

*Analyzing the Modern Sex Selection with the Perspective of the Prohibition of Infanticide.*

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**Abstract**

The emergence of modern biomedically assisted sex selection for non-medical reasons facilitates parents to desire the sex of a fetus. This practice raises many ethical questions that centers around human value and dignity. The notion and practice of infanticide are categorically prohibited in Islam. Whether the non-medical gender selection practice is a form of pre-Islamic paganistic (*jāhiliyyah*) infanticide and whether the reasons that persuade the parents to opt such practice resemble the causes that used to motivate the *jāhily* Arabs is the aim of this research. The research analyses the status of surplus embryos produced through the sex-selection process in order to mark the beginning of human life and consequently to determine whether fetuses not used, i.e. terminated in the sex selection process are infanticide. Some scholars and physicians opine that the surplus embryos in the process of sex selection, have life, thus killing them is as similar as killing life, i.e. a similarity to pre-Islamic infanticide in essence and in the factors.

Keywords: sex selection, infanticide, non-medical reasons, ethical, beginning of life, embryos.

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## Research Question

Is non-medical sex selection a modernized form of the ancient and ethically abhorrent infanticide?

## Introduction

Sex selection with the help of modern advanced biomedical technologies is a process that involves techniques such as In-vitro Fertilization (IVF) and Pre-implantation Genetic Diagnosis (PGD). IVF is a form of Assisted Reproductive Technology (ART), with which an egg is extracted from a woman's ovary and gets fertilized by a sperm. After the fertilized egg starts to divide, it gets transferred back into the woman's uterus (Zahraa & Shafie, 2006, p. 161; Ehrich, Williams & Farsides, 2008, p. 777). PGD is the genetic testing of embryos, which increases the chances of having a successful IVF process and decreases miscarriages, which may occur when the implanted embryo has (genetic) deformities (Tur-Kaspa & Jeelani, 2015, p. 116). These biomedical techniques considerably decrease the chance of having health-related diseases and are of great service for human wellbeing.

The main purpose of using advanced techniques such as IVF and PGD is to help infertile couples to get children that they otherwise would have never had in a natural way. That is why many Muslim religious scholars permitted the use of the ART in principle (Inhorn & Tremayne, 2016, p. 423), recalling for the formation of Standing Committee for Sharia Medical Ethics to observe the scientific development of ART and witness its religious and social implications (Seour & Dickens, 2001, p. 188-189).

Besides infertility treatment, the process of IVF and PGD can also be used for selecting the gender, in the embryo stage, where 1 to 3 embryos out of many intended with the specific gender are chosen to be implanted in the uterus and others are frozen or destroyed (Ghaly, 2012, p. 183; Basalamah, 1987). This form of sex selection denotes preferring one gender over another for many social and economic reasons, which remind the scenario of pre-Islamic age, *ʿAṣr al-Jāhiliyyah*, when having girls used to be thought of source of shame, disgrace, and humiliation in the family. That is why they were sometimes buried alive, the phenomenon of female infanticide (*waʿd al-banāt*), which the Qurʾān referred to. The Quran reads, “And when one of them is informed of [the birth of] a female, his face becomes dark, and he suppresses grief. He hides himself from people because of the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide.” (al-Nahl: 58-59).

The practice of sex selection, raises a number of questions, e.g., does this practice resemble the pre-Islamic notion of female infanticide? If not, would Islam allow gender selection for non-medical reasons? Is terminating the surplus male embryos in the process of selecting gender tantamount to killing or homicide?

## Female infanticide in the Quran

Several verses in the Quran speak about that the custom of infanticide, which seems to be widespread in the pre-Islamic Arab society for several reasons related to

the nature and structure of that society. Moreover, nearly all the verses related to infanticide were revealed in the Meccan context which indicates the wrongdoings of the pre-Islamic Arab society (Giladi, 1990, p. 186).

The Quran says: “And do not kill your children for fear of poverty. We provide for them and for you...” (al-Isrā’: 31). This verse indicates the occurrence of infanticide in case of both sexes for fear of poverty (al-Ṭabarī, 2000, vol. 17, p. 436) but the infanticide of girls was more predominant in the pre-Islamic age (al-Ṭabarī, 2000, vol. 17, p. 436; al-Rāzī 1999, vol. 3, p. 506; al-Bayḍāwī 1997, vol. 3, p. 254).

The Quran also states: “And likewise, to many of the polytheists, their partners have made [to seem] pleasing the killing of their children in order to bring about their destruction and to cover them with confusion in their religion...” (al-An‘ām: 137). This verse shows pagan Arabs’ ritualistic sacrifice of their children for partners (*shayāfīn*) who they used to worship (al-Ṭabarī, 2000, vol. 12, p. 137). Another Quran exegete says that they (the partners, i.e. the mediators) are the ones who used to serve the idols (Al-Qurṭubī, 1985, vol. 7, p. 91) and ordain Arab pagans’ daughters to be slain (al-Ṭabarī, 2000, vol. 12, p. 137). Furthermore, Al-Qurṭubī (1985, vol. 7, p. 91) and Ibn Kathīr (1999, vol. 3, p. 345) state that it was made glorifying for them to make a share with God, their idols, and (for many of them) to kill their children. Besides, Al-Qurṭubī mentions that the killing of their daughters for fear of poverty was made attractive to them (1985, vol. 7, p. 91).

Burying daughters by the Arab pagans for social shame is more clearly mentioned in the Quranic chapter al-Takwīr that says: “And when the girl [who was] buried alive is asked for what sin she was killed.” (al-Takwīr: 8-9). This verse is a clear example of burying a baby girl alive by the pre-Islamic Arabs (al-Ṭabarī, 2000, vol. 24, p. 248), for various reasons, e.g., the assumption that the angels are the daughters of God and that is why they used to relate the daughters to God, fear of poverty, or fear of enslavement (Al-Qurṭubī, 1985, vol.19, p. 232). Moreover, the Quran describes attitudes of the pre-Islamic Arabs by mentioning; “And when one of them is informed of [the birth of] a female, his face becomes dark, and he suppresses grief. He hides himself from people because of the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide.” (al-Nahl: 58-59). This is actually what existed in pre-Islamic Arab society where if a girl was born in a man’s house, she would be buried alive (al-Ṭabarī, 2000, vol. 17, p. 228). The tribes such as *Khuzā‘ah*, *Muḍār* and especially *Tamīm* were known for this immoral practice (Al-Qurṭubī, 1985, vol. 10, p. 117).

From the above-mentioned Quranic verses on killing children (*awlād*) and the commentaries made by the exegetes (*mufasssirūn*), one can conclude the following. The term *awlād* was sometimes understood to mean both male and female children but sometimes the practice was specifically targeting female children (*banāt*), as mentioned in the chapters of al-Takwīr and al-Nahl. This clearly indicates that there was a dominant preference of a specific gender, viz. male children, which also took the form of putting the life of early-born female children to an end. Thus, in one way or another, one can speak of a primitive form of sex selection.

## **Non-medical gender selection as seen by contemporary Muslim religious scholars**

Majority Muslim scholars and physicians agree that sex selection for non-medical reasons is impermissible. A workshop organized by the International Islamic Centre for Population Studies and Research (IICPSR) at al-Azhar University opposed strongly the use of IVF and PGD for gender selection and argued that this practice would open the door to discrimination against female embryos and fetuses (Serour & Dickens, 2001, p. 190). Though selecting gender does not go against the will and power of Allah, it is still prohibited in principle excluding exceptional cases (Shubayr, 2001, p. 339), such as sex-related diseases (Zahraa & Shafie, 2006, p. 180). Moreover, this practice would create demographic imbalance in society and may eventually lead to same-sex relations. Besides, there is no basis for allowing this practice as sex is not a disease that we need to avoid it in advance (Rispler-Chaim, 2008, p. 67-68).

Some Muslim scholars and physicians who stick to the opinion of the majority, however, opined that social reasons may be considered to permit gender selection under certain circumstances. For instance, the general prohibition of gender selection may lead some women to vulnerable situations in societies where having sons remain central to women's well-being and status (Serour & Dickens, 2001, p. 190). Moreover, family balancing may be considered acceptable, for families where several girls have been delivered by the wife and there is no boy or vice versa (Serour, 2008, p. 36; Serour & Dickens, 2001, p. 190). However, those reasons may only be considered with the condition that there cannot be any prejudice against either sex and the process cannot involve third-party other than the married couple in sexual relationship and the resulting procreation (Chamsi-Pasha & Albar, 2015, p. 107).

On the other hand, some Muslim scholars found sex selection unproblematic, saying that selecting gender for non-medical reasons should be permissible since there is no scriptural prohibition. This opinion was expressed by the late *Azhārī* scholar Muḥammad Ra'fat 'Uthmān. He premised his opinion on the juristic principle that everything in the universe is available for human exploitation and can be used by humans as long as it is not harmful (Rispler-Chaim, 2008, p. 65-66). Moreover, the proponents of gender selection for non-medical reasons also say that if asking or praying to God for having a son or daughter is allowed, it is also permissible to pursue it through other means (Shubayr, 2001, p. 339; Rispler-Chaim, 2008, p. 66).

Possibly an additional argument for the proponent of sex selection are some writings in the Islamic tradition. Some classical commentaries on hadith literature and works written by Muslim physicians, like Ibn Sīnā (d. 1037) and al-Rāzī (d. 925), provided instructions on how to procreate boys in particular. For example, they said; boys are born from the right side of the body and girls from the left side. Moreover, a boy is conceived if the sperm is warm and enters the right side of the womb, which is also the warmer part as it is closer to the liver (Ibn Sīnā, 1994, vol. 2, p. 767-768; al-Rāzī, 2000, vol. 3, p. 167). A hadith explains that when the seed of the man meets the seed of the woman, the seed that dominates determines the sex of the fetus (Muslim, 1986, vol. 1, p. 252, Hadith no. 315).

Remarkably, both the opponents and proponents of sex selection focused on either the good or bad consequences of this practice, without touching upon the moral status of the embryo. The section below is meant to fill this gap.

### **The status of embryo in the religious scholars' discourse on the beginning of human life**

As mentioned earlier, selecting sex through modern biomedical techniques such as IVF and PGD involves creating more than one embryo. This procedure raises concerns about the fate of surplus embryos that maybe ultimately terminated. Whether the destruction of these embryos is an act of killing or not, can be better understood from the views of classical schools of *fiqh* and contemporary scholars. The core issue here is how to determine the exact beginning of human life. The scholars have varied in their opinions on the specific moment of the beginning of life.

#### **a. Classical scholars: Ensoulment is the beginning of human life**

The classical schools of *fiqh* agree that life starts from the moment of ensoulment, i.e. after 120 days of gestation (Ibn 'Ābidīn, 1992, vol. 1, p. 302; al-Qarāfī, 1994, vol. 2, p. 470; Shams al-Dīn, 1984, vol. 2, p. 496; al-Zarkashī, vol. 2, p. 334; Ibn Hazm n.d., vol. 8, p. 168). The basis of their claim is the famous hadith of Ibn Mas'ud who narrated that mentions Prophet of Islam said: "Verily, you are aggregated in your mother's womb for forty days, then blood clot for another forty days, then embryo for another forty days, then Allah sends angel ..." (al-Bukhārī, 2001, vol. 2, p. 2036, Hadith no. 2643). Based on the classical opinion, it seems that surplus embryos in the IVF process do not possess human life because ensoulment happens only with the moment ensoulment, i.e. before 120 days of gestation but these embryos are not even implanted in the uterus yet. Thus, one can conclude that destroying these surplus embryos is not an act of homicide because there is no human life which was put to an end.

#### **b. Contemporary Muslim scholars**

Contemporary Muslim scholars and physicians have three opinions regarding the specific beginning of human life. This difference can be credited to the modern biomedical advancements which contributed to shaping the opinions of these scholars.

##### **b.1 The first position: The emergence of humid liver as the beginning of human life**

Muslim physician, Ibrahīm al-Sayyad opined that the sign of being alive is having a humid and warm liver with a functioning blood circulation system (Ghaly, 2012, p. 179). Al-Sayyad's argument was based on the prophetic hadith speaking about taking care of every creature with the humid liver (al-Bukhārī, 2001, vol. 3, p. 111, Hadith no. 2363). This is a minority opinion.

If this view is accepted, it is certainly evident that the surplus embryos in the IVF stage do not even reach to the uterus of the woman, let alone the stage of blood circulation, which indicates that embryos do not have life according to this position.

## **b.2 The second position: Conception is the initial point of human life**

Many physicians and Muslim scholars opine that the beginning of life is marked when the ovum of woman gets fertilized by the sperm of man, i.e. the conception (al-Madhkur, 1985). Some of them said that life starts exactly at the very moment of conception whereas some others thought of a bit later moment, namely just when the fertilized ovum gets settled in the uterus (Ghaly, 2012, 180-181).

The Egyptian physician, Ḥassān Ḥaṭḥūt, objected to the permissibility of getting rid of the embryo before ensoulment as it is against the discovery of modern medical knowledge which demonstrates that embryogenesis is an entirely constant process, and thus identifying the exact beginning of life is impossible (Ghaly, 2012, p. 181-182). The proponents of this position say that if the scriptural texts in their apparent meanings are contradictory to modern science, they need to be reinterpreted metaphorically (Ghaly, 2012, p. 181). Moreover, they quoted the classical scholar al-Ghazālī saying that life should be respected from the beginning of pregnancy, and thus offense against this life is unethical (Ghaly, 2012, p. 185). The advocates of this position also say that the Quran (in Chapter al-Insān: 2) uses the term *insān* to describe the fetus in the *nutfā* stage, which is the earliest stage of pregnancy (Ghaly, 2012, p. 183). Another argument put forward is the practical ruling in Islamic law that considers pregnancy as a valid excuse to postpone death sentence, without any differentiation between the period before or after the soul-breathing (Ghaly, 2012, p. 185).

If this opinion is chosen, it can be said that embryos have life as life starts when the ovum of the woman gets fertilized by the sperm of the man which happens in the IVF process. Thus, all the surplus embryos will be considered having life and hence killing them would raise ethical concerns about possible homicide. However, some advocates of this position who delay the beginning of human life until the settlement of the fertilized ovum in the uterus, destroying the surplus embryos would not raise the concern of homicide.

## **b.3 The third position: Ensoulment is the initial point of human life**

In line with classical scholars, a great number of contemporary Muslim scholars and physicians advocate the thesis that ensoulment marks the beginning of human life. They argued that if death occurs when the soul leaves, life should start when the soul is breathed in the embryo (Ghaly, 2012, p. 192). The Jordanian religious scholar, ‘Umar al-Ashqār, said that embryo before ensoulment is dead. They mentioned also that the prophetic traditions and their differences demonstrate that the soul is not breathed before 40 days as the angel does not visit the embryo before 40 days (Ghaly, 2012, p. 193).

They said that the prophetic tradition of Ibn Mas‘ūd clearly describes the stages of embryonic development and refers to the moment of ensoulment. Some of the proponents of this position criticized resorting to the metaphorical interpretation of Quranic verses and prophetic traditions relevant to the question of ensoulment and the beginning of human life. They said that parts of these scriptural texts are definitive and thus are not open for various interpretations. However, they added, scientific

knowledge is speculative in nature and thus can change over time (Ghaly, 2012, p. 187).

They also mentioned that the advancement of modern medical knowledge made it easy to detect the development of nervous system and specifically the brain, which is a scientific sign that ushers the stage of ensoulment. However, there were disagreements among the physicians who advocated the second and third positions about the exact time of the formation of the brain and its completion (Ghaly, 2012, p. 187-191).

From the above discussion on the beginning of human life, it is clear that majority of Muslim scholars are of the opinion that surplus embryos do not have human life because they are not even implanted in the uterus.

### **Analytical Remarks**

From the above-mentioned discussion on the status of embryos not implanted in the uterus, it is apparent that different opinions on the beginning of human life will have different implications with regards to choosing the sex of an embryo while ignoring the surplus embryos through biomedical techniques. If the second opinion (life starts exactly when woman's egg gets fertilized by man's sperm) is chosen, it is then seen that embryos in the IVF process would be seen as human beings. Thus, all surplus embryos will be considered having human life and destroying these embryos will raise serious ethical questions about possible infanticide. Therefore, it implies that the termination of surplus embryos in the process of selecting the sex due to gender preference may be considered infanticide, i.e. the killing of living beings. Nevertheless, further discussions from different angles are necessary and important to claim the act as infanticide.

However, the majority contemporary Muslim scholars still support the view of classical Muslim jurists (*fuqahā*) which links the beginning of human life to the moment of ensoulment, which occurs after the lapse of 120 days of pregnancy. If accepted, this opinion will mean that surplus embryos in the IVF process have no human life. Thus, terminating those surplus embryos cannot be deemed infanticide.

If this is the case, why did the majority of Muslim scholars oppose choosing the sex of an embryo for even non-medical reasons? Before answering that, we can say that sex selection is not strictly infanticide because it does not involve terminating an already existing human life. However, the two practices still have some similarities. For instance, Sex selection obstructs potential human life to take the normal course of growth, by choosing not to implant the female embryo in the uterus, just because of its gender. And female infanticide was motivated by specific social customs which were strongly opposed by Islam (e.g. having a female child is a source of shame, etc.). Sex selection implies the same preference for a specific gender for more or less the same reasons. Thus, we can see that the scholars' opposition towards sex selection for non-medical reasons has to do with the arguments related to social shame, humiliation that may cross people's minds and due to the bad consequences of the practice such as, preferring one gender over another (as we mentioned), the fear of widespread misuses of these techniques. Moreover, such practice on the public level

can become an attempt to change the universal order of God (Rispler-Chaim 2008, p. 71).

### **Concluding thoughts**

The main question of the research was, Is non-medical sex selection a modernized form of the ancient and ethically abhorrent infanticide? This was addressed in this paper. From the discussion, we notice that the early Muslim exegetes demonstrated pre-Islamic Arab societies' involvement in predominantly female infanticide and the factors that used to influence them doing this varied. They were involved in infanticide due to the fear of poverty, ritualistic purposes, and especially social shame and humiliation.

Regarding the modern biomedical process of sex selection, which involves creating more than single embryo, and thus the surplus embryo are terminated, we can see that majority Muslim scholars relate the beginning of human life to the moment of ensoulment, and provide sanctity to the implanted embryos and so, they do not consider surplus embryos having life. In contrary, minority give sanctity to the non-implanted embryos considering the life to begin by the moment of conception (when woman's egg gets fertilized by man's sperm).

Taking the majority opinion implies that surplus embryos have no life, and thus there is no infanticide in the sex selection process. However, the similarities between infanticide and sex selection lie from another angle, i.e. in the prevention of a potential life from having a normal course of life due to sex selection by choosing not to implant the embryo of a specific gender, and in the reasons that motivate to do sex selection. That is why, the majority of Muslim scholars are against it, together, due to the bad consequences of this practice.

Islam encourages medical treatment. This is reflected in the hadith: 'There is no disease that Allah has created, except that He has also created its remedy (al-Bukhārī, 2001, vol. 7, p. 122, Hadith no. 5678). That is why, sex-selection for medical reasons, such as avoiding inherited diseases that would affect a specific gender, is not a controversial issue among contemporary Muslim scholars who permitted this practice. However, selecting gender for non-medical reasons such as feeling shame or humiliation due to the birth of specific gender is inherently wrong and nothing but the manifestation of pre-Islamic Arab societies where girls used to be buried alive due to the same reasons. Their practice was a form of gender selection. Islam ascertains categorical negation of such practice and ensures that no kind of discrimination and preference of a gender over another occurs. However, Islam acknowledges the asking and prayer of parents for a baby of a specific gender, but they must not give preference with regards to care and treatment that would indicate discrimination.

The classical accounts and some hadith narrations that describe how to try to procreate intended gender babies do not involve the current process of IVF and PGD which produce more than one embryo and the ultimate termination of embryos. Moreover, those accounts demonstrate for the parents to try those, rather than the feeling of shame, sorrow for the birth of a specific gender not to mention tolerating putting the life of born girls to death or obstructing their implantation in the uterus in the first instance. In addition, these also prove that social and cultural importance of

procreating boys may have led the scholars and the physicians inclined to respond. Also, the classical discussions on *du'ā* (seeking to God) make the person attached to God rather than technology?

Furthermore, selecting gender in IVF and PGD process somehow involves destroying surplus fertilized embryos that may be assumed as potential human being, which raises the question on the process of gender selection that is even for non-medical reasons. Basalamah (1987) along the same lines, advocates that they have a sanctity that must not be violated by killing or implantation into a surrogate mother's uterus, nor should they be exposed to laboratory experiments; for such experiments might be the beginning of a human disaster.

Such selection may mean misuse of biomedical techniques and creating imbalance in God's order of society if there is widespread practice. Moreover, entering to this process may also entail the notion of playing God as this involves creating intended gender not for the process of curing sex-related inherited diseases but rather for mere expectations, which violates God's intention and will. However, it is said that nothing done by human goes beyond the will of Allah. Selecting gender also does not go outside the scope of the will and power of Allah (Shubayr, 2001, p. 339). But human has been given freedom to do good and bad, if human wills bad, despite the action not going against the power of Allah, human has to face recompense for indulging in God's prohibitions.

Moreover, the widespread gender selection may lead to harmful consequences. For instance, human intervention will probably be the cause of determining specific gender of population. Countries like China and India are involved in the process of gender selection-plus-abortion which is resulting in the deficit of women and excess of man (Pence, 2014, p. 98).

The researcher agrees with the opinion of the scholars who advocate banning gender selection for non-medical reasons in principle, assuming this practice an entry to gender discrimination, a replica of somehow a modernized form of the *jāhili* infanticide, and the reason for the destruction of surplus embryos. However, the researcher thinks that the general ban can lead to some other negative consequences such as oppression against women in societies where women would be threatened, humiliated or sometimes divorced if sons cannot be delivered. Therefore, for the greater benefit of women, the general prohibition should not be strictly and unconditionally upheld. Hence, the particular case of sex selection for non-medical reasons should be permitted or forbidden based on the merit of each individual case. Moreover, this should be observed by such committee who are well informed of the Sharia medical ethics and understand the religious and social implications of medical practices (Serour, & Dickens, 2001, p. 188). Above all, it is important to have further research to look at the sex selection, resultant termination of surplus embryos, and infanticide under Islamic and medical perspectives.

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