chromosomes discrepancies only

#### 2.1.2 Hermaphrodite

A hermaphrodite is an organism that has both male and female reproductive organs. Until the mid-20th century, "hermaphrodite" was used synonymously with "intersex". The distinctions "male pseudohermaphrodite", "female pseudohermaphrodite" and especially "true hermaphrodite" are terms no longer used, which reflected histology (microscopic appearance) of the gonads. Medical terminology has shifted not only due to concerns about language, but also a shift to understandings based on genetics.

Currently, hermaphroditism is not to be confused with intersex, as the former refers only to a specific phenotypical presentation of sex organs and the latter to a more complex combination of phenotypical and genotypical presentation. Using hermaphrodite to refer to intersex individuals is considered to be stigmatizing and misleading (of North America [2013]). Hermaphrodite is used for animal and plant species in which the possession of both ovaries and testes is either serial or concurrent, and for living organisms without

such gonads but present binary form of reproduction, which is part of the typical life history of those species; intersex has come to be used when this is not the case.

### 2.1.3 Transgender

Transgender people have a gender identity or gender expression that differs from the sex that they are assigned at birth (Altilio [2011]). Some transgender people who desire medical assistance to transition from one sex to another identify as transsexual (Polly and Nicole [2011]). Transgender, often shortened as trans, is also an umbrella term. In addition to including people whose gender identity is the opposite of their assigned sex (trans men and trans women), it may include people who are not exclusively masculine or feminine (people who are non-binary or genderqueer, including bigender, pangender, genderfluid, or agender). Other definitions of transgender also include people who belong to a third gender, or else conceptualize transgender people as a third gender.

The term transgender is also distinguished from intersex.

The opposite of transgender is cisgender, which describes persons whose gender identity or expression matches their assigned sex.

Many transgender people experience gender dysphoria, and some seek medical treatments such as hormone replacement therapy, sex reassignment surgery, or psychotherapy. Not all transgender people desire these treatments, and some cannot undergo them for financial or medical reasons. (Maizes [2015])

## 2.2 Scriptural definitions

### 2.2.1 Paṇḍaka

Pali word: *paṇḍaka*

Pali dictionary: see SuttaCentral

Sanskrit word: *paṇḍaka*

Tibetan word: *ma ning* or ' *dod* ' *gro*

Chinese word: 非男非女 or 半擇

ITLR dictionary: itlr.net

The term *paṇḍaka* and its female form *itthipaṇḍaka* have been discussed at length in the last years. The strictest readings of the word as used in the Buddhist world simply use this term very loosely to mean all LGBTIQ+, but this is a much too simple perspective, which also is very hurtful for many people. At the time when the Vinaya was laid down, the word most likely meant "eunuch" (Vimala [2019]). However, the meaning has shifted over time and the commentaries describe an individual who has a much higher libido than others.

*Itthipaṇḍaka* occurs far less in the canon and it's meaning is not quite sure because a female eunuch seems like something that cannot exist. The word only appears in the later additions to the Vinaya.

The word is not found in any of the early Buddhist Suttas, nor does it appear in the *pātimokkhas*, the lists of rules for monastics. Next to the *pāli* Vinaya, it appears twice in the *Āṅguttara Nikāya*, but both of these only have parallels to the Vinaya or later texts.

### 2.2.2 Ubhatobyañjanaka

Pali word: *ubhatobyañjanaka* or *ubhatovyañjanaka*

Pali dictionary: see SuttaCentral

Sanskrit word: *ubhayavyañjana*

Tibetan word: *mtshan gnyis pa*

ITLR dictionary: [itlr.net](http://itlr.net)

Traditionally, the word *ubhatobyañjanaka* was translated as "hermaphrodite" as is mentioned in the Pali Text Society dictionary. But the word "hermaphrodite" has shifted in meaning over the last decades with a greater understanding of the complex variations of natural bodies as well as the understanding that human beings are never able to be fully hermaphrodite i.e. can never reproduce both as male and female but are always dominant in one. Ajahn Brahmali uses the word "intersex" as a translation.

It would probably be more accurate to refer to this as a more narrowly defined subset of intersex rather than all intersex people. I would propose a subset of true gonadal intersex but will come back to this later in this paper.

Just as with the word *paṇḍaka*, it seems that this word has shifted in meaning over time to mean a more lustful individual (Vimala [2019]).

This word appears in various chapters of the Vinaya Khandaka, but never in the early Buddhist Suttas, nor in the *pātimokkhas*. It appears in the *Milindapañha*, the questions of a Greek king and therefore a much later text, even goes as far as to mention that a *paṇḍaka* or a *ubhatobyañjanaka* cannot attain enlightenment but there does not seem to be a basis for this assertion in any of the Early Buddhist texts. This seems to be added later at the end of a list of those who cannot attain enlightenment which is found elsewhere in the canon.

### 2.2.3 Other references

There are various other words mentioned in the ordination procedures for Bhikkhuni as described in *Bhikkhunikkhandhaka* that might be interesting in this context. These do not exclude from ordination and have been translated by Ajahn Brahmali as follows:

<i>animittā</i>	woman who lacks genitals
<i>nimittamattā</i>	woman with incomplete genitals
<i>vepurisikā</i>	woman who is manlike

The word *animittā* literally means "signless" and appears a number of times in the canon (excluding commentaries) but mostly in a different meaning, namely as in *Animitto (ceto)samādhī*, which is translated by Bhikkhu Sujato as "signless immersion", a term used in the context of meditation. In the context of not having genitals, it only appears in the canon in the Bhikkhunikkhandhaka and as a form of abuse for women in the Bhikkhu Saṃghādisesa 3, never on its own but always in the same sequence of words of which the above are a few. This points towards a later development.

The other words mentioned here also only appear in these two places in the canon and always exclusively refer to women. The words *(itthi)paṇḍaka* and *ubhatobyañjanaka* also appear in the same sequence.

The reason I mention these words here is that although they do not exclude a candidate from ordination, these categories would be seen as various forms of intersex in our modern understanding. Yet they are denoted separately in the context of Bhikkhuni ordination.

#### 2.2.4 Napuṃsaka

Pali word: *napuṃsaka*

Pali dictionary: see SuttaCentral

Sanskrit word: *napuṃsaka*

Sanskrit dictionary: see WisdomLib

The *napuṃsaka* is a broader umbrella term meaning 'third sex' and stems from vedic literature. They were seen as a natural and integral part of society in pre-Buddhist times (?). The meaning of the term has shifted over time to become a more derogative term. In the late Jain scriptures the term meant all gender non-conforming people, also having a much higher libido than others. The term *paṇḍaka* seems to have become synonymous with this at that time (Vimala [2019]).

The term *napuṃsaka* does not appear in the Pali Suttas, Vinaya or Abhidhamma but it appears extensively in the later commentaries, especially the *Anya*.

### 2.3 A note on translation and interpretation

The main responsibility of a translator is to translate words as accurately as possible according to the meaning at the time the text was laid down. In practise this can be challenging as meanings of words have shifted over time, both in the ancient past as they have in our times. Words used 100 years ago might not be used any more in the same way they

are today. It is clear from the above definitions that no modern word can clearly capture the understanding of the words in the canon entirely and it remain a question of interpretation. It is therefore important that we carefully study the socio-cultural conditions under which these words have formed and take these conditions into consideration when making decisions about the lives of others, most notably future candidates for ordination.

---

- In cases such as this, we should always err on the side of compassion. If there is no clear rule in the Vinaya, are we obliged to follow the commentarial interpretation? Of course there is always the danger that an ordination is not accepted in the wider Sangha, but with the Bhikkhuni ordinations we have seen that acceptance gradually grows. It is up to the individual communities, with agreement of all Sangha members, to ordain a person or not and to judge their suitability, even if the interpretation of other communities is different.

---

Another route to interpreting the texts is, as always, comparative study. It may turn out that the prohibition against ubhatobyañjanakas is a relatively late development that happened after the time of the Buddha. If so, we would have good grounds for disregarding this prohibition.

There are further complications, such as getting agreement from all Sangha members to ordain such a person. It is possible not everyone would feel at ease with it, for a number of possible reasons.



### 3 Word frequency

The following charts show how often some of the words are used in the Pali canon as well as in the Sanskrit and Tibetan texts. Note that the size of the specific parts of the canon is not taken into account so we have to be careful drawing definite conclusions from these charts, but they do show the relative importance of these words.

For the Sanskrit texts our dataset is not complete, many Buddhist texts are missing.

#### 3.1 Pali canon and commentaries

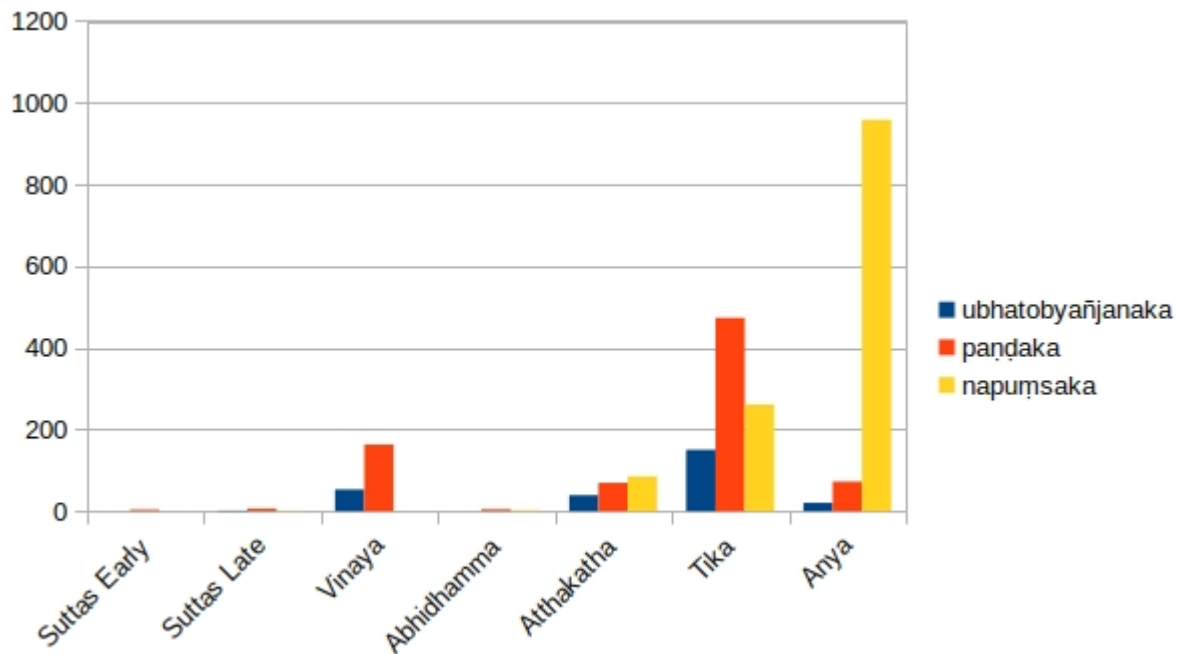


Figure 1: Frequency of words in the pali canon and commentaries

### 3.2 Sanskrit Buddhist and Vedic canon

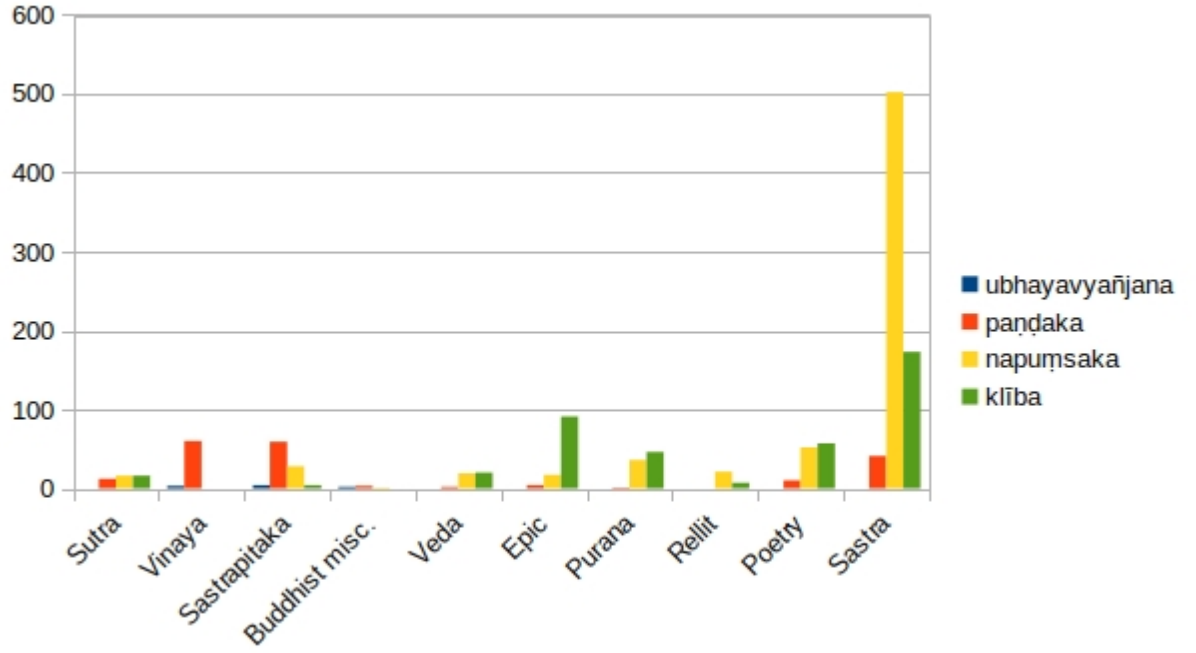


Figure 2: Frequency of words in the Sanskrit Buddhist and Vedic canon

It is important to note that unlike the texts in the Pali canon, the search over the Sanskrit text only use the GRETIL database and do not comprise of the entire Buddhist canon. The Vedic canon is also included in this chart.

### 3.3 Tibetan canon and commentaries

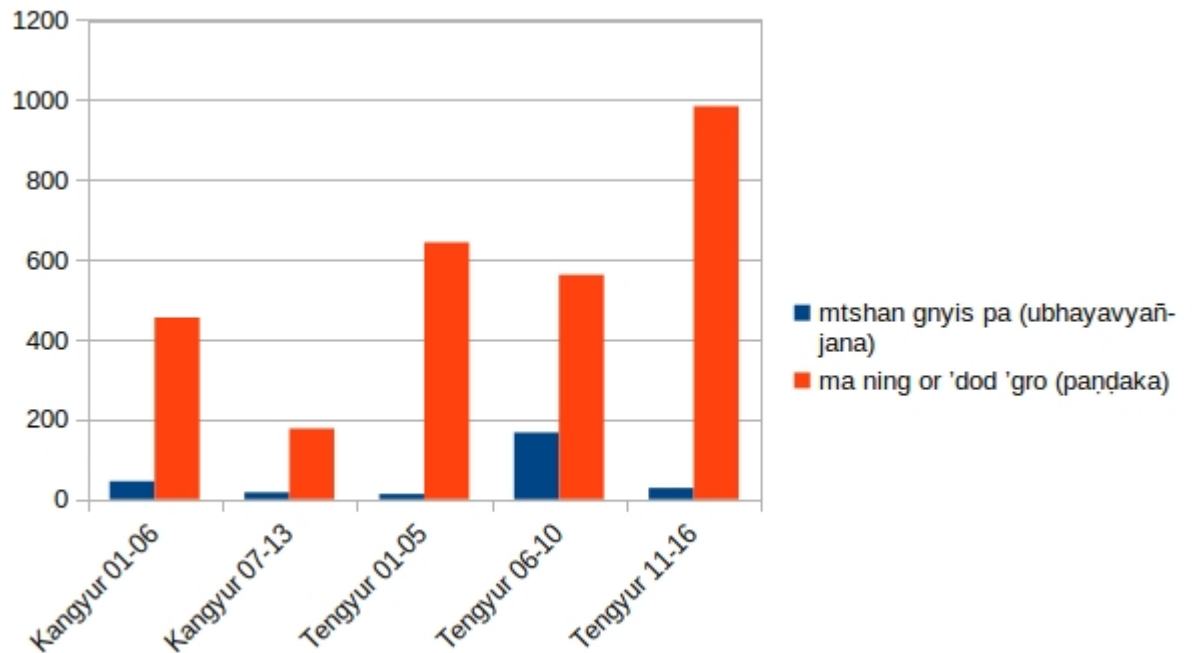


Figure 3: Frequency of words in the tibetan canon and commentaries

## 4 Analysis of the terms in the context of ordination

The rule against ordination of both the *paṇḍaka* and the *ubhatobyañjanaka* are laid down in Khandaka 1 and are clearly against the full ordination of these two types of individuals, the *upasampadā*. Yet it is interesting that in both cases the person to whom the rule applies is said to have been given the *pabbajjā*. This really only makes sense if we understand *pabbajjā* here to be equivalent to *upasampadā*. In fact this equivalence between *pabbajjā* and *upasampadā* is what we find throughout the earliest Vinaya, and indeed the suttas<sup>1</sup>. In any case, the rules itself are clearly limited to *upasampadā*.

### 4.1 Paṇḍaka

*Tena kho pana samayena aññataro paṇḍako bhikkhūsu pabbajito hoti. So dahare dahare bhikkhū upasaṅkamtivā evaṃ vadeti— “etha, maṃ āyasmanto dūsethā” ti. Bhikkhū apasādenti— “nassa, paṇḍaka, vinassa, paṇḍaka, ko tayā attho” ti. So bhikkhūhi apasādito mahante mahante moliḡalle sāmaṇere upasaṅkamtivā evaṃ vadeti— “etha, maṃ āvuso dūsethā” ti. Sāmaṇerā apasādenti— “nassa, paṇḍaka, vinassa, paṇḍaka, ko tayā attho” ti. So sāmaṇerehi apasādito hatthibhaṇḍe assabhaṇḍe upasaṅkamtivā evaṃ vadeti— “etha, maṃ āvuso dūsethā” ti. Hatthibhaṇḍā assabhaṇḍā dūsesuṃ. Te ujjhāyanti khiyyanti vipācenti— “paṇḍakā ime samaṇā sakyaputtiyā. Yepi imesaṃ na paṇḍakā, tepi ime paṇḍake dūsentī. Evaṃ ime sabbeva abrahmacārīno” ti. Assosūṃ kho bhikkhū tesāṃ hatthibhaṇḍānaṃ assabhaṇḍānaṃ ujjhāyantānaṃ khiyyantānaṃ vipācentānaṃ. Atha kho te bhikkhū bhagavato etamatthaṃ ārocesuṃ. “Paṇḍako, bhikkhave, anupasampanno na upasampādetabbo, upasampanno nāsetabbo” ti. (Mahakkhandhaka, PTS 1.86)*

At one time a certain *paṇḍaka* had gone forth as a monk. He approached the young monks and said, “Venerables, come and have sex with me.” The monks dismissed him, “Go away, *paṇḍaka*. Who needs you?”

He went to the big and fat novices, said the same thing, and got the same response. He then went to the elephant keepers and horse keepers, and once again he said the same thing. And they had sex with him. They complained

---

<sup>1</sup>The *sāmaṇeras/īs* are barely mentioned in the suttas. Instead we find the figure of the *samaṇuddesa*, “one designated as a *samaṇa*”, who seems to have had a looser affiliation with the Sangha, that is, no proper ordination. The commentaries glosses them as *sāmaṇeras*, but this might be an oversimplification. More likely they were a kind of precursor to the more formal status of novice. It seems likely that such people merely put on robes, and then lived in with loose connection to a particular community of ascetics, in which case their sex would have been a non-issue. I would argue it is natural to see novices proper in the same way. But the *samaṇuddesa* remains obscure.

and criticized them, “These Sakyan ascetics are *paṇḍakas*. And those who are not have sex with them. None of them is celibate.”

The monks heard their complaints. They told the Buddha and he said, “A *paṇḍaka* should not be given the full ordination. If it has been given, he should be expelled.”

## 4.2 Ubhatobyañjanaka

*Tena kho pana samayena aññataro ubhatobyañjanako bhikkhūsu pabbajito hoti. So karotipi kārāpetipi. Bhagavato etamattamaṃ ārocesuṃ. Ubhatobyañjanako, bhikkhave, anupasampanno na upasampādetabbo, upasampanno nāsetabboti. (Mahakkhandhaka, PTS 1.89)*

At one time an *ubhatobyañjanaka* had gone forth as a monk. He had sex, sometimes acting as the male partner, sometimes as the female.

They told the Buddha and he said, “An *ubhatobyañjanaka* should not be given the full ordination. If it has been given, he should be expelled.”

The commentary (*Samantapādādikā*, vol. 3, para. 116) mentions the following about *ubhatobyañjanaka*:

Ubhatobyañjanako ... so duvidho hoti -itthiubhatobyañjanako, purisaubhatobyañjanakoti. Tattha itthiubhatobyañjanakassa itthinimittamaṃ pākāṭamaṃ hoti, purisanimittamaṃ paṭicchannamaṃ. Purisaubhatobyañjanakassa purisanimittamaṃ pākāṭamaṃ, itthinimittamaṃ paṭicchannamaṃ. ... Imassa pana duvidhassāpi ubhatobyañjanakassa neva pabbajjā atthi, na upasampadāti

The *ubhatobyañjanaka* is of two sorts: the female *ubhatobyañjanaka* and the male *ubhatobyañjanaka*. For the female *ubhatobyañjanaka* the female characteristics are revealed, whereas the male characteristics are concealed. For the male *ubhatobyañjanaka* the male characteristics are revealed, whereas the female characteristics are concealed. ...

For either of these there is neither a going forth (*pabbajjā*) nor a full ordination (*upasampadā*).

The commentary makes a distinction between male and female *ubhatobyañjanaka* whereby characteristics of the other sex are hidden. This is a much broader definition and a much broader subset of the term "intersex" as we know it today. The fact that they are predominantly male or female would be a fairly objective basis for deciding on ordination with the Bhikkhus or Bhikkhunis. This distinction is not mentioned in the Vinaya. But the commentary also makes a distinction between *pabbajjā* and *upasampadā* and does not allow either for ordination.

---

— One thing that struck me in Khandaka 1 is that both passages for paṇḍaka and ubhatobyañjanako deal with monks (already ordained!) having sex and therefore breaking Parajika 1. But instead of being rightfully expelled on those grounds for their bad behavior, they are expelled for who they ARE, together with a whole lot of other monks (at that time and in the future), who might be exemplary practitioners. The only other example of that in KD1 is animals but the origin story of that also seems rather more mythological than anything that actually happened. All the other examples of people not to be ordained are those who have such heavy defilements that they cannot either practise properly or would be a burden to the community because they might fall into the same bad habits again. So those people are not accepted because of what they have DONE. Having a certain body can hardly be regarded as a defilement, unless you look at it in the light of the idea of "past bad kamma". However, the Buddha never punished anybody for the way they were born. This difference only makes sense if you read the translations according to a later interpretation of the words paṇḍaka and ubhatobyañjanako, namely people who have extremely strong sexual desire as I pointed out in my earlier article on pandakas. In fact, a eunuch has far less sexual desire as he no longer produces testosterone and there is no indication that an intersex person would have more sexual desire than other people.

## References

- Shirley Altilio, Terry; Otis-Green. *Oxford Textbook of Palliative Social Work*. Oxford University Press, 2011. URL [https://books.google.com/books?id=XS3XJL\\_RGIgC&pg=PA380](https://books.google.com/books?id=XS3XJL_RGIgC&pg=PA380).
- Bhikkhu Anālayo. The Legality of Bhikkhunī Ordination. *Journal of Buddhist Ethics, Special 20th Anniversary Issue*, 2013.
- Victoria Maizes. *Integrative Women's Health*. American Psychiatric Association, 2015.
- US National Library of Medicine. Intersex. URL <https://medlineplus.gov/ency/article/001669.htm>.
- Intersex Society of North America. Is a person who is intersex a hermaphrodite? 2013. URL <https://web.archive.org/web/20130701061246/http://www.isna.org/faq/hermaphrodite>.
- UN Office of the High Commissioner for Human Rights. Free and Equal Campaign Fact Sheet: Intersex. 2015. URL [https://unfe.org/system/unfe-65-Intersex\\_Factsheet\\_ENGLISH.pdf](https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf).
- R Polly and J Nicole. Understanding the transsexual patient: culturally sensitive care in emergency nursing practice. *Advanced Emergency Nursing Journal*, 2011.
- Bhikkhu Sujato. *Bhikkhuni Vinaya Studies*. Lulu, 2009. URL <https://www.lulu.com/shop/bhikkhu-sujato/shop/bhikkhu-sujato/bhikkhuni-vinaya-studies/paperback/product-1gjw8vnr.html>.
- Bhikkhunī Vimala. The meaning of paṇḍaka in light of the Vedic and Jain scriptures. 2019. URL <https://samita.be/en/2019/05/29/the-meaning-of-pa%e1%b9%87%e1%b8%8daka-in-light-of-the-vedic-and-jain-scriptures/>.